March 1, 2010

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

Re: Proposed Consolidated FINRA Rules Governing Registration and Qualification Requirements FINRA Regulatory Notice 09-70

Dear Ms. Asquith:

I write this letter on behalf of the National Society of Compliance Professionals ("NSCP"). NSCP is the largest organization in the securities industry serving compliance professionals exclusively through education, certification,[1] publications, consultation forums, and regulatory advocacy. Since its founding in 1987, NSCP membership has grown to over 1700 members including compliance professionals at broker-dealers, investment advisers, banks, insurance companies, hedge funds and independent consultants and attorneys.

The NSCP appreciates the opportunity to comment on Proposed Rules 1210, 1220, 1230 and 1240 ("Proposed Rules"). Our comments are intended to offer constructive observations and simplified alternatives. We applaud FINRA's efforts to update, consolidate and streamline the rules governing qualification and registration of personnel which has over time become complicated, and in some areas, needlessly complex, especially for dual members of FINRA and the NYSE. Overall, we are pleased that FINRA staff has taken so much time to develop a thoughtful, useful new construct for registered representative registration. Expanding the universe of persons who will be permitted to maintain

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[1] NSCP offers training and qualification testing for industry professionals committed to demonstrating expertise in both broker-dealer and investment adviser compliance best practices, rules, regulations and industry standards. NSCP's Certification Program enables professionals to earn the Certified Securities Compliance Professional® (CSCP®) credential. For a detailed description of the program, *see* the NSCP website at http://www.cscp.org.

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registrations will more easily enable member firms to handle their responsibilities on a day-to-day basis and manage unexpected events. Our principal recommendation with respect to the proposed rules is that they be further simplified, thus enabling FINRA to achieve its regulatory objective at less cost both to itself and to member firms. In this regard, we suggest in our comments below that the three proposed new registration categories (*Active*, *Inactive*, and *Retained Associate*) be reduced to two. For the reasons we explain, we believe there would be no regulatory downside to having two, as opposed to three, registration categories, and both FINRA and the industry would have a more efficient means for tracking the status of registered persons.

We understand that in addition to taking NYSE Rules into account, FINRA is proposing some significant changes. We shall focus our comments on proposed changes about which we are concerned. This letter first addresses the purpose of the Proposed Rule modifications, followed by a discussion regarding selected subject areas set forth in Regulatory Notice 09-70.

Purpose of Proposed FINRA Rules 1210, 1220, 1230 and 1240.

A. **Registration Requirements (Proposed FINRA Rule 1210)**.

1. Required Active Registration (Proposed Rule 1210(a).

We believe that proposed Rule 1210(b) permitting persons engaged in a ‘bona fide’ business purpose to be qualified as *Inactive Registrants* is excellent in concept but overly complex. Associated persons of a member firm should be able to continue to be registered while serving a member or member affiliate in any capacity whether or not registration is required. This approach enables firms to best deploy their HR assets at all times.

In today’s financial services environment, many member firms engage in a broad range of businesses. The ability to utilize individual skills with maximum flexibility allows often broadly arrayed services to be managed effectively. Skill sets of individuals can be applied where the greatest opportunity or need exists. Further, having as deep a “bench strength” as possible allows individuals to assume the responsibilities of managers who have vacated those responsibilities, either permanently or temporarily. It would be up to the

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firm to keep track of when a person, who is not the primary licensee for that function, is acting in that capacity. [2]

Properly registered and qualified individuals can step in quickly to substitute for persons temporarily or permanently unavailable. We believe the ability to redeploy staff as needed should be as unfettered as possible. But certain aspects of the Proposed Rules are overly complex and confusing.

