



Claire Santaniello
Managing Director
Chief Compliance Officer

July 30, 2010

VIA ELECTRONIC SUBMISSION

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

RE: FINRA Regulatory Notice 10-25 -- Registration and Qualification Requirements For Certain Operations Personnel

Dear Ms. Asquith:

Pershing LLC ("**Pershing**") appreciates the opportunity to comment on **FINRA Regulatory Notice 10-25 ("Notice")**, which proposes to establish a registration category, qualification exam, and continuing education requirement for "Operations Plus" Professionals. Pershing conceptually supports certain aspects of FINRA's proposal and agrees the industry would benefit from some level of enhanced regulatory structure surrounding member firms' operations. However, we respectfully disagree with an aspect of the proposal that would subject third-party personnel and associated persons to registration and continuing education requirements. Further, we wish to clarify an aspect of the proposal for "Depth of Personnel" to delineate responsibilities between clearing firms (CF) and introducing firms (IF). We also seek to confirm that IFs that are regulated entities (e.g., banks, investment advisors and foreign firms) are intended to be recognized in the same context as member firms with respect to this proposal.

Pershing has conferred with SIFMA regarding this Notice and fully supports each of points raised in SIFMA's comment letter.

We respectfully urge FINRA to consider the additional points raised below which we believe will mitigate the potential for unintended consequences while achieving a more practical and prudent approach to the industry's registration and qualification requirements.



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Member FINRA, NYSE, SIPC

Pershing LLC

Pershing (member FINRA/NYSE/MSRB/SIPC) is a leading global provider of financial business solutions to a broad representation of 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 many 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, we believe Pershing can provide a distinct perspective on the issues raised in the Proposing Release.

Depth of Personnel

According to the Notice, any person subject to the new Operations Professional registration category would be considered an associated person of a firm "irrespective of their employing entity and would be subject to all FINRA rules applicable to associated persons and/or registered persons". Strict application of this requirement potentially impacts vendors or third-parties (hereinafter, "third-parties") to a firm and as a result, these third-parties will be deemed associated persons of the firm. Application of this requirement could extend across member firms. For the reasons outlined below, we believe this proposed requirement is neither practical nor possible. Further, we believe existing FINRA requirements serve to confirm that members have sufficient oversight of outsourced arrangements.

Third-Parties as Associated Persons

We contend that the industry will be better served and FINRA's goals with regard to the new registration category will be met in all material respects if the proposed licensing scheme did not apply to individuals employed by an entity other than the registered broker-dealer and FINRA member. In this regard, we note that existing regulatory guidance (NASD NTM 05-48) already requires a member firm to supervise the activities of vendors and third-parties.

We do not believe subjecting third-parties to the registration requirement will further FINRA's intent to only "capture persons with decision-making or oversight authority" for registration. According to NTM 05-48, member firms are to retain the "continuing responsibility to oversee, supervise and monitor" a

third-party's performance of covered activities. For example, consider an arrangement involving statements, which is a covered function in the proposal and is a process that firms frequently outsource. We do not believe it is possible or practical to register persons at the vendor who oversee, supervise and monitor the statement production and subject such persons to all FINRA rules. Further, it would not be possible or practical to have such persons registered with each of the member firms that utilize the vendor for statement production. Also, it does not appear permissible to require registration of third parties, as there may be legal ramifications resulting from the registration of vendor employees with more than one member firm.

We assert that the member firm is already responsible for activities of its vendors and, in this example, have implemented processes to oversee the vendors' performance with respect to statement production. If the proposed registration and qualification requirements were applied to "persons at the member firm with the responsibility to supervise, review or authorize the work of third parties or vendors performing" any of the covered functions in proposed FINRA Rule 1230(b)(6)(B), FINRA's core regulatory objective would still be met, without raising the potential for unintended consequences of designating third parties as associated persons.¹

We urge FINRA to rely on the requirements set forth in NTM 05-48 and which is binding upon member firms². Such an approach would help reinforce the obligations set forth in NTM 05-48 while enhancing the qualification and registration requirements for member firms. It would also allow firms to dedicate the resources required to implement the new qualification and education requirements for their existing personnel, while allowing for further consideration of additional rulemaking for outsourcing that FINRA may deem appropriate.

Clearing Arrangements

Further unintended consequences could arise if third-parties are considered associated persons of the Firm with respect to the Clearing Firm ("CF") - Introducing Firm ("IF") relationship. For example, it would not be practical or commercially viable for the IF or CF employees to become associated persons of one another pursuant to this Notice. For example, FINRA Rule 3230 (and NYSE Rule 382) permits certain

¹ We note that firms have relied on the existing regulatory guidance in structuring their "outsourcing" arrangements both with affiliated and unaffiliated third parties to specifically exclude activities that require registration and qualification under existing FINRA rules. Requiring firms to now potentially treat third party employees performing activities that have not to date required registration or qualification as the firm's associated persons raises a myriad of complex and difficult issues for member firms – potentially necessitating contract re-negotiations and raising collateral (e.g., employment law issues).

