

July 30, 2010

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

**VIA EMAIL**

Re: Comment Letter in response to FINRA Regulatory Notice 10-25, Registration and Qualification Requirements for Certain Operations Personnel

Dear Ms. Asquith:

Bank of America<sup>1</sup> appreciates the opportunity to comment on FINRA Regulatory Notice 10-25: Registration and Qualification Requirements for Certain Operations Personnel (the “Proposal” or “proposed rule”). Bank of America is the parent company to several wholly owned registered broker-dealer subsidiaries, including Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPFS”), Banc of America Securities Inc. (“BAS”), Merrill Lynch Professional Clearing Corp. (“ML Pro”), and Merrill Lynch Government Securities Inc. (“MLGSI”) (together, the “FINRA-member subsidiaries”). As the parent company to these subsidiaries, BAC recognizes that individuals performing operational functions play an integral role in supporting the business activities of these FINRA-member firms, as well as a number of other BAC subsidiaries that are not members.

While we support FINRA’s proposal to establish a registration category, qualification examination and continuing education requirement for certain operations personnel, Bank of America is concerned about the extent to which application of this new rule may hinder both its FINRA-member subsidiaries’ and its other subsidiaries’ ability to serve the Bank’s customers in a timely and comprehensive manner, as well as adequately staff essential control functions at both its bank and broker-dealer subsidiaries. As currently drafted, the proposed rule may adversely impact the ability to adequately support its various business activities, which take place in both its FINRA-member and bank subsidiaries, but are often supported by the same associates. Bank of America’s comments on specific aspects of the rule proposal are below. In addition, we support the comments made in the SIFMA comment letter on this proposal.

**Depth of Personnel Included in the New Registration Category**

We support the goals of the FINRA proposed rule: to strengthen education and training standards, to bolster customer protections, and to safeguard the integrity of the marketplace. Although intended to advance these goals through registration and training requirements for individuals engaged in or

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<sup>1</sup> Bank of America serves individual consumers, small and middle-market businesses and large corporations with a full range of banking, investing, asset management and other financial and risk management products and services. We serve approximately 58 million consumers and small businesses with more than 5,900 retail banking offices, more than 18,000 ATMs and an award-winning online banking platform with nearly 30 million active users. Bank of America is also among the world’s leading wealth management companies and is a global leader in corporate and investment banking and trading across a broad range of asset classes.

supervising support activities, the proposed rule is worded in such a way that it could lead to unintended interpretations and application of the proposed rule.

Specifically, FINRA mentioned in the Regulatory Notice that, “those persons subject to the new Operations Professional registration category would be considered associated persons of a firm *irrespective of their employing entity* and would be subject to *all FINRA rules* applicable to associated persons and/or registered persons.” (Regulatory Notice, page 4, emphasis added). For example, if interpreted broadly, the proposed rule could apply FINRA rules to a wide range of personnel both in and outside BAC’s U.S. broker-dealers, including unaffiliated third party entities as well as bank employees whose job function requires them to support many Bank entities, including entities that are not FINRA-member subsidiaries. These support personnel work with various divisions within BAC including its Global Markets and Banking, Global Wealth and Investment Management, Global Commercial Banking, Consumer and Small Business Banking, the CFO Group, and Global Risk Divisions, among others. These Divisions within BAC operate across legal entities, with support personnel acting for both bank and broker-dealer entities. Therefore, we respectfully request the language quoted above from the Regulatory Notice be excluded going forward.

The current wording of the proposed rule also appears to extend beyond the stated purpose of regulating supervisors and managers. The proposed rule defines an “Operational Professional” to mean (1) in paragraph (b)(6)(A)(ii), “[s]upervisors, managers or other persons responsible for approving or authorizing work in direct furtherance of the covered functions ...,” and (2) in paragraph (b)(A)(iii), “[p]ersons with the authority or discretion to commit the member’s capital in direct furtherance of the covered functions ... or to commit the member to any contract or agreement (written or oral) in direct furtherance of the covered functions ...”. Also, paragraph (b)(6)(B)(xv), defines one of the “covered functions” as “[p]osting entries to the books and records of a member ....” (emphasis added). Defining the covered functions so broadly could require even relatively junior associates to register if they have any ability to approve/sign contracts, retain vendors or make clerical postings to the books of FINRA member firms. By the same token, the broad definition of Operations Professional could also require the registration of senior executives of a financial holding company who from time to time commit capital or enter an agreement on behalf of any subsidiary, but may not be involved in the day to day management of a broker-dealer subsidiary. It does not appear to have been FINRA’s intent to require registration of this group either.