Presumption of *Active* Registration; CRD Facility. We understand a person's registration status will be presumed to be *Active* unless FINRA is otherwise notified. If FINRA proceeds with the cumbersome approach of establishing status time periods *[Active, Inactive, Tolled* or *Forfeited]* under different scenarios, then only a very robust CRD system could be expected to accurately identify and track each person's statuses. We are not confident that the CRD system, as currently configured could take on this workload. We do not believe a quadruple status system is realistic. We envision a major challenge to member firms' resources to be able to accommodate such unnecessary complexity. [3]

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[2] Proposed FINRA Rule 1210(a) would require member firms to keep internal records of *Active* and *Inactive* status for each associated person, and notify FINRA of the commencement and termination of any associated person's *Inactive* status. Notice 09-70 states that FINRA will tell member firms in the future how they will be required to communicate these notifications to FINRA. We suggest that a determination regarding how such communications are to be made must be factored into an evaluation of the rule as a whole. In other words, the recordkeeping requirement cannot fairly be evaluated by member firms without knowing the cost and efficiencies of the communication method proposed to be used. As FINRA is aware, the creation and maintenance of every internal broker-dealer record has a cost associated with it, and there is a further cost associated with notifying FINRA of changes in each record. To date, the regulatory benefit of these costs has outweighed the burden to member firms. This may also be true with respect to the new *Active, Inactive, Retained Associate* records that FINRA has proposed, but it is difficult to perform a cost/benefit analysis without knowing in advance what exactly will be expected of member firms. Accordingly, we recommend that before FINRA submits the rule text for Rule 1210 to the SEC, it decide upon the methodology of required communications to FINRA.

[3] If this approach is ultimately adopted and approved by the SEC, we strongly recommend that a robust CRD facility be employed to allow all notices of any changes to be conveyed to FINRA. Further, we strongly recommend that the CRD facility be employed to track the various time periods prescribed for each registrant's tenure as *Active, Inactive, Tolled*, or *Forfeited*.

The CRD would seem to be the appropriate facility to track the various time periods prescribed for each registrant's tenure, *e.g.*, *Active*, *Inactive*, *Tolled*, *Forfeited*, etc., but we would like some assurance that FINRA does intend to use its systems to track this information and that those systems are capable of this

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How will an individual be able to comprehend her/his remaining *Retained Associate* period status, *e.g., Tolled, Not Tolled,* or *Forfeited*? The financial services industry is constantly changing. Given the highly mobile nature of industry employees, it is common for individuals to move back and forth between firms and within large financial services firms' complexes. During the last three years, many thousands of registered individuals have changed firms more than three times. In many cases, given the voluntary and involuntary consolidation of broker-dealers and related companies, many such individuals changed their status while continuing to sit in the same chair.

Today's supervisory principal could be tomorrow's supervised representative, and her/his status could change again in a few weeks. For that person to accurately recall and restate their status for any particular time period would be daunting and likely inaccurate. The volatility of securities industry changes can be expected to continue. Without FINRA tracking each person's history, it is unlikely that there will be any consistently reliable, accurate records showing the required information. Since firms with which individuals were previously registered may have disappeared, an accurate determination of one's status may be impossible to determine from a previous firm's records.

2. Permissive *Inactive Registration* of Persons Engaged in a Bona Fide Business Purpose of a Member: (Proposed FINRA Rule 1210(b).

We believe the expansion of permissive registration to include any person, so long as that person is engaged in a bona fide business purpose of the member, will benefit both members and the industry. Enlarging the number of regulatorily qualified and registered persons serves to broaden available resources, and enhance flexibility for firms and individuals. Firms can redeploy qualified individuals quickly for temporary or permanent assignments more efficiently. Often such moves have been delayed or hampered by requalifying exams and application approvals. Currently, we know that firms unwilling to risk a "parking"

workload. Whatever recordkeeping system FINRA uses must be capable of tracking every associated person's current and historical status.

Accordingly, the proposed rule change needs to describe with specificity how FINRA views its own capability to store and record all the status information required by the rules and make that information readily available to member firms.

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allegation have elected not to permit registered persons to remain registered when they are not currently performing a role requiring their specific type of registration. Getting persons qualified and registered have posed significant challenges for firms to effectively manage their businesses. A properly qualified and registered person should be able to "hit the ground running," in situations requiring immediate attention.

