

MEMO# 24097

January 25, 2010

Draft ICI Letter Supporting Greater Flexibility in Maintaining FINRA Registrations; Comments Due to ICI by Feb. 12th

[24097]

January 25, 2010

TO: TRANSFER AGENT ADVISORY COMMITTEE No. 2-10
BROKER/DEALER ADVISORY COMMITTEE No. 3-10
CHIEF COMPLIANCE OFFICER COMMITTEE No. 2-10
COMPLIANCE ADVISORY COMMITTEE No. 2-10
SEC RULES COMMITTEE No. 4-10 RE: DRAFT ICI LETTER SUPPORTING GREATER
FLEXIBILITY IN MAINTAINING FINRA REGISTRATIONS; COMMENTS DUE TO ICI BY FEB. 12TH

As you may recall, in 2007, FINRA filed with the SEC proposed rule amendments that were intended to provide FINRA member firms greater flexibility with respect to maintaining their associated persons' registrations and licenses. [\[1\]](#) In anticipation of the SEC publishing the proposal for comment, the Institute circulated to members a draft comment letter supporting the proposed amendments. [\[2\]](#) The draft letter noted that, if adopted, the amendments would enable members to more effectively plan for and respond to emergencies or unexpected situations impacting their staffing needs (e.g., for business continuity purposes). As such, the rule amendments would benefit the investing public.

Since the proposed amendments were filed with the Commission, FINRA decided to address registration and qualification issues through a more comprehensive proposal as part of the NYSE/FINRA rule consolidation process. Accordingly, it has determined to withdraw its previous filing with the Commission and has proposed consolidated rules to govern registration and qualification requirements. [\[3\]](#) Importantly, FINRA's latest proposal

includes the flexibility of the 2007 proposal by enabling persons associated with members to maintain their registrations in either an active or an inactive status. While the criteria for obtaining and maintaining either form of registration are the same (e.g., continuing education requirements, annual supervisory reviews, etc.), the registration of a person in an inactive status would not expire after two years and such person's status could be changed to "active" by notifying FINRA of the change. As such, a member will be able to have inactive registrants serving in capacities that do not require an active registration until such time as the member elects to "activate" the inactive registration.

In addition, the consolidated rule would recognize a new qualification status – a "Retained Associate." The Retained Associate status will enable a member to register as a principal or representative any individual who is engaged in the business of a financial services industry affiliate of the member that controls, is controlled by, or is under common control with the FINRA member. For purposes of this provision, "financial services industry" means any industry regulated by the SEC, CFTC, state securities authority, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authority. Unlike the "inactive" status, the Retained Associate status has a maximum duration of 10 years. It is intended to enable, for example, an individual who is working for a bank in a capacity that does not require FINRA registration to be licensed with FINRA in anticipation of working in a registered capacity sometime within the next ten years with a bank's affiliate that is a FINRA member. The proposal would impose several conditions upon use of the Retained Associate status, which are discussed in detail in FINRA's Notice.

Consistent with our support for the 2007 proposal, the Institute has prepared the attached comment letter supporting FINRA's current proposal to consolidate and revise its rules to govern registration and qualification requirements. As with the 2007 proposal, our support is based on the fact that the flexibility added to the rules will enable members to establish effective and efficient redundant staffing plans and, when necessary, to move persons more quickly between registered and unregistered positions and active and inactive status.

Comments on the proposal are due to FINRA by March 1st. Please provide any comments on the Institute's letter to the undersigned no later than Friday, February 12th by phone (202-326-5825) or email (tamara@ici.org).

Tamara K. Salmon
Senior Associate Counsel

[Attachment](#)

endnotes

[1] See *Proposed Rule Change to Amend NASD Rules 1021 and 1031 Regarding Registration Requirements* (Aug. 2007), which is available on FINRA's website at: <http://www.finra.org/RulesRegulation/RuleFilings/2007RuleFilings/P036408>.

[2] See Institute [Memorandum](#) No. 21546, dated August 28, 2007.

[3] See FINRA Regulatory Notice 09-70 (December 2009), which is available on FINRA's website at:
<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p120687.pdf>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.