

May 3, 2011

VIA ELECTRONIC MAIL (rule-comments@sec.gov)

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.W.
Washington, D.C. 20549-1090

Re: Release No. 34-64080; File No. SR-FINRA-2011-13; Proposed Operations Professional Registration

Dear Ms. Murphy:

Goldman, Sachs & Co. appreciates the opportunity to comment on the above-referenced proposal.

Because our representatives have been involved in the industry dialogue with FINRA as it has developed this proposal, we are well aware of the time and effort that have been invested to date in doing so. We applaud FINRA's engagement with the industry in this regard. We also believe that the basic approach taken by FINRA is, in most regards, appropriate. And we appreciate the difficulty in attempting to describe generically the key "operational" areas of firms across the industry.

We believe that this proposal will have a fundamental impact on FINRA member firms. At many larger broker-dealers, about half of employees are in non-revenue producing functions and have heretofore not been subject to a registration requirement.

We also believe that it is important that the rule itself, and any supplementary material, be clear and "self-contained" – i.e., that a reader in the future be able to understand the rule without extensive research and certainly without having participated in the development of the rule.

We have participated in discussions related to the comment letter being submitted by the Securities and Finance Markets Association (SIFMA), and we are supportive of the points made in that letter, with two key exceptions. First, we do not believe currently registered supervisors should be required to carry this new registration as well. Second, we take a different view of the provisions of the proposed rule dealing with technology functions. We will discuss those

matters after briefly providing background as to operations and related functions at our firm as a means of providing context.

Background

The non-revenue functions at broker-dealers are critically important and staffed by knowledgeable and experienced professionals who make both their firms and the industry function.

We use the term “Federation” to describe those functions at our firm. We then differentiate those functions further into four major areas: Operations, Technology, Finance and Services.

The proposed rule appears to apply to – most – of the groups within what we term Operations and Finance but clearly does not apply to Services (Human Capital Management, Security, Travel, etc.)

That leaves the issue of technology, which we discuss after the following section.

Cross-Registering Supervisors

As we read Proposed Rule 1230(b)(6)(D), those senior personnel now holding various supervisory registrations who will fall into the category of covered persons with respect to covered functions would be exempt from taking the new “operations exam” but would be required to register as an “operations professional.” We fail to understand the reason for such a double registration for those who hold the most senior supervisory qualifications – i.e., General Securities Principal (Series 24) and Financial and Operations Principal (Series 27). As a drafting matter, a proviso to, or referring to, the senior management category described in proposed Rule 1230(b)(6)(A)(1) could provide that any such persons holding those registrations would not be required to register as an Operations Professional. Indeed, we note that, given the policy reason for exempting from examination persons holding any of a number of registrations, - i.e., that such persons have already exhibited fundamental knowledge of the key rules applicable to the industry - the argument could be made that no such person need be additionally registered as an operations professional.

Technology Functions - Subparagraphs (xiii) through (xv)

We think it fair to say that the issue of technology functions has proven to be the most difficult in the drafting of the proposed rule. Again, we acknowledge the challenge. But we must submit that the proposed rule as currently drafted in this regard is highly unsatisfactory and that SIFMA’s comments do not address key points.

First, there is a fundamental question: Should personnel in technology be subject to this registration requirement at all? We think that the answer should be no. Technology personnel build and maintain technology systems according to business, operational or – in many cases –

legal and compliance requirements. While they are highly sophisticated and valued professionals, no technology personnel – to use the concept utilized in the proposed rule - “define and approve business requirements” or “define and approve business security requirements” on their own without oversight and approval from the functions for which the systems are being designed. Consider a concrete example: If trade confirmations or account statement systems are to be redesigned, the operations professionals responsible in those areas will set the requirements and approve the new technology system required. Therefore, the “function” is already covered by that description (see subparagraph (vi)) and the supporting technology function is subsumed in it. (If, in some cases, contrary to the general case, technology personnel are directly responsible for a covered function otherwise described, then those covered persons would be subject to registration – not because they are technology personnel but because they “own” the covered function.)