[We note that persons categorized *Inactive* pursuant to Proposed Rules 1210(b) will be considered registered persons only for the purposes of the seven provisions identified on page 4 of Release No. 09-70.][4] We recommend that there be two categories: *Active* and *Inactive.* We believe current permissive registrants are presumably covered by all provisions of FINRA/NASD Rules and Bylaws and therefore whether they are operating under a specific license or not, they should be *Active* registrants adding flexibility to firms' work distribution. We are uncertain of which licensing regime currently registered legal, compliance, internal audit, back-office or similar responsibilities would be subject to under the proposed rules. As a practical matter, which FINRA/NASD/NYSE rules that currently apply to such persons would no longer apply?

Further, since we do not believe there is currently an *Inactive* registration status for such persons, we wonder why those persons should be moved into an *Inactive* status, if that is the intended outcome of the proposed changes. We believe that many firms currently deploy such persons in roles requiring registration status, *e.g.*, taking orders from customers during very active trading days especially where technical trading system problems have arisen or in a Hurricane Katrina environment where a firm's offices and personnel are unable to serve clients' needs, or perform some other function. This "bench strength" could be another aspect of a firm's Business Continuity Plan.

We also know where firms have deployed such persons to stand in for absent RRs or branch managers on a temporary basis. Firms can rely on competent individuals to step in and conduct a firm's business. The availability of these qualified registered persons to take on temporary operating or supervisory tasks has proved beneficial to both firms and the individuals involved. We are concerned that a cumbersome

[4] Intended to assure maintenance of competence and supervision levels, those bulleted items include: FINRA By-Laws including Schedule A; Forms U4 and U5; FINRA consolidated registration rules; current NASD Rule 1120 (continuing education requirements); current NASD Rule 3010(a)(5) (assignment to appropriately registered supervisor); current NASD Rule 3010(a)(7) (annual compliance meeting); current NASD Rule 3010(e) (personnel background investigations.)

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"change of status" protocol could impair firms' ability to manage their businesses through crises and transition smoothly. The new process should facilitate minimum disruption for clients and employees.

Those who are currently registered via the permissive provisions of NASD Rule 1021(a) and 1031(a) might well object to the requirement that their *Active* status must be sustained for at least 12 months. We believe such persons should be able to say: "My work is done here. I can now return to my regular day job." And again, firms would be responsible for notifying FINRA that someone is acting in a different capacity for the time indicated. We are not convinced that there is "risk of customer confusion" by switching between *Active* and *Inactive* registration status for time periods of less than 12 months. In most instances, these switches would be made behind the scenes and could be completely transparent to clients. On occasion it may be necessary to change the roles of persons interfacing with clients. In those instances, it is customary to communicate these changes to the client as quickly as possible as would continue to be the case in the future.

We also note that the proposed rule would "supersede existing permissive registration provisions." Legal, compliance, internal audit, back-office operations personnel "will have to become appropriately registered in accordance with the proposed rule." We are puzzled by this aspect of the proposal. What does "appropriately registered" entail and what status will it denote?

We understand that persons deemed *Active* registrants shall be able to perform their assigned functions, and also continue to maintain registrations in non-required principal or representative categories by virtue of being engaged in a bona fide business purpose of the member. Such a person would be "appropriately supervised to ensure that he or she is not acting outside the scope of his or her assigned function." The Release uses an example: a General Securities Representative ("GSR") may not perform any functions of a General Securities Principal ("GSP"). First, how does a supervisor prove a negative? Further, daily business conduct may call on persons to perform many different tasks.

Our business is conducted by well-intended individuals who hope to remain compliant with all regulatory requirements. We believe efforts to draw subtle regulatory lines between various activities may be counterproductive. The ability to be registered in a certain capacity should empower individuals to effect

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necessary actions as circumstances dictate. We are concerned that if adopted in their current shape, the rules will engender uncertainty and delay vital decision-making. Would a GSR then categorized as an *Inactive GSP* be prevented from backing up a GSP when the GSP is unavailable for a short or lengthy period of time? Why should a person willing and able to assume certain GSP duties for a short time, be required to be "on duty" for 12 months? How can such a rigid and complex regulatory approach be effectively explained, implemented or managed?

