



February 26, 2010

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

Re: Regulatory Notice 09-70 – Registration and Qualification Requirements

Dear Ms. Asquith:

Nationwide Financial Services, Inc. (the “Company”)¹ appreciates the opportunity to submit its comments concerning the proposed consolidated FINRA rules that are addressed in Regulatory Notice 09-70 (the “Notice”). Specifically, FINRA is proposing to streamline and amend the registration and qualification rules, as part of the process of developing its new consolidated rulebook.

The Company appreciates and supports FINRA’s efforts in connection with its development of a consolidated rulebook that seeks to harmonize and streamline existing rules. Moreover, the Company strongly supports the expansion of inactive registration categories for the following reasons, which are articulated in the Notice:

- With respect to associates whose registrations have lapsed for more than two years, if a member has a need to move any of these people back into positions requiring registration, this can be accomplished without the associates having to re-register and re-test.
- Members can develop a depth of associated persons with registrations in the event of unanticipated personnel changes. This also encourages greater regulatory literacy.
- This would permit all persons who are serving a bona fide business purpose to have the same registration opportunities.

The Company believes, however, that certain provisions require further consideration and, accordingly, offers the comments set forth below.

¹ The Company is submitting this comment letter on behalf of its broker-dealer affiliates, each of which is a FINRA member firm.

Proposed Rule 1210(b) – Inactive Registrants Serving a Bona Fide Business Purpose

Proposed Rule 1210(b) would permit members to register associates (or maintain the registration of such persons), provided that they are engaged in a bona fide business purpose of the member. Proposed Rule 1210(b) indicates that persons registered pursuant to this section shall be associated persons for all purposes, but shall be considered registered persons only for purposes of compliance with certain enumerated FINRA provisions. Included among those provisions is NASD Rule 3010(a)(5) (which requires the assignment of each registered person to an appropriately registered supervisor). Proposed Rule 1210(b) further indicates that, for purposes of compliance with NASD Rule 3010(a)(5), an inactive registrant's activities shall be appropriately supervised to ensure that such person is not engaged in any activities that would require registration and is complying with the provisions applicable to such person based on his or her status as an inactive registrant.

Comment. We support the proposed criteria for this registration category but would recommend that the rule language be modified to refer to “any associate, provided that such person is engaged in an activity that serves a bona fide business purpose of the member, as determined by the member.” In addition, we believe that the FINRA staff should make it clear that, for purposes of satisfying this supervision requirement, members will be permitted to exercise discretion in establishing risk-based supervisory policies and procedures that are reasonably designed to ensure compliance. For instance, a member may determine that the use of periodic certifications and/or questionnaires would be adequate to meet its supervisory obligations here.

The FINRA staff should also make it clear that, with respect to the supervision of inactive registrants under this section of the proposed rule, member firms will not be required to adhere to any FINRA or NASD rules that are applicable to the supervision of associates who hold active registrations (e.g., e-mail reviews). Thus, the staff should verify that, except for the supervision referenced above, no other form of supervision of such inactive registrants would be required of members.

We also believe that the FINRA staff should make it clear that, since persons registered under this section shall be deemed to be associated persons for all purposes, all FINRA provisions that are applicable to associated persons (including but not limited to current NASD Rule 3050, current NASD Rule 3070 and the FINRA Rules referenced in Proposed Rule 1210(c)(3)) will apply to persons registered pursuant to this section.

Finally, we also believe that the FINRA staff should make it clear that FINRA oversight of “bona fide business purpose” registrants would be limited to those aspects of their activities that involve the securities business of the member firm.

Proposed Rule 1210(c) – Registration of Retained Associates

Proposed Rule 1210(c) would permit members to register any individual (or maintain the registration of such person) who is engaged in the business of a financial services industry affiliate of the member that controls, is controlled by, or is under common control with, the member. Such person would be designated as a Retained Associate and would be deemed to hold an inactive registration. This category of inactive registration is permitted, subject to various conditions, which include (i) a ten-year limit, (ii) tolling provisions, (iii) forfeiture provisions and (iv) notification requirements.

Proposed Rule 1210(c)(3) provides that Retained Associates shall only be subject to certain FINRA provisions. Included among those provisions is NASD Rule 3010(a)(5), which is discussed above. Proposed Rule 1210(c)(3) further provides that, for purposes of compliance with NASD Rule 3010(a)(5), each Retained Associate shall be appropriately supervised to ensure that such person is (i) in fact engaged in the business of the member's financial services industry affiliate, (ii) not engaged in any activities that would require registration or make such person eligible for inactive registration by engaging in a bona fide business purpose of the member, and (iii) complying with the provisions applicable to such person based on his or her status as a Retained Associate.

Comment. We are concerned about the feasibility of permitting the registration of large numbers of Retained Associates, given the challenges and potential administrative burdens associated with tracking the status of such registrants and complying with all of the above-referenced conditions. Our fear is that, while many members may applaud FINRA's efforts in permitting this type of inactive registration status, many of those same members may ultimately adopt policies that do not allow for the registration of Retained Associates. In light of these concerns, we would pose the following questions for the staff's consideration:

- Should the staff consider the allowance of Retained Associate status for an indefinite period of time?
- Has the staff considered any enhancements to its Central Registration Depository to better enable members to track the status of Retained Associates?
- Does the staff expect to assert jurisdiction for purposes of examining the activities of Retained Associates?

With the foregoing in mind, the Company currently has reservations concerning the plausibility of maintaining registrations for Retained Associates. Thus, while we generally support the idea, we may not find it feasible to maintain these registrations, given the costs and resources that may have to be dedicated to meeting the conditions and requirements referenced above.

As suggested above, we believe that, for purposes of compliance with NASD Rule 3010(a)(5), members should be permitted to exercise discretion in establishing risk-based supervisory policies and procedures that are reasonably designed to ensure compliance and recommend that Proposed Rule 1210(c)(3) be modified to reflect this. In addition, we request that the staff verify that (i) other than the supervision referenced above, no

other form of supervision of Retained Associates would be required of members, and (ii) FINRA oversight of Retained Associates would be limited to those aspects of their activities (e.g., complying with NASD and FINRA Rules applicable to Retained Associates) that involve the securities business of the member firm.

We appreciate the opportunity to provide our comments. Please let us know if we can provide any further assistance. If you have any question, please contact me at (614) 249-3184.

Very truly yours,

Robert L. Tuch
AVP, Associate General Counsel
Nationwide Office of General Counsel