² Pershing acknowledges that NTM 05-48 requires third-party service providers conducting activities or functions that require registration and qualification under **current** rules will be considered associated persons of the member and required to have all necessary registrations and qualifications. However, we believe this requirement should only apply to those activities for which registration is **currently** required, (e.g., sales and investment banking), but not to activities performed by third parties being contemplated for this proposal.

responsibilities to be allocated to either the CF or IF by a contract known as a clearing agreement. The clearing agreement must stipulate the obligations required of each firm with respect to requirements detailed in NASD Rule 3230(a), some of which are covered functions that can be designated to either party. The clearing agreement provides FINRA the opportunity to require changes to a clearing agreement if FINRA so determines.

NTM 05-48 currently allows an exception for parties to a contracted arrangement (in this example, clearing agreement) when the arrangement has been contemplated by FINRA rules. The intent of the exception is to exclude from registration those persons conducting activities pursuant to the clearing agreement. Pershing acknowledges and appreciates that in Endnote 3 of the Notice, FINRA excludes activities and persons governed by clearing arrangements. However, Pershing believes it was an unintentional oversight to only specifically reference “registered broker dealers”. We assert that registered broker dealers should serve as one example of excluded regulated entities subject to the rule. Other examples should include arrangements with other regulated entities including banks, investment advisory firms and foreign firms. We respectfully request FINRA expand the exclusion to cover arrangements with regulated firms which limits the potential for unintended consequences (e.g. registering office(s) of advisory firms and foreign firms as “branch offices” pursuant to NASD Rule 3010(g)(2)(A)).

Pershing also requests that FINRA confirm that the Notice did not intend to include clearing arrangements wherein, a covered person in an IF initiates a covered function or a function ancillary to a covered function, and which is finalized at a CF pursuant to a clearing arrangement. By doing so, FINRA would eliminate the possibility that CFs would be (i) inadvertently held accountable to supervise the work of persons in covered functions performed at the IF for which the CF has no supervisory oversight or responsibility and (ii) protecting the functional and control integrity of the covered functions performed at the IF.

Specifically, we request FINRA clarify the applicability of “supervisors, managers or other persons responsible for approving or authorizing work in direct furtherance of the Covered Functions” as it pertains to certain functions initiated by the IF but ultimately processed at the CF. For example, an IF, who maintains the end-client relationship and is in the best position to know the client, has its own responsibility to receive, verify and approve disbursement requests before transmitting them to the CF for processing. In this scenario, the person “responsible for approving or authorizing” the disbursement request at the IF would be considered covered. Although the disbursement may ultimately be processed at the CF, we seek to clarify that when the CF is processing such a request, it is not considered to be supervising, approving or authorizing the work of the IF in any context as the IF maintains this responsibility. The IF has the most “meaningful and direct connection to the client funds, accounts and transactions” and it is not practical or commercially reasonable for the CF to perform a supervisory role of the IF. We submit that the CF will have its own policies governing the point where the CF continues or finalizes the disbursement request, and the persons at the CF who supervise or are “responsible for approving or authorizing” the disbursement request in accordance with the CF’s procedures shall be a Covered Person of the CF.

Lastly, we respectfully assert that persons performing covered functions for either party should only be considered associated persons of their employing firm so as to maintain delineation of responsibilities long associated with clearing arrangements. This will avoid any inadvertent confusion as to which firm retains the primary supervision over a Covered Person and a Covered Function.

Mapping of Supervision

Pershing requests guidance as to FINRA's expectations with respect to the chain of supervision. For example, NASD Rule 3010(a)(5) requires the assignment of each registered person to an appropriately registered representative and/or principal who shall be responsible for supervising that person's activities. Pershing requests that FINRA clarify that it is appropriate for personnel required to qualify as an Operations Professional to be supervised by an individual that has been qualified as a supervisory principal based on registration (Series 24 or 27 as appropriate) and expertise.

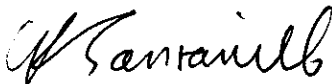
Conclusion

Pershing acknowledges and agrees, in principle, with FINRA's desire to address regulatory gaps with respect to the registration and education requirements for Operations Professionals. However, we strongly encourage FINRA to consider the points discussed in this comment letter, specifically the unintended consequences and practical implications of its proposals on its members. Further, we believe our comments describe how FINRA can still achieve the derived result of enhanced regulatory structure around a member firm's operations.

We appreciate the opportunity to meet with FINRA to present our views on this very important topic and how the comments we describe seek to further FINRA's goal of investor protection while providing a balanced approach to regulation.

If you have any questions concerning these comments, please contact the undersigned at 201.413.2741 or Trina Glass at 201.413.4259. Thank you in advance for your time and consideration.

Respectfully Submitted,



Clarie Santaniello
Managing Director and Chief Compliance Officer
Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation

cc: Marc Menchel
Grace Vogel
Stephen Luparello