Compliance Officer Category. We understand that Proposed Rule 1230(a)(4) is intended to establish a Principal Registration Category of Compliance Officer. Apparently, a Compliance Officer need not be a registered principal, but is required only to be a General Securities Representative [See Proposed Rules 1230(a)(4)(B) and 1230(b)(2)]. However, per FINRA Rule 3130(a) and Proposed Rule 1230(a)(4), a Chief Compliance Officer ("CCO") must be a principal and have passed either the Compliance Officer qualification exam (when extant) or the GSP qualification exam (until there is a Compliance Officer Exam). Chief Compliance Officers who have been qualified and designated CCOs before the effective date of Proposed Rule 1230(a)(4) will be grandfathered provided they have completed GSR and GSP requirements. Apparently, there is no concise definition of "Compliance Officer," other than that a CCO must be qualified as a Compliance Officer.

NYSE Rules 342.13b and NYSE Rule Interpretation 342(a)(b)/02 required that a qualified Compliance Officer responsible for day-to-day compliance activities and supervising 10 or more compliance personnel be qualified by passing the appropriate qualification exam and be designated a Compliance Officer. We are unclear as to when a person must or may become a Compliance Officer. We are unable to find a clear definition of Compliance Officer in the proposed rules.

Further, we note that certain persons who have earned a FINRA Wharton Institute certification may be qualified without having to pass the Compliance Officer exam. A person seeking to become a Compliance Officer (not CCO), apparently need only complete GSR qualification exam requirements and the new Compliance Officer exam when that exam becomes available. Those persons need not pass the GSP exam. Do we have an accurate understanding?

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We believe that certifications provided by other organizations should be acceptable, in addition to FINRA's Wharton certification. There is certainly precedent for FINRA to accept non-FINRA-sponsored certifications. Currently, persons who have satisfactorily completed CFA levels I and II are not required to take the Research Analyst exam. We observe that NSCP has developed an excellent testing process for persons to demonstrate their proficiency and earn the NSCP credential, the Certified Securities Compliance Professional ("CSCP®). We urge FINRA to provide similar qualification status as Compliance Officer for persons meeting NSCP or other similar certification requirements.

General Comment: Permissive Registration. We endorse the reasons cited by FINRA on page 5 of Release 09-70 for allowing registration for those engaged in a *bona fide business purpose* of the member. Members often need to move an associated person back into positions requiring registration. While those persons may have been actively performing in the financial services market place, their location within a member or with an affiliated entity may not have required registration. The passage of time should not necessarily impede their transfer to duties requiring registration status.

We strongly agree that firms should be enabled and encouraged to develop "bench strength" to assure long-term growth in capacity. With that capacity, they can both effectively manage their current business and address gaps caused by temporary or permanent departures of staff members. We also appreciate a continued need to sustain consistent rules for all engaged in the same or similar businesses.

Qualified individuals should be encouraged to move between affiliated businesses without fear of being disadvantaged when returning to a FINRA-regulated part of an affiliated company's business. The passage of time should not impede their transfer to or from duties requiring *Active* registration status.

3. Permissive *Inactive Registration* of Persons Engaged in the Business of a Financial Services Industry Affiliate of a Member (Proposed FINRA Rule 1210(c)).

We believe the proposed expansion of provisions permitting registration of persons engaged in the business of a financial services industry affiliate of a member is a very good proposal. Firms and individuals will be able to achieve greater flexibility while continuing to be mindful of regulatory requirements and responsibilities. The definition of "financial services industry" appears to be broad enough to encompass the

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range of activities in which financial service providers are engaged. We observe that the definition appears to be flexible as to foreign regulatory authorities. We suggest the definition be broadened to facilitate including other regulatory bodies such as a Consumer Financial Protection Agency (now being considered in Congress); perhaps this could be achieved by FINRA having authority to recognize a particular entity or type of entity or being "in the financial services industry," without needing to propose a rule change to the SEC just for that purpose.

The identification of a person currently located at an affiliate of a member as a *Retained Associate*, appears to be positive and workable. (We suggest that such persons be designated *Inactive* for simplicity's sake.) We believe the permissive status expressed in proposed Rule 1210(c) is clear. The requirements for notification are that a person not concurrently registered pursuant to 1210(a) or (b) and 1210(c) are reasonable.

