



AN AFFILIATE OF THE BANK OF NEW YORK MELLON

March 1, 2010

VIA ELECTRONIC SUBMISSION

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1509

RE: FINRA Regulatory Notice 09-70 -- Registration and Qualification Requirements

Dear Ms. Asquith,

Pershing LLC ("Pershing") appreciates the opportunity to comment on FINRA Regulatory Notice 09-70 ("Notice") which proposes to create new FINRA Rules that replace and revise the existing rules governing and applying to the *Registration and Qualification Requirements*. We agree the rule proposal would significantly broaden the current "permissive" registration categories to allow member firms to register (or maintain the registration of) certain persons employed by the member firm or its financial services affiliates. FINRA also proposes several other amendments to the qualification and examination requirements, which would introduce several new stand-alone registration categories. We believe, however, that the proposed new FINRA rules, as discussed in the Notice, are not clear with respect to the application of the Compliance Officer category (FINRA Rule 1230(a)(4)), the scope of proposed FINRA Rule 1230(a)(5), and the application and impact of NASD Rule 3010(a)(2) on the proposed FINRA rules.

Accordingly, we respectfully urge FINRA to consider the points raised below and to offer additional guidance to the industry that will provide more clarity and better achieve FINRA's intent to streamline the rules governing the Registration and Qualification Requirements.

Pershing LLC

Pershing (member FINRA/NYSE/SIPC) is a leading global provider of financial business solutions to more than 1,150 institutional and retail financial organizations and independent registered investment advisers who collectively service approximately five million active investors with assets of over \$715 billion. Located in 20 offices worldwide, Pershing and its affiliates are committed to delivering dependable operational support, including clearing and custody services, trading services, flexible technology, investment solutions and practice management support. Pershing is a member of every major U.S. securities exchange and its international affiliates are members of the Deutsche Borse, the Irish Stock Exchange and the London Stock Exchange. Pershing is a subsidiary of The Bank of New York Mellon Corporation

and a broker-dealer affiliate of (and clearing firm for) Pershing Advisor Solutions LLC ("PAS") which provides services to unaffiliated investment advisers. Pershing also provides clearing and custodial services for two registered investment adviser affiliates, Lockwood Capital Management, Inc. and Lockwood Advisors, Inc., which provide services to Pershing's introducing brokers and PAS' investment adviser customers.

As a leading provider of securities clearing and custody services to more than 1,150 introducing brokers and investment advisers, Pershing can provide a unique perspective on the issues raised in the Proposing Release. Our affiliate, The Bank of New York Mellon, also has taken the opportunity to share with FINRA its perspectives on some of the issues raised by the Notice for those firms that have a complex supervisory structure.

The Proposed New Rules and Regulatory Notice 09-70

As a threshold matter, Pershing thanks the FINRA staff for undertaking the task to streamline and modernize the existing registration and qualification rules so that financial services professionals may now have the opportunity to become registered and retain their registrations regardless of job function or where they are employed within global financial services organizations.

In addition to the modifications discussed in the Notice, Pershing also requests additional modifications and clarification with respect to several provisions within the proposed new Rules as discussed further below.

Compliance Officer Registration –Proposed Rule 1230(a)(4)

Pershing seeks further clarification as to the application of the Compliance Officer category. Among the changes contained within Proposed Rule 1230 is the introduction of a new stand-alone registration category for Compliance Officers. The Notice clearly states that this new registration category and qualification exam is required only for Chief Compliance Officers who are designated as such on Schedule A of Form BD; however, there is no indication that compliance professionals who would otherwise be required to qualify as NYSE Compliance Officials (e.g. Compliance professionals that supervise ten or more compliance personnel) would also need to be qualified as Compliance Officers.

To avoid any undue confusion, we request FINRA amend the rule language to clarify whether an individual who is required to be registered as a NYSE Series 14 Compliance Official under current NYSE Rule 342.13(b) will not be required to register as Compliance Officer under the proposed Rule 1230(a)(4) unless designated as a Chief Compliance Officer on Form BD. Specifically, please clarify (1) whether persons designated to direct day-to-day compliance activities and other persons directly supervising ten or more compliance personnel must also register as Compliance Officers and (2) if this registration is no longer required for the persons described above, whether those individuals will be permitted to retain the Series 14, as active registrants, specifically, if they are still responsible for supervising compliance activities or compliance personnel. Lastly, please clarify whether NYSE Rule 342.13 will still be applicable to NYSE member firms, regardless of their membership with FINRA.

