INVESTMENT
COMPANY
INSTITUTE

1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

February 24, 2010

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

Re: Proposed Registration and Qualification Requirements; FINRA Regulatory Notice 09-70

Dear Ms. Asquith:

As part of its rule consolidation process, FINRA has proposed revisions to its registration and qualification requirements that would enable members' associated persons to be registered with FINRA in either an active, inactive, or Retained Associate capacity.[1] The Investment Company Institute[2] is writing to support this proposal as it will provide FINRA's members greater flexibility in maintaining their associated persons' registrations and licenses. We believe this enhanced flexibility will better serve FINRA's members and the investing public by enabling members to better plan for and respond to emergencies or unexpected situations impacting their staffing needs.

If adopted, the amendments will enable persons employed by or associated with a member firm to maintain their FINRA registration or license, even though these persons may not be functioning at all times in a capacity related to such registration or license. This is a significant change to FINRA's current rules, which prohibit a member from maintaining the registration or license of any person if

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[1] *See FINRA Request Comment on Proposed Consolidated FINRA Rules Governing Registration and Qualification Requirements,* Notice 09-70 (December 2009).

[2] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $11.62 trillion and serve almost 90 million shareholders.

such registration or license is not necessary to the function the person performs for the member. This limitation hinders members' ability to establish effective and efficient redundant staffing plans or to move persons between registered and unregistered positions. Importantly, the newly proposed Retained Associate status will also enable FINRA members to maintain licenses that will facilitate their movement of associated persons from one affiliated firm to another without delay.

We are pleased that the proposed consolidated rules will alleviate the unnecessary rigidity of the current rules. The added flexibility that will be provided by the revised and consolidated rules will better enable FINRA's members to respond to those emergencies or unexpected situations requiring employees to act in registered capacities or to move among affiliated firms to address staffing needs quickly. Moreover, this added flexibility may promote financial education within the broker-dealer industry by providing greater incentives to members and their associated persons to study for and pass qualifying examinations.

RECOMMENDED REVISION FOR MUTUAL FUND UNDERWRITERS

Notwithstanding our support for the proposal, we recommend one revision to the Retained Associate portion of the proposal to accommodate mutual fund underwriters. This revision is necessary due to the uniqueness of the mutual fund industry. As proposed, "a Retained Associate who subsequently enters an active registration or a bona fide business purpose inactive registration *must remain in such registration(s) for at least a consecutive 12-month period* to be eligible for any years that may be remaining on his or her Retained Associate period." (Emphasis added.) According to FINRA's Notice, this requirement is intended "to mitigate the risk of customer confusion that might be caused by frequent switching between a Retained Associate status and active or inactive statuses."

Unlike FINRA's members that are full-service broker-dealers, it is not uncommon for FINRA's members that are mutual fund underwriters to utilize call centers to service customer accounts. With such arrangements, shareholders contacting the call center are handled by the next available account representative and do not have an ongoing relationship with any one particular account representative. The number of calls coming into these call centers may increase substantially during certain times – such as during tax season, following a natural disaster when shareholders need immediate access to their funds, or during times of market stress or uncertainty. When the number of incoming calls the call center handles experiences ones of these peaks, it is not uncommon for mutual fund underwriters to draw registered representatives from other parts of the business in order to handle the increased call volume.

As currently proposed, FINRA members that are mutual fund underwriters would not be able to utilize representatives who are associated with the FINRA member's affiliate in a Retained Associate status to respond to the increased call volume *unless* the member is willing to have the Retained Associate remain in an active status for *at least* a 12-month period. We believe that, for mutual fund underwriters, this requirement is not necessary to allay customer confusion because the customer has no ongoing relationship with the representative. Moreover, the 12-month commitment imposes an unnecessary burden on the FINRA member, its affiliate, and the Retained Associate, which will diminish the ability to make temporary staffing changes to respond to investors. To avoid this, we recommend that FINRA reconsider this 12-month requirement for call centers operated by mutual fund underwriters. Importantly, providing the flexibility we request will benefit investors by making sure that, during periods of increased call volumes, when investors may be more anxious about their accounts, mutual fund underwriters have sufficient personnel to respond to investors' calls in a timely fashion.

Accordingly, while the Institute supports adoption of FINRA's proposed consolidated rules governing registration and qualification requirements, we recommend that the Retained Associate provisions be revised to accommodate mutual fund underwriters. If you have any questions concerning our comments or would like additional information about our recommended revision, please contact the undersigned by phone (202-326-5825) or email (tamara@ici.org).

Sincerely,

Tamara K. Salmon
Senior Associate Counsel