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March 1, 2010

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

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

Dear Ms. Asquith:

The American Bankers Association (ABA)¹ and its affiliate, the ABA Securities Association (ABASA),² appreciate the opportunity to offer comments on proposed changes to FINRA's registration and qualification requirements. While we strongly support the proposal to establish a "Retained Associate" registration category, we do have some questions regarding the interplay among the proposed retained associate registration category, Title II of the Gramm-Leach-Bliley Act (GLBA),³ and Regulation R, promulgated jointly by the Securities and Exchange Commission (SEC) and the Board of Governors of the Federal Reserve System (FRB). In addition, we would urge FINRA to consider expanding the proposal to allow community banks and their third-party broker-dealer partners to take advantage of the benefits offered by the proposal.

Proposed FINRA Rule 1210(c) would permit a member to register any individual, holding a principal or representative license and meeting certain other requirements, as a retained associate. The individual must be engaged in the business of a financial services affiliate of the member that controls, is controlled by, or is under common control with the member. Once designated as a retained associate, the

¹ The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's more than \$13 trillion in assets and employ over 2 million men and women.

² ABASA is a separately chartered trade association representing those holding company members of the American Bankers Association (ABA) actively engaged in capital markets, investment banking, and broker-dealer activities.

³ Pub. L. No. 106-102, 113 Stat. 1338 (1999).

individual's registration will be deemed to be inactive. An inactive registration status requires the individual to comply with a limited number of FINRA and NASD rules in order to ensure that the individual maintains an appropriate level of competence and knowledge and is subject to a level of supervision commensurate with his or her inactive status.

DISCUSSION

ABA and ABASA strongly support the proposal to allow member firms to designate individuals, holding principal or representative qualifications, as retained associates. Many financial services holding companies move their employees from positions in the broker-dealer affiliate to investment and other positions in the bank not requiring registration, e.g., trust and wealth management and safekeeping and custody. Employees are often reluctant to accept these new positions for fear of losing their qualification status after the two year grace period has lapsed and, thereafter, being required to re-take the necessary licensing exams. Permitting individuals to maintain their licenses as retained associates while employed by the bank or some other non-broker-dealer holding company affiliate will allow these individuals to assume, at a later time, new responsibilities in the brokerage affiliate as appropriate and allow banks to manage their employee resources more efficiently. We believe this rule change will also have the additional benefit of reducing the number of waiver requests currently filed by our members under Rule 1070.

Retained Associate Designation

ABA and ABASA seek confirmation that associated persons who become employees of banks and obtain retained associate status will be able to maintain that status when they engage in activities permitted for bank employees under Section 3(a)(4) of the Securities Exchange Act of 1934 (Exchange Act), as amended by Title II of GLBA, and Regulation R. Section 3(a)(4) of the Exchange Act permits bank employees to receive a "nominal one-time cash fee of a fixed dollar amount" for referring bank customers to the broker-dealer and excepts banks from broker-dealer registration provided the "bank employees are not *associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization*" and, further, "perform only clerical or ministerial functions in connection with brokerage transactions.... except that bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available from the bank and the broker-dealer... (Emphasis added)."⁴

Similarly, Rule 701 of Regulation R exempts from broker-dealer registration those banks that pay more than the statutorily required nominal referral fee to their employees in connection with referring high net worth or institutional customers to a broker. Rule 701 defines a bank employee as one that is "[n]ot registered or approved, or otherwise required to be registered or approved, in accordance with the qualification standards established by the rules of any self-regulatory organization."

Because GLBA and Regulation R use the term "associated persons of a broker or dealer" and refer to bank employees as not being "registered" while proposed Rule 1210(c) uses the new

⁴ The de minimis exception from broker registration under Section 3(a)(4)(xi) of the Securities Exchange Act is also conditioned on the bank employee not being considered an employee of the broker-dealer.

term “retained associate,” it is unclear whether the bank employee who holds a retained associate designation may engage in the same activities permitted to a bank employee who does not hold a similar designation under GLBA and Regulation R. Nor is it clear whether the employee with the retained associate designation would be able to receive compensation similar to that paid to bank employees, e.g., referral fee compensation.