We disagree, however, that there is a need for a person leaving *Retained Associate* status (or as recommended *Inactive* status) to remain in an active registration or *bona fide business* purpose for at least 12 consecutive months. Given the nature of the financial services business, we know that it can be important to have capable, qualified persons able to step in for different temporary assignments, such as persons replacing a temporarily absent staff member, or providing service in a Hurricane Katrina situation.

Why would a customer be confused by frequent or infrequent switches? A customer could identify a registrant's status/record by accessing the BrokerCheck® facility. The crucial information about an individual's current status would be readily accessible. Better yet, if there were only two categories (*Active* or *Inactive*), the process would be easier and clearer.

Most importantly, would a customer really care about a registered person's status? Isn't the headline that an individual is registered and subject to FINRA jurisdiction sufficient?

The concept of *Tolling* a *Retained Associate's Inactive Registration* period day-for-day for each day that person is active is also confusing. Why should *Retained Associate* (or *Inactive* as recommended) status be limited to a 10-year time period limit? So long as a person is subject to the provisions enumerated in

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1210(c)(3),[5] we perceive no reason for establishing such an arbitrary time limit. *Retained Associates* [*Inactive*] must be supervised and participate in compliance-related meetings and keep their continuing education status current, much the same as regulatory requirements for any other properly registered individual.[6]

We believe the examples provided clearly demonstrate how such a Byzantine system of technical requirements could quickly become incomprehensible. Candidly, the drafters of this letter could not understand how any person would be able to decipher the variety of requirements. Several of those drafters have practiced securities law or been responsible for member firm compliance for as many as 38 years. They foresee challenges for registrants in attempting to navigate through the thicket of proposed requirements.

More importantly, we do not perceive any benefits that might be achieved by setting up a system derived from the time a person has served in any particular category. Further, if we accurately understand the proposals, a person might forfeit her/his eligible *Retained Associate* status by working seven months as an *Active Registrant* or *Bona Fide Business Purpose Inactive* registrant and then returning to an affiliate to work. Would a qualified, experienced person lose their registration because of an overly complex and arbitrary system? We question the benefit of a process intended to facilitate flexibility for member firms and associated persons that permits only single-event mobility.

We believe that the proposed outcomes based on a person's changing registration status make little sense. As experienced compliance professionals, we are uncertain as to how the proposed new rules will work. We are certain, however, that they are extraordinarily complex and would present major unnecessary challenges for firms and individuals.

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[5] FINRA By-laws and Schedule A, Forms U4 and U5, Rule 1200 Series (Arbitration), Rule 5130 (IPO purchase restrictions); Rule 8000 Series (Investigations and Sanctions); Rule 9000 Series (Code of Procedure); NASD Rule 1120 (Continuing Education Requirements); 3010(a)(5) Appropriately Supervised; 3010(a)(7) (Annual Compliance Meeting); 3050 (Associated Persons Transactions); and 3070 (Reporting Requirements).

[6] The proposed *tolling, forfeiture* and other similar points of analysis seem to stem from the overall time a person is permitted to have *Retained Associate* status. This approach seems likely to engender greater confusion and uncertainty. Is it really necessary?

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B. **<u>Qualification Examination Requirements and Waiver of Requirements (Proposed FINRA Rule 1220)</u>**.

1. <u>Qualification Examinations (Proposed FINRA Rule 1220(a), (b) and (d) — (g)</u>.

We believe the proposed changes to Rule 1220 are appropriate and clear except for the requirement that a General Securities Principal (GSP) have 18 months experience as a General Sales Representative (GSR).

If our initial interpretation is correct, FINRA is proposing that a member may not designate a GSR to be a GSP until the GSR-qualified person has worked 18 months as a GSR. Why would FINRA propose an arbitrary number of months for a person to have served as a GSR?