We respectfully suggest that paragraph (b)(6)(A)(ii) be redrafted to reflect that these “supervisors” and “managers” be senior members of their respective departments or units, and that the phrase “or other persons” be deleted. In addition, the authority to enter into contracts should trigger registration requirements under (b)(6)(A)(iii) only if the contracts at stake are sufficiently material to the firm, and paragraph (b)(6)(B)(xv) in Covered Functions should be deleted in its entirety.

Finally, we request that the language in the last paragraph at the bottom of page 3 of the Regulatory Notice be added as a clarifying condition to the first sentence of proposed rule 1230(b)(6)(A). This paragraph provides: “[t]he requirements would not apply to persons who perform covered functions, but whose responsibilities are below these three specified levels, or persons who perform a function ancillary to a covered function or whose function is to serve a role that can be viewed as supportive of, or advisory to, the performance of a covered function .... Also, the requirements would not apply to persons who are engaged solely in clerical or ministerial activities in any of the covered functions ....”

## **Covered Functions – Technology and Information Management**

Bank of America also notes that some of the “Covered Functions” set forth in proposed rule 1230(b)(6)(B), specifically subparagraphs (B)(vi), (vii) and (viii) are too broadly written. The proposed rule describes the type of functions triggering registration requirements as those relating to “capturing of business requirements,” “validation that these systems meet such business requirements,” “defining and approving business security requirements,” and “defining information entitlement policy.” However, using these terms would likely capture programmers and other technical personnel and not the supervisors and managers the proposed rule is intended to cover.

In order to avoid imposing unnecessary requirements on technology personnel, we recommend that the terms; “capturing,” “validating,” and “defining,” be deleted and terms such as “accepting” and “approving” be substituted. These changes will better focus the proposed rule on the actual supervisors who are approving the business requirements and their use. Bank of America wishes to note that in many of these instances the supervisor approving these business requirements may be a business person or a liaison between the business and information technology services. Finally, we recommend combining subparagraphs (B)(vii) and (viii) because it appears that subparagraphs (B)(vii) and (viii) seek to cover overlapping sets of supervisors in the Information Management area.

## **Transition Period and Implementation Date**

The Regulatory Notice contemplates a transition period of six to nine months after the proposed rule becomes effective, during which time existing covered personnel would be required to register. This transition period, however, would not apply to personnel who are hired or transferred into a covered job function after the effective date of the proposed rule. These associates would be required to register as an Operations Professional *before* they start their new job.

Bank of America support personnel typically provide services to several different BAC subsidiaries, potentially including both broker-dealers and banks, and entities located outside the United States. By working for different entities on a regular or even daily basis, support personnel receive broad training and better access to promotion opportunities and in turn the Bank ensures its ability to staff its support functions appropriately, on a global, enterprise-wide basis, and in a way that promotes the safety and soundness of its subsidiaries. To avoid disruptions in support staffing, Bank of America will likely need to divide the large pool of affected associates and stagger each associate’s preparation and examination, including time for any personnel who, for whatever reason, do not receive a passing grade on their first attempt. Bank of America suggests the transition period be extended to twelve to eighteen months after the proposed rule becomes effective, so as to mitigate potential disruptions to customer service, operational support, and risk management.

We also request the proposed rule be amended to allow new hires and associates transferring to a covered function to serve in their new position for up to 90-days while they prepare for the exam. During this time, these associates can be supervised by appropriate personnel who have either the Operations Professional license or other appropriate principal license. This 90-day grace period is consistent with current FINRA Rule 1021(d), which allows a newly promoted associate to act in a principal capacity for 90-days while preparing for an applicable exam.

The modifications suggested above are intended to help alleviate administrative and operational burdens on firms in a manner consistent with the core objectives of the Proposal. Please contact the undersigned at 646-855-0873 if you have questions on the comments raised herein.

Sincerely,

A handwritten signature in cursive script that reads "Douglas G. Preston". The signature is written in black ink and is positioned above the typed name and title.

Douglas G. Preston  
Senior Vice President  
Compliance Executive  
Bank of America Tower  
One Bryant Park  
New York, NY 10036