SIFMA
Securities Industry and Financial Markets Association

March 1, 2010

BY EMAIL TO: pubcom@finra.org

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,

The Securities Industry and Financial Markets Association ("SIFMA")[1] 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 registration and qualification requirements. Among other things, 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.

I. Background and Summary

As a threshold matter, SIFMA thanks the FINRA staff for undertaking to streamline and modernize the registration 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. Currently, FINRA registration rules are fairly prescriptive in nature, significantly limiting who may obtain and retain a U.S. securities license. With very few exceptions, the existing rules restrict registration to those individuals engaged in certain enumerated functions on behalf

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks, and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association ("GFMA"). For more information, visit www.sifma.org.

of the U.S. broker-dealer and require registered persons to relinquish their license(s) upon change of responsibilities or transfer to non-registered affiliated entities within financial service organizations.[2] Consequently, strict application of the rules can sometimes impede the changing business needs of member firms and their affiliates, as well as the career development of many financial services professionals.

Proposed new FINRA Rule 1210 provides much-needed regulatory flexibility by expanding the existing registration categories to introduce three new registration statuses: (i) *Active* registration for those individuals engaged in the member firm's investment banking or securities business; (ii) *Inactive* registration for any person engaged in the bona fide business purpose of the member; and (iii) *Retained Associate* registration for persons engaged in the business of a financial services industry affiliate of the member firm.[3] Notably, while there are no time limitations for Active or Inactive registration, individuals with Retained Associate status would only be permitted to maintain their license(s) for a period of ten years, subject to certain tolling and forfeiture provisions.

As noted by FINRA, broadening the universe of individuals that may become registered will enable firms to cultivate more depth of qualified staff within their overall organizations from which to draw in the event of changes in personnel or business requirements. Further, and more fundamentally, the proposed changes engender greater knowledge of U.S. securities laws, markets and financial products among financial services professionals within the global organization that ultimately contributes to the overall culture of compliance at member firms, and the financial services industry at large.

SIFMA therefore welcomes and supports the expansion of permissive registration as proposed in FINRA Rule 1210 as meaningful and useful reforms to the overall registration framework. We believe, however, that several aspects of this proposed rule are highly problematic and require further modification in order to ease the administrative burdens and practical difficulties associated with the current proposal. Among these are the proposed forfeiture and tolling measures contained in Rule 1210 (c), which SIFMA strongly recommends be eliminated and instead replaced with a more straightforward ten-year license retention period for all Retained Associates, regardless of movement in and out of the broker-dealer. Specifically, we request that any person designated as a Retained Associate be afforded the benefit of this ten-year period, except that any such person who subsequently becomes associated with the broker-dealer for at least three years in either an

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[2] NASD Rules 1021 and 1031 require associated persons engaged in the investment banking business or securities business of the broker-dealer to be registered as a representative or principal. These rules also allow (but do not require) "permissive" registration of persons who perform legal, compliance, internal audit, back-office operations or similar responsibilities of the member firm, or who are engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

[3] Proposed new Rule 1210(c)(6) defines the term "financial services industry" to mean any industry regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

Active or Inactive capacity would be entitled to a new ten-year retention period upon return to a financial service affiliate (i.e., a new Retained Associate designation date). This requested modification and alternative approach are explained more fully in Part IIB of this letter.

Moreover, and as detailed in Part III herein, SIFMA also requests that FINRA modify or clarify various terms and requirements within Proposed Rules 1210 and 1230 to more accurately define the scope and application of these new rules.

Clearly, regulatory flexibility that fosters awareness of the securities laws and markets among financial services professionals benefits investors, member firms and regulators alike, and therefore should be encouraged. Those benefits could be diminished or even lost, however, if the new requirements result in costs or complexity that ultimately deter member firms from sponsoring or maintaining the registrations of otherwise qualified individuals. We therefore urge FINRA to consider the modifications and requests for clarifications described herein, which we believe will produce a more efficient registration framework that promotes the core objectives of the proposed expansions while addressing potentially burdensome attributes of the proposed rules.

II. Retained Associate Status – Proposed Rule 1210(c)

Under proposed new Rule 1210(c), Retained Associates engaged in the business of the member's financial services industry affiliate may maintain their registrations for a period of ten years, subject to certain strict time and job function conditions, including complicated tolling and forfeiture measures. Proposed Rule 1210 would permit Retained Associates that transfer from a financial services affiliate to an Active registration role in the broker-dealer to toll (i.e. extend) the ten-year license retention period, provided Active registration status is maintained for at least 12 months. By contrast, Retained Associates that enter Inactive status at the broker-dealer for same period of time would only be entitled to a ten-year retention period, inclusive of the time spent at the broker-dealer. If, however, the Retained Associate moves to the broker-dealer in *either* an Active registration or Inactive registration role for *less* than 12 months, the Retained Associate *forfeits* any remaining time on the ten-year period, and therefore would have to relinquish all securities licenses.

