

July 9, 2010

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

Re: NTM 10-25

Dear Ms. Asquith:

As contemplated in NTM 10-25, the extension of qualification examination and continuing education requirements to certain operations professionals would appear to have merit although upon further analysis, I'm not so sure it isn't a misguided solution in search of a much more intractable problem.

I understand that this is a regulatory reaction to the Madoff scandal and that by requiring licensing of certain operations personnel, this would hopefully (1) have a deterrent effect on future fraudulent activity and (2) expand regulatory jurisdiction over more individuals who might participate in such activity.

The Madoff scandal was, of course, a failure of human character. This sort of failure has plagued the human race since the beginning of time and no amount of licensing will change that unfortunate reality in the future. You simply cannot legislate morality, nor, sadly enough, can you license it.

I believe the breadth, depth and duration of the Madoff scandal were functions of regulatory failure, not licensing omissions. I think the regulatory failures associated with the Madoff scandal would not have been remedied had this proposed registration category already been in place. The regulatory failures occurred for a variety of reasons, some competency-based, but principally due to a lack of regulatory "common sense" and the willful turning of a blind-eye to the numerous red flags that were continuously waved in the regulators' faces.

More to the point, however, is to ask what really is to be gained by this reach into back office operations which have not heretofore been the subject of qualification examination or continuing education requirements? Our industry and the public have suffered through

fraudulent scandals before without resorting to some new licensing scheme to paper over the reality of human imperfections and failings of our regulatory apparatus. Has the Madoff scandal put so much political pressure on regulators that they must now take on the appearance of doing something, even if that something will do nothing to avert the next financial scandal?

Moreover, the financial services industry is chock full of trust companies and third party retirement plan custodians whose personnel routinely engage in many of the “covered operations functions” described in NTM 10-25 but who will completely escape the dragnet of these requirements because the companies they work for are not broker-dealers. And what about similarly “covered functions” that occur in the back offices of investment advisers who are not also broker-dealers?

I can see the next headline now: *“Massive fraud uncovered in the operations department at XYZ Trust Company resulting in the loss of millions of dollars of investor retirement funds. Unnamed sources stated that regulators were warned repeatedly about possible financial improprieties at XYZ but attributed their inaction to lack of jurisdiction.”*

This proposal is “make-work” at best and, at a minimum, constitutes an unnecessary, added cost burden and time sump on member firms and their employees which, in my opinion, will not prevent the next Madoff scandal.

Although I suppose one could argue that a “partial loaf” is better than “no loaf” at all, if I thought for one moment that the source of our industry’s ills resided in the operations departments of broker-dealers, you’d have my unequivocal support. We all know, however, that investment frauds, small or large, are almost always perpetrated on the frontlines by sales personnel of one ilk or another – individuals who are already subject to qualification examination and continuing education requirements.

Let’s keep our eye on the ball and true to FINRA’s regulatory mission of protecting investors. The proposal outlined in NTM 10-25 is a complete distraction from what we should be concentrating on. Other than expanding employment and job security within the testing and education departments at FINRA and creating additional revenue streams for third party test vendors and consultants, in my judgment, implementation of this proposal would provide no meaningful benefit to anybody whatsoever.

Respectfully,

Nicholas C. Cochran
Vice President