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Financial Industry Regulatory Authority

VIA E-Mail pubcom@finra.org
Re: Regulatory Notice 09-70

I am writing this letter to comment, as encouraged by FINRA, on proposals that are contained in FINRA Regulatory Notice 09-70. Before doing so, I must indicate that the views expressed herein are mine personally and, with the exception of Integrated Management Solutions USA LLC, are not necessarily the same as the views of any other organization with which I have any affiliation.

I began to study the proposals by parsing the 37-page Notice and the 55-page attachment that accompanied it. I soon realized that the drafters of the proposals expended much effort patching up obvious inconsistencies and inappropriate sections in the existing rules, and ignored -- perhaps purposely-- the real predicate upon which the registration rules are based.

In my view, a principal purpose of the registration rules is to ensure that industry professionals are properly knowledgeable about the products and services in which they engage and the rules, regulations and laws that are applicable to those products and services. Many of the rules have illogical and onerous provisions, and it appears that these provisions are being dragged into the proposed rules instead of being repealed altogether and having more sensible processes substitute.

Use it, or lose it

Under current rules, a person with a gap of over two years from the last time that person was registered may not be registered again without retaking examinations. The reason for that is a regulatory concern that a person who is away from the subject matter for more than two years may not have kept up with important changes that have gone on in the securities industry. In fact, however, there are many examples of persons who leave a FINRA member and subsequently utilize almost the exact same skill sets they used while they were with the member firm -- yet these people are penalized because they are no longer registered with a FINRA member.

Here are some examples:

- An institutional sales-trader leaves a FINRA member and joins the investment adviser of a mutual fund where she buys and sells securities using the same computer platforms she used when she was at the member firm. After four

years, she wishes to return to work at the FINRA member but is required to requalify by exam. While the FINRA member may apply for an examination waiver on behalf of the sales-trader, there is no guarantee that it would be granted.

- A Financial and Operations Principal wishes to accept a position with an industry regulator, such as FINRA or SEC, or a PCAOB-registered CPA firm where his skills can be enhanced further. Once two years go by, should he wish to come back to a FINRA member, the person would need to requalify by examination or seek a waiver.

- A retail customer service representative who is registered with a Series 7 license takes a 20-month leave from her firm so that she can give birth and take care of her child. During this period, she attends the firm's annual compliance meetings by phone and participates in the annual Firm Element Continuing Education. Alas, she decides to continue her motherly duties for an additional six months, which takes her beyond the two-year window. She therefore loses her ability to re-register.

- A member's compliance officer leaves the firm and becomes a consultant, spending the next three years in an unregistered capacity assisting his clients with various regulatory compliance issues. His registrations are lost after two years.

It is logical for FINRA to suspect that people get a bit rusty if they don't regularly use the skills that underlie qualifying examinations, but the two-year window is far too arbitrary. There are better alternatives! One such alternative would be to extend the permissible non-registered period to be equal to a percentage of the period of time that a person was registered. For example, assume that everyone is given a two-year safe harbor -- PLUS one year for every three that the person was actually registered. A person who was registered in the industry for 30 years would thus have a 12-year safe harbor instead of only two years. The 30 years' of experience would then have a recognized value.

But perhaps the best way to vet people is to make sure that they are continually educated.

Education, education and more education

Long after the two-year "use it or lose it" concept was embodied in NASD rules, the entire securities industry adopted the current continuing education rules, which require all industry-registered personnel to maintain their professional proficiency by maintaining their knowledge. Instead of requiring people who have passed examinations to retake them when they are out of the industry for over two years, why not require those individuals to subject themselves to remediation through the use of computerized routines currently available to the people who are registered? Better yet, the computerized routines should be a bit more comprehensive than the sessions given

for people who maintained their registrations. Thus, there would be quick restoration of any proficiency lost due to non-involvement with a broker-dealer.

Who should qualify to take continuing education courses?

Anyone, of course! It shouldn't matter if the person is registered or not. Learning is a wonderful experience. What a good way for FINRA to get a financial return for all of its efforts in developing courseware. FINRA already does this with respect to various subjects, and I know of no reason why this can't be extended to the mandatory continuing education courses that are administered by Pearson and Prometric. This is important, because a person who has left a broker dealer by the time the continuing education window pops up cannot sit for CE until he or she is registered again. Thus, when rejoining a broker-dealer, that person cannot work in a capacity requiring registration until there is enough room at the exam center for the person to sit and participate.

Who should be qualified to take registration examinations?

Anyone, of course, and I really mean that. Anyone who wishes to work in any capacity within or even tangentially-related to the securities or investment banking industry should be allowed to take industry examinations. And the rules should be changed so that instead of "use it or lose it" there is a protocol whereby men or women who took the examinations but were not registered for a few years after passing the examinations would only need to be remediated with courseware to demonstrate their continued proficiency.