Fundamentally, SIFMA believes that licensed securities professionals should be viewed and afforded similar treatment as other licensed professionals that are able to retain their licenses, provided they satisfy continuing education requirements and do not hold themselves out as registered representatives. In that regard, SIMFA notes there is no specific rationale given for the license retention period of ten years proposed by FINRA for financial services professionals who work for affiliated entities of the broker-dealer (i.e., Retained Associates). We understand, however, that both the FINRA and SEC staffs have expressed concerns with an indefinite license retention period. SIFMA is prepared to support the ten-year time limit, subject to adoption of the recommended modifications

described herein, including the elimination of the complicated tolling and forfeiture provisions in favor of a more uniform, streamlined approach.

A. Tolling and Forfeiture Provisions under Proposed Rule 1210(c) Are Overly Complicated, Impractical and Could Undermine the Utility of the Registration Reforms

Due to the complexity of the proposed tolling and forfeiture provisions, implementation will be both costly and extremely difficult for member firms. Specifically, member firms will need to develop elaborate control systems to track and administer the multiple iterations of the tolling and forfeiture provisions in order to take advantage of the Retained Associate registration status. While some member firms may undertake to develop such systems, for others implementation could be cost-prohibitive. Consequently, firms that would otherwise avail themselves of the expanded registration rules may decline to sponsor or maintain the registrations of financial services professionals employed by their related affiliates. Not only would such an outcome disserve the core policy objectives of enhanced regulatory literacy, in some cases it could have serious competitive and business ramifications.

Indeed, because the forfeiture provision penalizes Retained Associates that subsequently transfer to a broker-dealer for a short period of time, we believe the current formulation could in fact discourage registration and movement of individuals employed at the affiliated entity. As proposed, the Rule requires a sponsoring broker-dealer to "terminate" the license(s) of any Retained Associate that becomes employed by the broker-dealer in either an Active or Inactive registration role for less than 12 months and cannot find new employment with another broker-dealer within 30 days. Consequently, unlike the Retained Associates that remain exclusively with affiliated non-member firms (and have the full benefit of the ten-year retention period), licensed securities professionals that transfer between the affiliate and the broker could lose their licenses altogether if they fail to meet the 12-month threshold at the broker-dealer. [4]

Similarly, Retained Associates that move to the broker-dealer in Inactive status for extended periods of time are also disadvantaged because their ten-year registration clock continues to run during their period of employment at the broker-dealer. Consider the following example: A person obtains a Series 7 license while employed at the non-member affiliate and transfers to the member firm one year later in an Inactive registration role. The Retained Associate (now an associated person of the firm) remains in the Inactive

[4] In this regard, SIFMA requests clarification regarding the interaction between the proposed forfeiture provision and existing two year registration reinstatement period for individuals that become "inactive." Specifically, under existing FINRA rules, registered persons that leave the industry become "inactive" for a period of up to two years, after which registration status will be administratively "terminated," thus requiring the previously registered person to re-qualify by examination. If however the former associated person returns to the broker-dealer within the two-year period, the registrations are reinstated without need for re-qualification.

registration role for seven years and thereafter transfers to an affiliated entity. Under this scenario, the Retained Associate would be entitled to retain the licenses for another two years only, after which re-qualification would be required. By contrast, an associated person who obtains the Series 7 in Inactive status while employed at the broker-dealer can retain that license indefinitely at the broker-dealer and would be entitled to a new ten-year retention period upon transfer to a non-member affiliate. Thus, financial services professionals performing similar jobs and subject to the same continuing education and annual meeting requirements could be entitled to different retention periods, depending on where they initially qualified for the "inactive" license. Particularly for individuals that intend to move to the broker-dealer shortly after obtaining the Retained Associate status, these disparate time limitations could be significant.