If it is a correct interpretation, given the vast experience of some persons as both supervisors and as active participants in similar businesses, regulated or not, we believe members should be permitted to request a waiver of the 18 month time-served as a GSR. For example, persons who have served as regulators or worked for many years as securities lawyers counseling member firms on legal and compliance matters should be able to secure a waiver by FINRA of this 18-month requirement. This appears to be contemplated in Proposed Rule 1220(c).[7]

We presume that a member firm will continue to be able to hire persons for jobs requiring GSP licensure, who have not necessarily been registered as GSRs for 18 months in their previous incarnations. For example, we expect that a member could hire a mutual fund portfolio manager with 20 years experience, and that person, upon completing qualification requirements, exams (or waiver of exams per Proposed Rule 1220(c)), background checks, etc., could immediately assume a Research Principal's responsibilities.

[7] Upon reading the description at page 11 of Release 09-70 more carefully, we suspect that the purpose of the 18 month time period in 1220(g) is to permit experienced GSRs to act as a principal for a period of 120 days within which she/he must successfully pass the applicable principal qualification exam. Are we correct in concluding that the 18-month "experience as a GSR requirement" is not a precondition for <u>all</u> persons to become registered as principals, but rather, serves as a mechanism to permit a GSR to act as principal prior to successful completion of an appropriate principal exam?

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2. Waivers (Proposed FINRA Rule 1220(c)).

We understand that Proposed Rule 1220(c) reflects an intent to continue the current process, which permits meritorious examination waivers for qualified individuals.

We are unclear about FINRA's intent that it "proposes to amend the provision permitting a member to designate any representative *to function as a principal for a limited period* (emphasis added).[8]

C. **Registration Categories (Proposed FINRA Rule 1230)**.

1. Definition of Principal (Proposed FINRA Rule 1230(a)(1)).

Proposed Rule 1230(a)(1) effectively streamlines the definition of the term *principal*. We presume that all the interpretations published in NASD Notice to Members 99-49 will continue to be effective.

2. General Securities Principal (Proposed FINRA Rule 1230(a)(2).

We believe Proposed Rule 1230(a)(2)'s reorganization of current NASD Rule 1022(a) helps to clarify the process for identifying qualification standards for becoming a General Securities Principal. Establishing stand-alone categories for Research Principals and Compliance Officers makes sense. We are unclear as to whether all Compliance Officers must become Principals, or only Chief Compliance Officers must be Principals. It is clear that one can currently become a Compliance Officer by completing the General Securities Principal qualification exam and earning a FINRA Wharton Institute CRCP designation.[9] We reiterate our request that other qualification certifications be recognized. Since the Compliance Officer category is included in 1230(a), we ask if all Compliance Officers are deemed to be principals. Does FINRA plan to develop a definition of Compliance Officer and to identify circumstances where a person's duties require her/him to be registered as a Compliance Officer?

[8] *See* discussion at top of page 11, Release 09-70.

[9] *See* discussion at page 7 of this letter.

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3. Research Principal (Proposed FINRA Rule 1230(a)(3).

We understand that Research Principals will be required to pass the GSP exam and the Series 86 and 87 exams. Alternatively, a Research Principal must have passed the GSP and Series 16 Examinations. Proposed Rule 1230(a)(3) appears to efficiently encompass current requirements. The additional examination requirements will only apply to persons seeking to be Research Principals after the new Rule 1230(a)(3) becomes effective.

4. Compliance Officer (Proposed FINRA Rule 1230(a)(4)).

We understand that Proposed Rule 1230(a)(4) establishes a new stand-alone registration category for Compliance Officers. The discussion in Release 09-70 appears to focus primarily on Chief Compliance Officers. We presume that member firms may designate any number of persons to serve as Compliance Officers, albeit members shall generally only have one Chief Compliance Officer, depending on how their business lines are organized.

We reiterate that we believe persons wishing to become Compliance Officers should be able to do so by successfully completing the GSP exam and an approved satisfactory Compliance Officer certification program provided by more than just the FINRA / Wharton Institute, *e.g.*, persons who have successfully completed the NSCP's compliance officer certification program should qualify for the FINRA Compliance Officer status, without being required to take FINRA's Compliance Officer examination.