Do other professions have similar procedures to what I have proposed?

Yes! An example is in order. We know a person who is New York State Certified Public Accountant No. 28473. Were he to abandon New York and not practice accountancy for a period, he could later on return to New York and practice again, simply by taking some continuing education courses. This would hold true even if he hadn't practiced for many years. We also know a person who is Central Registration Depository No. 708042. Under current rules, if that person did not have FINRA registration for over two years and then chose to return to the securities industry, he would be faced with the challenge of retaking examinations, which could be quite daunting even with his years of experience and practical knowledge but no recent experience with objective computer-based examinations. To emphasize how seasoned these licensees are, I should tell you that New York State has already issued licenses with six digits and CRD has issued numbers way beyond number 5,000,000.

For that matter, FINRA itself has in its employ many attorneys, CPAs and other professionals who could easily rejoin those professions without needing to requalify by examination. Why are securities industry professionals treated worse than other professionals, such as those attorneys and CPAs?

More importantly, if FINRA's rules allowed people to take qualifying examinations without being registered, many people could take the examinations as a rite of passage.

I would like to see some or all of the following industry professionals or persons who deal with industry matters take and pass the standard examinations:

- Regulatory examiners and coordinators
- Independent auditors
- Trade processing vendor personnel
- Internal auditors
- Attorneys who deal with securities industry matters

Reciprocation

By way of rule or policy, there should be full reciprocation between all of the self-regulatory organizations that register professionals. Actually, many registrants of the other self-regulators qualify by passing FINRA-created or approved examinations anyway. There must be thousands of industry professionals who are not FINRA-registered but are registered with CBOE, CBSX, NASDAQ OMX PHLX, etc. (For the sake of full disclosure, one happens to be my son.) They shouldn't be treated as second-class citizens who require exams or waivers when they join a FINRA member.

Separation of Principal Financial Officers and Principal Operations Officers of clearing firms

I am pleased that many clearing firms may be granted waivers from the requirement to have separate individuals render these functions. I assume that such waivers will be granted to many, if not most, so-called 15a-6 firms that never handle customer cash or securities but are technically clearing firms. Better yet, why not exempt non-custodial firms automatically, or at least grandfather them. Many of these firms have fewer than ten employees and have clearing operations handled offshore by a related party, and they are managing quite well.

Functions of Financial and Operations Principals (FINOP)

Over many years we have found instances where NASD took issue with Financial and Operations Principals, such as myself and many others whom I know, who executed the oath or affirmation attached to annual financial statements that were submitted to NASD, SEC or other regulators. Not only is a FINOP the only person authorized by current FINRA rules to give final approval to such reports and to supervise how members comply with such rules, but suggesting instead that some other officer of a member is an appropriate person flies in the face of the text of current NASD Rule 1022(b) and proposed FINRA Rule 1230(a)(5). We realize that there's a bit of a disconnect with SEC Rule 17a-5, which is extremely weak on this subject. For example, that rule defines an appropriate signatory to be a "duly authorized officer with respect to corporations and a general partner with respect to partnerships." Unfortunately, that rule is way out of touch with the twenty-first century. Many partnerships have sole general partners that are non-natural persons obviously incapable of signing, and most broker-dealers today are organized as limited liability companies, a type of organization not covered by the rule at all.

I implore FINRA to do two things even **before** the proposed FINRA rules are adopted:

- Require the signatory on an annual audit filing to be a FINOP, unless there are extenuating circumstances that argue against that happening.

- Discuss with SEC staff the possibility of issuing a no-action or interpretive letter that expresses a strong preference for having a report signatory who actually has the acumen to understand the report being filed.

In this post-Enron world, publicly held companies must have accounting and finance experts on their boards of directors, and SEC has not seen fit to extend the exemption from the requirement that broker-dealers have an audit conducted by a PCAOB-member auditor. I am utterly amazed that SEC has not mandated that the signatories on the very reports involved with these audits be duly licensed FINOPs. Since SEC has chosen not to do that, I assume that SEC staff would be delighted to have FINRA step in and implement that notion immediately. You can do it right now with a simple regulatory notice distributed on a timely basis. I know that most of the Rule 17a-5-based audited financial reports are due on March 1st.

I have chosen not to delve into the nitty-gritty of the entire proposal at this time. I and others at my firm are quite busy during January and February. Now that the comment period has been extended, we may choose to supplement this letter at a later date.

Should anyone at FINRA or anywhere else desire to discuss my thoughts with me, I can be contacted at 212-897-1688 or, for those preferring email, at hspindel@intman.com.

Very truly yours,

Howard Spindel
Senior Managing Director

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