Notably, FINRA indicates that the 12-month threshold for retention and tolling of Retained Associated status is intended to mitigate concerns about potential customer confusion that may result from frequent switching of the registration status of Retained Associates. While SIFMA appreciates these legitimate concerns, SIFMA believes the proposed threshold is inconsistent with the regulatory justification proffered for this aspect of the proposal. Member firms currently face and already address similar risks today with respect to unregistered or permissively registered staff who potentially could misrepresent their registration status or unlawfully conduct securities business with the public. In SIFMA's view, the potential risk of investor confusion is not heightened by movement of Retained Associates between the U.S. broker-dealer and its own affiliates. We therefore question whether the 12-month retention period will mitigate investor confusion in a meaningful way. Indeed, as a general matter, the risk of persons holding themselves out as registered representatives is greatly diminished if there is no financial incentive (e.g., no compensation based on transactions with or for the member firm), and such persons are not ultimately paid by the U.S. registered broker-dealer.

B. SIFMA's Proposed Alternative Approach

In light of the foregoing, SIFMA urges FINRA to amend Proposed Rule 1210(c) to eliminate the tolling and forfeiture measures in their entirety and instead adopt a more simplified ten-year license retention period for *all* Retained Associates as follows.

First, we respectfully request that the new Rule permit Retained Associates to retain their licenses for ten consecutive years, irrespective of a subsequent change in registration status (Active or Inactive) or length of time spent in the broker-dealer in either of those registration statuses. Therefore, even if a Retained Associate, during the ten-year period, moves to an affiliated broker-dealer and changes registration status to Active or Inactive, the ten-year retention period would continue to run without tolling or forfeiture.

Second, any Retained Associates who become associated with the member firm and complete at least three consecutive years at the broker-dealer in *either* an Active or Inactive status would be entitled to restart the ten-year Retained Associate period upon transfer to an affiliate. As such, any registered associated person of the member firm that

subsequently becomes "Retained" at an affiliated entity would be assigned a new Retained Associate designation date and therefore have the benefit of the ten-year time period, provided the associated person remained registered with a member for at least three consecutive years. In our view, this modification preserves the need for uniform time limitations while recognizing that individuals who spend a significant period of time engaged in the business of a broker-dealer should be entitled to the full benefit of the new provisions.[5]

Additionally, to address concerns about possible investor confusion that may arise with the respect to a Retained Associate's (or Inactive registrant's) ability to conduct business with the public, we also recommend that FINRA modify the Central Registration Depository ("CRD") and BrokerCheck systems to accommodate, disclose and explain the registration designations for *all* persons registered with the broker-dealer. We note that enhancements to CRD and BrokerCheck to include designations of Active, Inactive and Retained Associate status will provide greater transparency, as well as assist firms in monitoring and supervising the different types of licenses. Furthermore, FINRA could require firms to implement specific policies and procedures as part of a control framework reasonably designed to reinforce role limitations. As noted above, many member firms already have policies and procedures in place that are reasonably designed to prevent unregistered or permissive registrants from holding themselves out to the public or conducting business on behalf of the U.S. broker-dealer. Such policies and procedures could be enhanced as needed to satisfy the requirement of the Rule.

III. Additional Comments and Requests for Modifications

In addition to the foregoing modifications, SIFMA also requests further modification and clarification with respect to several provisions within the proposed new Rules as follows.

A. Concepts of Active, Inactive and Retained Associate Registration Status Should be Clearly Defined in the New Rule

With the introduction of the new registration statuses, it is important that the concepts of "active registration," "inactive registration" and "Retained Associate" be clearly defined and utilized in a consistent manner within the proposed new Rules. We find certain provisions of Proposed Rule 1210 unclear in this regard. SIFMA therefore urges FINRA to review and define these terms within the Rule's text to more clearly differentiate between the new registration statuses and their attendant obligations.

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[5] This requested modification is intended to apply the same policy considerations underlying the proposed tolling provision in a more uniform and equitable manner by affording all registered associated persons (Active, Inactive, or previously Retained) that spend at least three years at the broker-dealer the same benefits under the rule.

In that regard, we respectfully request that FINRA reconsider use of such terms like "deemed active," which we find to be confusing, particularly as it pertains to member firm reporting and supervisory obligations. For example, Proposed Rule 1210(a) states that "a person registered pursuant to paragraph (a) shall be presumed to have an active registration with respect to such registration, unless FINRA is otherwise notified in a manner specified under paragraphs (b), (c) or (d) of this Rule that such registration is inactive." Proposed (b)(3) further states:

> A person registered pursuant to both paragraphs (a) and (b) of this Rule shall be *deemed to have active registrations with respect to all such registrations* for purposes of paragraph (a) . . . . Such person shall be appropriately supervised by a member to ensure that such *person is not acting outside the scope of his or her assigned function.*

Thus, where an Active registrant obtains another registration in Inactive status, the otherwise Inactive registrations would be *"deemed active"* for purposes of the Rule. While SIFMA appreciates FINRA's willingness to permit associated persons to hold multiple registrations in different registration categories, the proposed Rule language is confusing and creates uncertainty as to the member firms' responsibilities under the proposed new registration regime.