We believe that once an associated person becomes an employee of the bank and registers as a retained associate, that person should not be treated as an associated person or a registered person for purposes of Section 3(a)(4) and Regulation R. We believe that our view is consistent with Notice 09-70, which states that a retained associate “generally will not be considered a registered person (or an associated person).” Without this needed clarification, however, bank employees will be unable to avail themselves of the retained associate designation, as no bank will permit its employees to take any action that puts at risk its Exchange Act exemption from broker-dealer registration.

Supervision of Retained Associate

Under the proposal, a retained associate also must comply with several FINRA and NASD rules, including NASD rules 3010(a)(5) and 3010(a)(7). These rules generally require the retained associate to be supervised by a registered person and to be subject to an annual compliance review. Previously, FINRA had proposed to except from member firm supervisory oversight those bank securities activities that are exempt, by statute or regulation, from broker-dealer registration and regulation. Specifically, Regulatory Notice 08-24 proposed to eliminate Rule 3040 and, instead, replace it with new streamlined provisions in proposed Rule 3110(b) (3) that would exempt from securities regulation and FINRA member oversight those bank securities activities that are exempt under either GLBA or Regulation R. In so doing, FINRA recognized that bank securities activities conducted by dual bank-broker-dealer employees are appropriately regulated by the banking organization and its functional regulators.

In our comment letter filed in response to Regulatory Notice 08-24, ABA and ABASA expressed our support for the need for coordinated supervision to ensure that dual employees’ conduct of securities activities in two legal entities does not result in inadequate supervision that would increase the risk of violations of the anti-fraud provisions of the federal securities laws. We also encouraged FINRA to adopt a flexible approach in achieving the necessary coordinated supervision to allow our members to tailor their individual compliance programs in a manner that best works for their particular organizations.

Obviously, there is an inconsistency between the coordinated bank/broker-dealer supervisory oversight approach proposed by FINRA in proposed Rule 3110(b) (3) and the supervisory oversight approach proposed by FINRA in Rule 1210(c). We urge FINRA to resolve this inconsistency by incorporating into proposed Rule 1210(c) the supervisory oversight approach contained in proposed Rule 3110(b)(3) and allow banks to assume responsibility for the coordinated supervision of employees with retained associate designations.

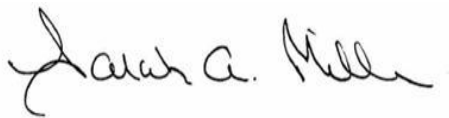
Expand the Proposals Benefits to Community Banks

In this connection, we would urge FINRA to consider expanding the proposal to allow registered representatives of member firms to assume the retained associate designation upon the assumption of a new position at an unaffiliated bank with which a member firm has contractually entered into a networking arrangement. Many community banks enter into networking arrangements, as permitted under GLBA and Regulation R with third-party broker-dealer firms that are regulated by FINRA. Because the bank and the third-party broker-dealer firm do not control each other nor are they under common control, the proposal is of limited utility to that sector of our membership. Any real or perceived gaps in supervision can be addressed through proposed Rule 3110(b) (3).

CONCLUSION

In conclusion, the Associations are pleased that FINRA has proposed to permit a retained associate licensing designation. We believe this action will be most welcomed by our members. We do, however, have concerns regarding how the proposal will impact the broker exceptions under the Exchange Act and the exemptions under Regulation R and request that FINRA clarify the situation by confirming that retained associates, when employed by a bank, can engage in the same activities permitted to bank employees under GLBA and Regulation R. In addition, we do not support giving the broker-dealer firm supervisory responsibilities over the retained associate when he or she is performing bank employee responsibilities only, and we request that the supervisory oversight approach contained in proposed Rule 3110(b)(3) be incorporated into proposed Rule 1210(c). Finally, we request that the proposal be expanded to allow community banks to employ individuals with retained associate designations.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sarah A. Miller". The signature is fluid and cursive, with the first name "Sarah" being more prominent than the last name "Miller".

Sarah A. Miller