We believe proposed FINRA Rule 1230(a)(4) should be consistent with Rule 1230(a).[10] Proposed Rule 1230(a)(2) lists acceptable alternatives to the GSR as a prerequisite for GSP registration as follows:

(a) Registration as a United Kingdom Securities Representative;

(b) Registration as a Canada Securities Representative; and

[10] 1230(a)(2) is consistent with current NASD Rule 1022(a)(1)(A).

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(c) Registration as a Corporate Securities Representative (Series 62) or Private Securities Representative, provided that such persons have limited supervisory responsibilities (consistent with their registration category) *e.g.*, does not engage in municipal securities activities.

We suggest that FINRA add items (a), (b) and (c) above to their list of acceptable prerequisites for the GSP and Compliance Officer designations in Rule 1230(a)(4).

5. <u>Financial and Operations Principal, Introducing Broker-Dealer Financial Principal Officer and Principal Operations Officer (Proposed FINRA Rule 1230(a)(5))</u>.

We believe merging the registration categories currently contained in NASD Rules 1022(b) and (c) is appropriate.

We also believe that members who neither self-clear nor provide clearing services should be able to designate the same persons as the Principal Financial Officer, Principal Operations Officer and Financial and Operations Principal or Introducing Broker-Dealer Financial and Operations Principal.

We further agree that clearing and self-clearing firms should designate separate persons to function as Principal Financial Officer and Principal Operations Officer. The ability for firms with limited size and resources to request a waiver of this requirement seems appropriate, and we would expect FINRA to liberally supply such waivers, in a manner consistent with assuring adequate controls and safeguards, *i.e.*, other firms and customers would not be at risk.

6. <u>General Securities Sales Supervisor (Paragraph (a)(10) and Supplementary Material .04 of Proposed FINRA Rule 1230)</u>.

We support adding "approval of customer accounts" to the list of permissible supervisory activities of a General Securities Sales Supervisor. We believe the General Securities Sales Supervisor registration should permit a qualified individual to supervise sales of Municipal and Municipal Fund Securities.

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Further, we believe FINRA's proposal to amend the communications rules by combining the definitions of advertisement, sales literature and independently prepared reprints into the single category – retail communication, is a good change. Removing the final advertisement approval restriction from General Securities Sales Supervisory category is appropriate since it will facilitate a more efficient process for reviewing and approving retail communications. We recommend that this change be highlighted in the Notice to Members announcing adoption of the new rules. Some members may wish to change their WSPs concerning who may approve retail communications. Some firms may choose to be more restrictive.

D. **<u>Associated Persons Exempt from Registration (Proposed FINRA Rule 1240)</u>**.

1. <u>Active Versus *Inactive*</u>.

NSCP supports FINRA's approach that registration "parking" is problematic in today's regulatory regime. Nevertheless, we believe that the provision, as proposed, is too restrictive. We believe that many firms maintain registrations for personnel for legitimate reasons, such as maintaining a Series 24 registration to act as a backup or delegate for certain supervisory functions. In these circumstances, while the person is not engaged full-time in the activity, the registration is necessary for valid reasons.[11]

2. <u>Codification of Guidance Regarding Contact With Prospective Customers (Proposed FINRA Rule 1240.01)</u>.

FINRA proposes to codify existing guidance permitting unregistered persons to have limited contact with prospective customers (subject to certain restrictions). While NSCP believes that restricting

[11] FINRA may wish to consider whether it may be appropriate for FINRA to allow registered associated persons to hold one of two registration statuses: *Active* or *Inactive*. In many professions, such as for attorneys, the individual can obtain a license, and maintain that license on an *Inactive* status. The attorney cannot practice law in the jurisdiction where she/he is inactive, however, they must pay annual dues and meet certain requirements prior to being allowed to convert to *Active* status. In the securities milieu, a firm may determine that it will be responsible for the activities of any inactive person, as well as be responsible that the individual comply with all requirements prior to becoming *Active*. The firm will bear the cost of paying the annual renewal fees as well. Thus, FINRA will collect the fees, while the firm makes the decision that it will ensure that the representative not engage in any securities-related activities while on *Inactive* status.

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unregistered personnel to certain activities is appropriate, the Interpretive Materials, as drafted, appears too restrictive, as noted below.