Another example of where proposed rule language could benefit from further clarification is Proposed Rule 1210 (b)(4), which deals with associated persons who elect (but are not otherwise required) to register as Compliance Officers in Inactive status. That paragraph states:

> Notwithstanding paragraph (b)(2) of this Rule, a person registered as a Compliance Officer as set forth in Rule 1230(a)(4) solely pursuant to this paragraph (b) *(i.e., a person who is not required to register as a Compliance Officer) and who is not otherwise required to register* in any other category of registration pursuant to Rule 1230 may have an active or inactive registration with respect to such registration, provided, however, that such person shall be engaged in compliance activities at the member to be eligible to have an active registration.

Here too the rule language conflates notions of "active" and "inactive" registration status. As written, associated persons "not required to register" in any category under proposed Rule 1230 -- including the Compliance Officer registration under 1230(a)(4) -- could be eligible for "active" registration by virtue of their "inactive" Compliance Officer registration status. SIFMA finds this entire paragraph extremely difficult to understand and respectfully requests that FINRA amend the language to more clearly explain what is intended by the reference to "active" registration in this context.

Similar to the comments above, SIFMA believes that the term "Retained Associate" should be modified because it incorrectly implies that persons holding such registration status are associated persons of the member firm. While Active and Inactive registrants are

associated persons of the member firm, Retained Associates of non-member affiliated entities are not, *unless* such persons subsequently become actively or inactively registered with the member. [6] In SIFMA's view, a more accurate term is "Retained Person" since that term would more clearly differentiate individuals holding that status from associated persons of the member firm.

B. Supervision of Retained Associates

Proposed Rule 1210(c) requires that each Retained Associate comply with certain specified rules. SIFMA greatly appreciates the clarity regarding which of FINRA's employee conduct rules would apply to Retained Associates, but we are concerned that assigning each Retained Associate to be "supervised" by a registered principal on an individual basis will not be practical or effective in all cases.[7] In most cases, there will not be a registered principal with the member firm in an operational position to "supervise" the direct activities of the Retained Associate at the member firm's affiliate. Retained Associates often will be geographically and organizationally separate from the broker-dealer and subject to their own hierarchy of supervision. Thus, in some instances attempting to "map" each Retained Associate to registered principals in the broker-dealer could result in supervisory arrangements of more form than substance. In addition, managers within financial services affiliates who would not otherwise be required to register with FINRA may do so solely to satisfy this requirement.

SIFMA nevertheless recognizes the clear need for oversight of the activities of Retained Associates. Rather than assigning a registered principal to "supervise" each Retained Associate, we respectfully request that member firms should be required to assign a registered principal(s) responsible for implementing a system of policies, procedures and controls reasonably designed to ensure that Retained Associates do not engage in activity that would require "active" registration with the member firm. We also suggest that the assignment of each Retained Associate to a registered principal as recommended herein is one method of supervision but not the only acceptable alternative. Another effective approach would be to expressly require that Retained Associates be subject to the broker-dealer's overall system of supervision, including written procedures designed to address compliance with the core set of rules applicable to Retained Associates and the requirement to act within the limits of their registration status. Allowing alternative approaches would recognize the diversity among FINRA's member firms in terms of size, corporate structure, and geographic dispersion.

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[6] The Notice states that Retained Associates generally will not be considered associated persons.

[7] For purposes of the proposed Rule, the assigned registered principal would only be responsible for "supervising" the Retained Associate's activities to ensure that the Retained Associate is: (1) in fact engaged in the business of the member's financial services industry affiliate; (2) not engaged in any activities that will require registration or make such person eligible for inactive registration by engaging in a bona fide business purpose of the member; and (3) complying with the provisions applicable to such person based on his or her status as a Retained Associate. Notice at footnote 11.

C. Grandfathering of Retained Associates Within The Two-Year Registration Reinstatement Period

Under existing NASD Rule 1031(c), a member firm has two years to reinstate the registrations of a formerly registered person that became "inactive" due to change in responsibility or non-association with a member firm. SIFMA respectfully request that, in adopting the new rules, FINRA permit individuals currently within the two-year inactive period to reinstate their registrations either in Inactive or Retained Associate status provided all other conditions of the rule are met.