If, however, the position that technology personnel be exempt from operations registration is rejected as inconsistent with the regulatory objective of sensitizing personnel in technology to regulatory requirements, then subparagraphs (xiii) through (xv) as currently proposed are ambiguously worded and confusing in three basic respects.

First, the three subparagraphs are unclear as to the functions covered, appearing to suggest there may be three such functions. The first reference – in (xiii) - is to “systems”; that suggests those technology (or “information technology”) systems used by covered functions. There is then a reference – in (xiv) – to “business security requirements for information technology”; it is not entirely clear, but it appears that this is a reference to what is generally referred to as “information security” – firewalls, passwords, encryption and the like. Finally - in (xv) - there is the term “information entitlement policies”, which we take to mean access controls for employees. While we recognize the first two as roles performed by technology personnel, we do not recognize the third as so being. In our experience, “information entitlements” are set by the managers of businesses and operations areas to grant access the appropriate employees; the “information security” area implements those entitlements. Finally, in our experience, information security is part of, not independent of, the technology function.

The second major problem in each of the subparagraphs is the use of the concept of “defining and approving.” In two of the three subparagraphs, the matter to be “defined/approved” is “business” requirements; in the third it is “information entitlement policies.” In each case, the rule could be read to referring to revenue personnel who are “defining and approving” those requirements. In that case, the proposed rule could be read to suggest that such revenue personnel be registered as operational professionals - - a result that we are sure FINRA did not intend. (And, again, the very fact that revenue, operations and finance supervisors and managers do “define and approve” requirements for systems and information security is the reason why technology managers should not be subject to this proposed regime.)

Finally, there is a lack of clarity as to scope. While the three subparagraphs all refer to “the covered functions”, only (xiii) refers as well to “sales and trading systems.” However, given that reference is immediately followed by the phrase “and any other systems related to covered

functions”, we believe the intention was to cover sales and trading systems only insofar as they are part of systems related to the covered functions in subparagraphs (i) through (xii).

Therefore, if – contrary to our basic position – the technology function, including information security, supporting the other covered functions is to be a covered function and technology personnel therefore required to be registered as operations professionals, we submit that the function should be more clearly and simply defined in one consolidated subparagraph as follows:

(xiii) [Information] Technology (including information security) supporting the other covered functions in paragraph (b)(6)(B) of this Rule.

The foregoing has dealt with clarifying the issue of technology as a covered function. We now revert to the issue of “depth of staff” – how deep into the technology “pyramid” should the registration requirement extend. If, as we suggest, the technology function provision is modified to eliminate the terms “defining and approving”, then the issue is how the concept of “supervisors and managers approving or authorizing work” in the covered persons provision (Proposed Rule 1230(b)(6)(A)(ii)) is to be applied to the technology function.

We believe that each member will have to take a view as to how the requirement should apply to its technology organization given the size of the organization and the levels of management involved. It might be helpful, however, for there to be supplementary material to the rule (and thus accessible going forward to any reader) indicating that, in the case of technology, a relatively junior technical expert leading a project team, for example, of a half dozen others in writing and testing code to effect a change within a major system of a firm would not be deemed a “supervisor or manager approving or authorizing work”.

We conclude, however, by restating our basic position: We see no good reason for covering the technology function under the rule.

Proposed Rule 1230(b)(6)(E)(ii) – the “Grace Period” issue

We are aware that others are commenting on this issue. We would add that, if in the end the technology function is to be covered, there would be an additional reason to allow a “grace” period for a new manager to pass the examination. In our experience, technology professionals move from area to area (and region to region) in a large firm. They may be transferred or promoted to manage technology in an entirely new area from their prior assignment. (Further, hires from outside the firm tend to occur more often in this area as well.) So if such a professional not previously required to be registered moves to manage technology supporting a covered function such that registration would be required, the lack of a grace period to pass the examination could be disruptive.

Again, Goldman, Sachs & Co. appreciates this opportunity to comment on this important and far reaching proposal. We would be pleased to discuss these matters with the SEC staff. If you so desire, please contact John W. Curtis at 212-902-6268; email john.curtis@gs.com.

Very truly yours,

/s/ John W. Curtis

John W. Curtis
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