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July 28, 2010

Via E-mail: pubcom@finra.org

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

**Re: Regulatory Notice 10-25
FINRA Rule on Registration and Qualification Requirements for Certain Operations
Personnel**

Dear Ms. Asquith:

Wells Fargo Advisors (“WFA”) appreciates this opportunity to comment briefly on FINRA’s rule filing that aims to impose licensing and education requirements for certain operations personnel. WFA fully supports rule changes when they are necessary to make meaningful and measurable improvements to protect investors and the securities marketplace. We write this letter to review certain aspects of this proposal to insure that FINRA considers whether the rule accomplishes its goals in a cost effective manner.

WFA consists of brokerage operations that administer almost \$1 trillion in client assets. It accomplishes this task through 15,100 full-service financial advisors in 1,100 branch offices in

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all 50 states and 5,900 licensed financial specialists in 6,610 retail bank branches in 39 states.¹ WFA employs thousands of non-customer facing individuals who help support the extensive retail brokerage presence.

Training as an Alternative to Licensing

The concept of licensing certain operations personnel has its genesis in the belief that it is a key feature in investor protection. FINRA states that it believes registering certain operations personnel is needed “to help ensure that investor protection mechanisms are in place in all areas of a member firm’s business that could harm a customer. . . .” As currently proposed, FINRA would require persons with supervisory, management or decisional authority to register as “Operations Professionals,” pass an exam and fulfill continuing education requirements. The proposed rule lists 15 different “covered functions,” and it would require registration by the senior management of those covered functions; supervisors, managers and others responsible for approving “work in direct furtherance” of the covered functions; and persons with authority to commit the firm’s capital or its contract authority in direct furtherance of the covered functions. Legal, compliance and internal audit personnel would not have to register even though one could perceive their work as supportive or advisory to the covered functions. Those persons whose work is clerical or ministerial in support of a covered function also would be free from registering as Operations Professionals.

Given FINRA’s overall goal of putting in place appropriate “investor protection mechanisms,” it is unclear whether the proposal strikes the proper regulatory balance between costs, burdens and benefits. From a cost standpoint, it is likely each individual will pay \$85 for registering (\$30 for renewals), \$260 or more for an exam and \$95 for each Form U-4(U-5) update. Rather than reach a number of individuals below “senior management with responsibility over covered functions,” perhaps FINRA could ask for informational and ethical training of support personnel. FINRA could buttress this approach with certain enhanced back office reviews as a part of its periodic exams of member firms. In this fashion, FINRA would achieve investor protection goals while actually touching more individuals in the back office system without imposing costly burdens on firms. An example of this approach is found in the anti money laundering (AML) arena where a number of firms use annual training to heighten the awareness of staff of operating in a regulated environment, another stated goal of FINRA in promulgating this registration rule. At a minimum, FINRA should consider offering informational and ethical training of back office staff as an alternative to the registration and examination of operations personnel below the level of senior management.

It may be that if FINRA combines this rule proposal with its recently proposed “retained associate” rulemaking (See, *Registration and Qualification Requirements, FINRA Regulatory Notice 09-70*), it could create a rulemaking that allows flexibility in how firms achieve the

¹ WFA includes a number of brokerage operations that have combined as the result of the 2008 purchase of Wachovia Corporation by Wells Fargo & Company. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

desired investor protection mechanisms. For example, it could require Operations Professionals registration of senior management with responsibility over the covered functions. The modified rule proposal could impose upon these registered persons the obligation to create policies and procedures reasonably designed to ensure that operations personnel have an awareness of appropriate investor protection mechanisms in place at that firm. How the Operations Professionals meet that obligation could vary firm by firm. One may decide that the “retained associate” rule causes her to ask that all key operations personnel sit for the Series 7 exam in order to fulfill her requirement. Another senior manager at another firm may decide he prefers to provide training with annual attestations and periodic internal audits to meet the rule’s mandates. Still another Operations Professional may choose to have supervisors and managers also obtain the Operations Professional license while simultaneously asking certain senior staff to sit for their Series 7. In this fashion, FINRA would not be wedded to any strict formula of how best to protect investors, and it would be in a strong position to measure the effectiveness of a firm’s efforts during its examinations. We ask FINRA to give consideration to modifying the rule proposal to allow some flexibility for firms to meet the investor protection objectives.

Operations Professionals Should Not Have to Comply with All Associated Person Rules

In keeping with a general belief that the proposed rule should impose requirements narrowly to best accomplish FINRA’s goal in the least burdensome and costly manner possible, we would recommend that FINRA make it clear that not all of the rules applicable to registered persons apply to the Operations Professional. At the outset, these operational support persons generally are not customer facing, reducing in part many of the concerns underlying the panoply of rules FINRA applies to “associated persons.” The proposed rule maintains most of the current regulation’s filing requirements. WFA is concerned that rules designed for those customer facing professionals merely impose additional and unnecessary costs on the operations professional that are not germane to the work in which they engage nor any harm that the regulation is designed to prevent. NYSE Rule 345.10 generally recognized the implications of having a limited universe of rules where it required registration of securities lending personnel but reduced other obligations normally imposed on customer facing personnel. In NYSE 345.10, it obligated securities lending personnel to file a Form U4 and sign a code of ethics agreement. Similarly, under this proposed rule, FINRA should reduce substantially the associated person obligations for the operations professional designation.

Time Needed to Get Licensed

It will be important for FINRA to address the timing in which operations personnel must get registered and pass the required examination. As proposed, FINRA establishes a six-to- nine-month “transition” period after the effective date of the rule for those persons who are acting in a capacity that requires registration and licensing. It is almost a certainty that nine months will not allow sufficient time to register and examine all of the personnel that would meet the proposal’s requirement. There will need to be time to stagger the exams and registrations so that an entire operational department is not out of service at one time.

An additional feature relating to timing in the proposal is troubling as well. The rule allows the described transition period for operations personnel who are working in a position requiring registration *on* the effective date. For any operations professional hired or promoted into a position requiring registration after the effective date, there is no transition period. These persons must be fully registered prior to engaging in any activities requiring operations professional registration. FINRA offers virtually no explanation or justification for this requirement. In many other areas, FINRA permits acting temporarily in a position while engaging in the registration process. Such a provision is particularly important as many who are obligated to register as operations professionals were actually forbidden the opportunity to hold a Series 7 license. FINRA should modify the rule so that a person would have a 180-day period in which to obtain the required operations professional license.

It is important to the industry and for investor protection that FINRA create a grace period for obtaining the license. The risk of transactional or other operational errors occurring if firms cannot immediately fill positions requiring a license with an otherwise qualified person simply because that individual has not yet participated in the exam. Furthermore, the rule as written restricts a firm's ability to effectively and efficiently manage its own personnel if individuals have to take the exam prior to entering a position. It is unrealistic and burdensome to essentially require firms to license operations professionals prophylactically in anticipation that job vacancies and promotions will occur among those staff in covered functions.

Other Comments

FINRA should review or clarify a number of other provisions in the proposed rule. The definition of "covered persons" is ambiguous concerning whether a clearing firm has an independent obligation to register operations personnel. Even though those at the introducing firm arguably act "in direct furtherance" of a covered function at the clearing firm, FINRA should not extend an obligation upon the clearing firm to register those persons at the introducing firm. Additionally, many independent broker-dealers (IBDs) operate as fully disclosed introducing broker-dealer firms. These firms often share responsibility for operational business functions, including some of the fifteen "covered functions," with their clearing firm(s). It likely will be difficult for IBD firms to determine which operations personnel have to register and take the operations examination.

The "covered persons" definition also is unnecessarily broad where it covers persons "with authority to commit the firm's capital." This broad language might be used to include vast numbers of staff who have varying limits of authority to "commit" the firm's capital. For example, margin clerks often have flexibility to obligate the firm's capital up to certain limits. At firms with numerous branch offices, some may contend that this rule reaches those individuals who help make those offices function smoothly but have traditionally not needed licensing or registration. It seems to run counter to the proposal's underlying purpose to force firms to register such individuals as Operations Professionals.

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A final concern is that the proposal may include in its “other persons responsible for approving or authorizing work” more persons below the levels of supervisors and managers than is reasonable or desirable. Many firms use more experienced individuals as “senior associates” or “team leads” in formats that do not truly render them managers or supervisors but does allow them to act as a resource to other staff. Forcing such persons to register will impose additional costs on a number of firms. There is also the possibility that this interpretation will lead to a temptation by some firms to reduce the import of senior associates, or perhaps to actually reduce the number of managers it might include in its organizational structure. It may be that such a “wider” work pyramid reduces investor protections.

Conclusion

Thank you for providing WFA the opportunity to comment. We support FINRA’s efforts to heighten the awareness of the regulatory environment by those employed in certain functions in brokerage firms. It is essential that FINRA acknowledge that making personnel get a license does not *a fortiori* make them more ethical or fear less for their job security. Presently, our industry is one of the most regulated of job choices in the country with all hires submitting fingerprints and undergoing an FBI background check. The solution truly rests more in firms creating a culture of ethics, compliance, and accountability rather than arbitrarily imposed registration and exam requirements. Some changes to these rules as proposed likely would render them more effective while also making them less burdensome. If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long

Chief of Regulatory Affairs