D. Waiver Process under Proposed Rule 1220(c)

Proposed Rule 1220 adopts the current provisions regarding waiver of examination requirements (current NASD Rule 1070) without substantive change. Consequently, as with the current Rule, the proposed Rule does not articulate the clear standards or criteria for granting of examination waivers. Given the increase in proposed specialized registration categories, we respectfully request that FINRA consider providing clear guidelines and administrative procedures for waivers, so as to avoid much of the uncertainty and inherent delays associated with the current process.

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

SIFMA also seeks confirmation that an associated person who supervises ten or more compliance personnel is not required to register as a Compliance Officer under Proposed Rule 1230(a)(4), unless such person is designated as a Chief Compliance Officer (CCO) on firm's Form BD. There is some confusion as to the scope of the proposed new Compliance Officer registration category due to language in the exception clause in paragraph (a)(4)(C). That provision states that individuals designated as CCO on Schedule A of the Form BD, *or* registered as a Compliance Official, immediately prior to the effective date of the Rule would be exempt from the new qualification examination requirement. Because the term Compliance *Official* typically describes individuals that qualify for NYSE Series 14 registration under current NYSE Rule 342.13(b), application of the new stand-alone registration and examination requirement with regard to these individuals is not entirely clear. We therefore request FINRA amend the Rule language to clarify that persons qualified to hold a NYSE Series 14 license pursuant to NYSE Rule 342.13(b) are not required to register as Compliance Officer unless designated as a Chief Compliance Officer on Form BD.

F. ***Supervisory Analyst - Proposed FINRA Rule 1230(a)(11)***

Proposed Rule 1230(a)(11) also introduces a new a stand-alone permissive registration category for Supervisory Analysts. Under this category, a registered principal whose activity is limited to approving research reports may register as a Supervisor, provided he or she passes a Supervisory Analyst qualification examination. SIFMA supports Rule 1230(a)(11) as proposed and further requests that FINRA continue to

exclude from the branch office definition locations where member firms solely conduct final approval of research reports.

G. Retained Associates Ability to Engage in Activities Permitted by and Receive Referral Fee Compensation Pursuant to Networking Arrangements under GLBA and Regulation R

SIFMA also seeks confirmation that Retained Associates employed at bank affiliated entities may participate in, and make referrals pursuant to, networking arrangements with a broker, as well as receive compensation for such referrals, as permitted by both the Exchange Act and Regulation R promulgated thereunder to the same extent as bank employees who do not have Retained Associate status. Specifically, Section 3(a)(4) of the Exchange Act, permits bank employees to receive "a nominal one-time cash fee of a fixed dollar amount" for referring bank customers to the broker, provided the bank employee is not an "associated person of a broker or dealer" and the bank and bank employees comply with the other requirements of Section 3(a)(4).

Similarly, Rule 701 of Regulation R exempts from broker registration those banks that pay, under a networking arrangement, more than the statutory required nominal referral fee to "bank employees" in connection with their referral of high net worth individual or institutional bank customers to a broker and the bank and bank employees comply with the other requirements of Rule 701. Rule 701 defines a "bank employee" as one that is "*not registered"* in accordance with the qualification standards established by the rules of any self-regulatory organization.

We believe that once an associated person becomes an employee of a bank affiliated with a broker and attains Retained Associate status under the proposed Rule, that employee should no longer be treated as an associated person or registered person for purposes of Section 3(a)(4) of GLBA and Regulation R, but rather should be treated as a bank employee for all purposes under those provisions, including all other applicable exemptions (e.g., receiving compensation for selling money market mutual funds as sweep vehicles). We believe that our view is consistent with the Notice which states that a Retained Associate "generally will not be considered a registered person (or an associated person)." However, because of the importance of this issue to our members and their affiliated banks, we believe that the requested clarification would be extremely helpful to avoid any unintentional ambiguity.

IV. Conclusion

A global workforce that has a fundamental understanding of the U.S. securities laws and markets would serve to enhance the effective functioning of our global capital markets, enable U.S. financial services firms to compete in that marketplace, and promote an industry-wide culture of compliance. SIFMA generally supports the proposed amendments, which we believe will better align the FINRA registration rules to the global marketplace, enable firms to cultivate a greater depth of qualified personnel, and give firms

greater flexibility in making personnel decisions to meet client and market demands. We urge FINRA to modify the proposed amendments as we have suggested, in order to facilitate efficient implementation, and maximize the realization of the intended regulatory benefits. We thank you for your consideration and look forward to further discussions on this matter. If you have any questions or require further information, please contact me at 212 313 1268.

Respectfully submitted,

Amal Aly
SIFMA
Managing Director and
Associate General Counsel