The proposed provisions of 1240.01(b)(1) specify what an unregistered person may not do. We agree that that person may not solicit orders, as this activity clearly requires registration. We do not, however, believe that the remaining restrictions are appropriate. Specifically, the provision states that "Unregistered persons may not discuss general or specific investment products or service offered by the member." We can envision many scenarios where an unregistered person may have a conversation with a prospect and the prospect needs to know what services are offered or what general product categories a firm offers. The unregistered person should have the ability to state, in general terms, that the firm offers, for example, mutual funds, stocks and so forth.

Regarding the proposal to require firms to conduct training regarding obligations and restrictions applying to unregistered persons, NSCP believes that this is a reasonable approach.

3. <u>Rescission of Guidance Regarding Unregistered Persons Who Occasionally Receive Unsolicited Customer Orders (Paragraph (a) and Supplementary Material .02 of Proposed FINRA Rule 1240)</u>.

We are concerned about FINRA's proposal to rescind existing guidance permitting unregistered administrative personnel to occasionally receive unsolicited customer orders at a time when appropriately qualified representatives or principals are unavailable. We believe the long-standing NASD policy and rule interpretations of other self-regulatory organizations should continue in place. While situations calling for unregistered personnel to take on unsolicited orders are rare, we believe the safeguards imbedded in the policy are a valid way of serving customer's interests. In keeping with long-standing NASD policy and rule interpretations of other self-regulatory organizations, the "ministerial" exemption would continue to apply to administrative personnel who occasionally receive communications from the public at a time when appropriately qualified representatives or principals are unavailable. In these circumstances, unregistered administrative personnel may record and transmit unsolicited customer orders to the firm's normal order-

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processing channels, provided such orders are subsequently reviewed by a registered principal of the firm and the unregistered personnel do not routinely accept customer orders as part of their normal duties.[12]

We do not believe customers should be exposed to the risk of rapidly moving markets without a way to get an order to the appropriate registered person at a member firm. We are unaware of any substantial problems in relation to the occasional emergency situations when unregistered persons have taken orders. We do not believe a customer's access to a trading market should be denied. We believe this valuable guidance has helped firms and clients avoid substantial problems in emergency situations. Rather than rescind a long time interpretation, we recommend developing a set of examples where it is allowable to take unsolicited orders from customers and transmit them to a registered person for execution. Directions from customers may arrive in an office by email, fax or text order. Administrative personnel clearly should be allowed, and expected, to convey them to the correct location for execution. Where a client needs to give updated information about her/his account and calls in, administrators should be able to take that call and assist the client to get information correctly entered.

4. Other Exemptions from Registration (Paragraphs (b) and (c) of Proposed FINRA Rule 1240).

In the proposal, specific categories are identified as not requiring registration. We ask that FINRA consider specifying what activities require registration/qualification. Regarding the proposal to require firms to conduct training regarding obligations/restrictions for unregistered persons, NSCP believes that this is a reasonable approach.

For background checks, NSCP believes that a pre-hire background check is appropriate. NSCP suggests, however, that FINRA provide some guidance on the minimum information that a firm should acquire for all persons. The goal being that a uniform standard can be achieved and the public better protected.

Regarding referral fees, we believe that the language in the proposal is unclear as to whether a *de minimus* referral fee is going to continue to be appropriate under the proposed rule. Does the current draft of the proposal in some way restrict these types of referral fees?

[12] NASD NTM 87-47.

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Regarding the proposal related to firm procedures in place for unregistered persons, NSCP requests guidance on minimum standards for supervision. Does FINRA distinguish between home office employees and administrative staff in field offices?

NSCP appreciates the opportunity to provide comments on FINRA's proposed consolidated rule; Governing Registration and Qualification Requirements (FINRA Regulatory Notice 09-70.) We look forward to discussing the issues we have addressed in this letter with FINRA staff members, if that would be helpful. Please feel free to contact the undersigned at 860.672.0843 if you have any questions or require further information regarding our comments.

Thank you in advance for considering our comments.

Sincerely,

Joan Hinchman
Executive Director, President and CEO

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