Financial and Operations Principal, Introducing Broker-Dealer Financial and Operations Principal, Principal Financial Officer and Principal Operations Officer - Proposed FINRA Rule 1230(a)(5)

Proposed FINRA Rule 1230(a)(5) will require clearing members to designate separate persons to function as Principal Financial Officer ("PFO") and Principal Operations Officer ("POO") and that those persons may carry out other responsibilities of a Financial and Operations Principal, including supervision of individuals engaged in financial and operational activities. The Rule is not clear as to whether a firm, depending on its size, structure, and nature of activities, may have more than one person actively registered as a PFO or more than one person actively registered as a POO, even if such persons are not listed on Form BD. For example, a firm that has many operational and financial functions may presently have registered persons performing oversight of financial or operational functions in support of those persons designated on the Form BD. We seek to clarify that such persons may continue to maintain an active registration if the new rules are adopted. We believe that firms should be permitted to use discretion to appoint multiple actively registered Principals in support of its supervisory and control systems, if appropriate for the size and complexity of a firm.

Supervisory Designations under NASD Rule 3010(a)(2)

Under the current requirements of Rule 3010(a)(2), a firm must designate an appropriately registered Principal with authority to carry out the **supervisory responsibilities** of the member firm for each type of business in which it engages and for which registration as a broker-dealer is required. Under the proposed FINRA Rule 1210, it is unclear whether member firms will retain the ability to designate this supervisory responsibility to an associate who would be held out as an "active registrant" with the member firm. We believe that it is imperative to allow a firm the ability to designate the supervisory responsibility for each of its business areas, as currently exists under Rule 3010(a)(2) and for the registrant's registration to remain active.

Under the current rules, the Head of Operations who is qualified as a General Securities Principal (Series 24) and Financial and Operations Principal (Series 27) has the ability to designate the day-to-day supervision of various functions to other qualified Supervisory Principals. For illustrative purposes, please consider a Margin Department. Although a person in the Margin Department does not presently require registration in support of its supervisory system, a firm may opt to register a person (or persons) to serve as a Supervisory Principal primarily responsible for (i) supervision and control over the Margin Department and (ii) compliance with the rules associated with the functions the Margin Department performs (e.g. Regulation T, NYSE Rule 431). Under the proposed Rule 1210, it is unclear whether member firms will retain the ability to designate this supervisory responsibility to a supervisor who would be held out as an "active registrant" with the member firm. We believe that it is imperative to allow a firm the ability to designate the supervisory responsibility for each business unit, as currently exists under Rule 3010(a)(2) and that the person's registration status is recognized as "active". This will allow for the expansion or delegation of the firm's supervisory structure to the appropriate Principal responsible for functions, depending on a firm's size, complexity, nature of activities and design of its supervisory system. By designating one PFO and one POO, it limits a firm's

ability to ensure there is a qualified supervisory principal in every area of its business to achieve the firm's supervisory obligations as prescribed in NASD Rule 3010(a).

Accordingly, we believe that firms should maintain their ability to designate supervisory principals (e.g., Series 24 or Series 27) below the PFO and POO and that the supervisory Principal designee should be able to maintain their registration in an "active" status. This will enable firms to maintain robust supervisory systems tailored to the size and complexity of the firm and the activities it performs.

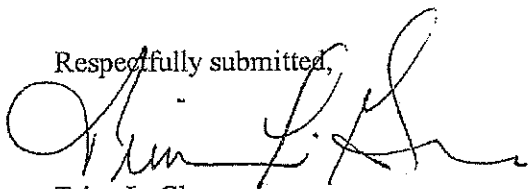
Conclusion

Pershing understands and agrees, in principle, with FINRA's desire to enhance the rules concerning the Registration and Qualification Requirements. However, we encourage FINRA to examine more closely the unintended consequences and burdens of its proposal on the regulated entities. Pershing respectfully requests clarification on a few points that may directly impact Pershing and similar firms.

We appreciate the opportunity to present our views on this very important topic and would appreciate the opportunity to meet with FINRA to discuss how the comments we describe could serve to enhance investor protection while providing a balanced approach to regulation.

If you have any questions concerning these comments, please contact Claire Santaniello, Managing Director and Chief Compliance Officer, at (201) 413-2741 or the undersigned at (201) 413-4259. Thank you in advance for your time and consideration.

Respectfully submitted,



Trina L. Glass
Vice President, Compliance Department
Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation