



**NASAA**

March 1, 2010

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, D.C. 20006-1560

*Via email to: [pubcom@finra.org](mailto:pubcom@finra.org)*

Re: Regulatory Notice 09-70 – Registration and Qualification Requirements

Dear Ms. Asquith:

The North American Securities Administrators Association, Inc. (NASAA) submits the following comments in response to Regulatory Notice 09-70 – Registration and Qualification Requirements (“Notice”). The Notice requests comment on proposed changes to FINRA rules governing registration and qualification requirements. Under current rules, associated persons of a FINRA member firm who are engaged in a FINRA member’s investment banking or securities business must be registered in an appropriate registration category and pass the qualification examination(s) prescribed for such registration category. Provisions for a waiver of the required qualification examinations are also contained in current FINRA rules. The current registration and qualification regimen also provides for permissive registration of certain persons, including those who perform legal, compliance, external audit, back office operations and/or similar responsibilities. FINRA rules also require that a person who ceases to act in a registered capacity for more than two years must re-register and re-qualify: a process that generally entails passing the appropriate prescribed examination(s).

The Notice suggests radical changes to the rules governing registration. As we understand it, the proposed revisions would, among other things, create the following three registration categories:

- 1) Active Registration – This status would be required for persons engaged in the investment banking or securities business of a FINRA member firm.
- 2) Permissive Inactive Registration – This status would be permissive and would be permitted for any person who is engaged in a “bona fide business purpose” of a FINRA member. The term “bona fide business purpose” is not defined in the proposal thereby leaving it to the firm’s sole discretion to determine what qualifies as such a purpose.
- 3) Retained Associate – This status would be permissive and thus part of the proposed inactive registration category. FINRA members would be permitted to

designate as a Retained Associate those engaged in the business of a financial services industry affiliate of a FINRA firm that controls, is controlled by, or is under common control of the member.

Individuals who are in the permissive inactive registration categories and were presumably actively registered at one point would be permitted to unilaterally change to an active registration status if their new role within the firm requires registration. The shift from inactive to active status would be permitted without any requirement that demonstrates that an individual remains qualified to carry out the responsibilities of the position. As we understand the Notice, a person could work for years in a capacity determined by the firm to constitute a bona fide business purpose and then transition to an investment banking or securities function without demonstrating that he or she remains qualified for the position. While there is a ten year limit on the ability of a Retained Associate to return to active registration status without the benefit of reexamination, no such time limit applies to the permissive inactive registration category.

In the Notice, FINRA explains that a transfer from permissive inactive status to active status without any requalification examination is justified in part because, “a member may have a foreseeable need to move an associated person whose principal or representative registration has lapsed for more than two years back into a position that will require or permit such person to be registered. Currently such persons are required to re-register and re-test (or obtain a waiver of the applicable qualification examination).” While FINRA has detailed a “business” reason for this approach, it has failed to articulate a sound regulatory reason for this rather significant departure from the organization’s current registration requirements.

NASAA understands the need for FINRA to consider the business practices of its members when drafting proposals. However, simply changing the rules in order to allow an associated person to move easily from one job to another without the need for retesting is not sufficient to justify this change especially since no regulatory benefit is achieved. In fact, the new registration and qualification examination regime reduces current testing provisions. For example, an individual could qualify as an inactive General Securities Principal, move to another business purpose of the firm wholly unrelated to the duties of a general securities principal and then return to her position as a principal twelve years later without the need to re-qualify. This practice seems contrary to the provisions of the Exchange Act requiring FINRA to prescribe standards of training, experience and competence for individuals engaged in the investment banking or securities business.

The Notice also explains that individuals registered in the permissive inactive registration category would be required to adhere to some provisions of FINRA rules including continuing education requirements. Compliance with these requirements will, according to FINRA, “ensure that such persons (permissive registrants) maintain an appropriate level of competence and knowledge.” NASAA disagrees with the conclusion that continuing education can be judged to meet the level of competence and knowledge required by a qualification examination program. Historically, continuing education has served as a supplement to the qualification examination program. Under this proposal, continuing education becomes a replacement for, not a supplement to, FINRA’s qualification examination program. This is a major change in regulatory emphasis and one that will not benefit public investors. In light of what appears to be

the elevation of the continuing education component of assessing a person's skills to carry out his or her duties it seems prudent, at the very least, to also propose enhancements to the continuing education requirements.

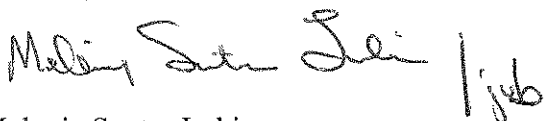
The firm element of the continuing education requirement also should bear some relationship to the associated person's business activities. The Notice offers no guidance on the appropriate substance of the inactive person's education. If someone is in an inactive status, the continuing education undertaken by that person during the period of inactivity may bear absolutely no relation to the type of activity the person may eventually move into after the period of inactivity, further demonstrating the inadequacy of continuing education as a substitute for a competency examination.

NASAA does recognize that circumstances may arise in which an individual's required registration may lapse because of an assignment to a non-registered job function with his/her FINRA member firm or a control affiliate of such firm. If FINRA is considering options that would benefit these individuals, NASAA would suggest that the same result could be achieved for these people by continued use of FINRA's qualification examination waiver process. In fact, continued use of the waiver process would be a much simpler administrative process for a FINRA member than compliance with the reporting and tolling requirements detailed in the proposed rule changes.

FINRA (and previously NASD) rules have for years prohibited the practice of maintaining a registration but not performing the investment banking or securities activities associated with that registration. This practice is commonly referred to as "parking a registration." NASAA is concerned that the implementation of the rule amendments proposed in Regulatory Notice 09-70 would eliminate any prohibition against parking a registration in favor of the expanded permissive registration plan. NASD rules 1021(a) and 1031(a) prohibit the parking of registrations and would both be replaced under the proposed rule changes. NASAA believes that rules 1021(a) and 1031(a) exist for a specific regulatory purpose and serve to prohibit individuals from maintaining securities industry qualifications without in fact being engaged in those activities.

For the reasons stated herein, NASAA believes that FINRA should abandon this proposal which appears to be structured more for the convenience of its members than the protection of investors.

Sincerely,

A handwritten signature in black ink, appearing to read "Melanie Senter Lubin" followed by a vertical line and the initials "jeb".

Melanie Senter Lubin,  
Maryland Securities Commissioner and  
Chair, NASAA CRD Steering Committee