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Preparing for the Consolidated FINRA Registration Rules and Restructured Examination Requirements.

In October 2017, the Financial Industry Regulatory Authority (FINRA) announced, through Regulatory Notice 17-30 (the "Notice"),[1] that the U.S. Securities and Exchange Commission (SEC) approved a proposed rule change, which, (i) consolidates FINRA's registration rules; (ii) makes a number of technical changes to permissible registration categories and related rules; and (iii) restructures the representative-level qualification examinations. Each of these is discussed in greater detail below. The Proposed Rules (as defined below) take effect on October 1, 2018.

Consolidated Registration Rules

Summary of the Proposed Rules

The proposed rules, FINRA Rules 1210-1240 (the "Proposed Rules"), will adopt and consolidate, with amendment, certain National Association of Securities Dealers (NASD) and New York Stock Exchange (NYSE) rules related to registration and qualification of individual persons associated with FINRA member firms. The Notice explains that while the legacy NASD rules generally apply to all FINRA members, the existing incorporated NYSE rules only apply to FINRA members that are also members of the NYSE. The proposed rules, however, will generally apply to all FINRA members. The Notice further posits that while there are certain key differences, as discussed below, the Proposed Rules are substantially similar to the NASD and NYSE rules that are being consolidated. The Proposed Rules are:

- *FINRA Rule 1210.* Requires that each person engaged in investment banking or securities business of a FINRA member firm be appropriately registered commensurate with the individual's job functions and responsibilities, unless exempt from registration. FINRA Rule 1210 also discusses: (1) the requirement to have a minimum number of registered principals at each member firm; (2) the ability to maintain permissive registrations for associated persons; (3) the requirement to pass an appropriate qualification examination and the process for obtaining a waiver of a qualification examination; (4) the requirements applicable to registered persons functioning as principals prior to passing an appropriate principal qualification examination; (5) rules of conduct for taking examinations and confidentiality of examinations; (6) waiting periods for retaking a failed examination; (7) the requirement that registered persons satisfy continuing education ("CE") requirements; (8) lapse of registration and expiration of the Securities Industry Essentials ("SIE") exam; (9) the waiver program for individuals working for a financial services industry affiliate of a member firm; (10) the status of persons serving in the Armed Forces of the United States; and (11) impermissible registrations.[2]
- *FINRA Rule 1220.* Defines "principal" and "representative" and sets forth the qualification and registration requirements for these categories. FINRA Rule 1220 also provides a number of additional registration-related rules and clarifications, including with respect to certain eliminated registration categories.
- *FINRA Rule 1230.* Sets forth the associated persons for whom FINRA registration is not required.
- *FINRA Rule 1240.* Sets forth the CE requirements for member firms, including the Firm and

Regulatory Elements.

Accepting Orders from Customers

Once the Proposed Rules take effect, unregistered persons will not be allowed to accept an order from a customer under any circumstances.[3] In the event that a registered person is unavailable, an unregistered person will be permitted to transcribe order details if a customer contacts a firm to place an unsolicited order for the purchase or sale of securities. A registered person, however, will be required to subsequently contact the customer to confirm the order details prior to the order being accepted.

Financial Services Affiliate Waiver Program

Under the Proposed Rules, FINRA will be establishing a waiver program, effective October 1, 2018, for individuals who terminate their representative or principal registrations with a member firm in order to work for a non-U.S. or U.S. financial services industry affiliate of a member firm (the "Waiver Program"). The term "financial services industry affiliate of a member" is defined as "a legal entity that controls, is controlled by or is under common control with a member firm and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent [non-U.S.] regulatory authorities."[4] Individuals who are eligible for the Waiver Program would be granted a single seven-year waiver period beginning on the date that they are initially designated as eligible for the Waiver Program. This waiver period is fixed and cannot be tolled or renewed. During this time period, individuals will be responsible for timely completion of Regulatory Element CE programs based upon their most recent registration category. Failure to complete the Regulatory Element within the prescribed 120-day window will result in an individual losing his or her eligibility for the Waiver Program.

The Waiver Program will allow for an individual to re-apply with FINRA for registration as a representative or principal, provided that the following conditions have been met:

- the individual must have been registered as a representative or principal for a total of five years within the most recent ten-year period prior to his or her initial designation under the Waiver Program;
- the individual must have been registered as a representative or principal for at least one year prior to his or her initial designation under the Waiver Program with the member firm that is designating him or her;
- all waiver requests under the program must be made within seven years of the individual's initial designation;
- the individual's initial designation and any subsequent designation must be made concurrently with the filing of the individual's related Form U5;
- the individual must have continuously worked for a financial services industry affiliate of a member firm since his or her last Form U5 filing;
- the individual must have complied with the Regulatory Element of CE; and
- the individual must not have any pending or adverse regulatory matters, or terminations, that are reportable on Form U4, and must not have been subject to a statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 while eligible under the program.

The Waiver Program will not require that individuals return to the same member firm that designated them as eligible for a waiver, and during the seven-year window individuals may move between member firms, between a member firm and a financial services affiliate of the member firm or another member firm, and between financial services affiliates of member firms; provided that the individual continuously works for a financial services affiliate of a member firm since the filing of the

individual's last Form U5. An individual participating in the Waiver Program cannot, however, be working for a member firm while also working for a financial services affiliate of a member firm.

Member firms will be required to designate individuals as eligible for the Waiver Program by notifying FINRA concurrently with the filing of an individual's Form U5. Member firms will also be responsible for requesting waivers when registering individuals who have been eligible participants in the Waiver Program. FINRA will rely on representations made by the member firm at the time a waiver is requested under the Waiver Program, and also may independently verify that the conditions under the Waiver Program have been met. FINRA will review and determine whether to grant any waiver requests under the Waiver Program within 30 calendar days of receipt of the request.

Registration Changes

Principal Financial Officer and Principal Operations Officer Designations

Under the Proposed Rules, firms will be required to designate a:

- Principal Financial Officer with primary responsibility for financial filings and the related books and records; and
- Principal Operations Officer with primary responsibility for the day-to-day operations of the business, including overseeing the receipt and delivery of securities and funds, safeguarding customer and firm assets, calculation and collection of margin from customers and processing dividend receivables and payables and reorganization redemptions and those books and records related to such activities.

While the day-to-day duties of these positions may be delegated to other principals of the firm, the ultimate responsibility for the functions must remain with the Principal Financial Officer and the Principal Operations Officer.

These designations will replace the existing requirement that all member firms designate a Chief Financial Officer, and that FINRA and NYSE dual-member firms also designate a Chief Operations Officer, and will apply to all firms, regardless of whether the firm is exempt from the requirement to have a Financial and Operations Principal ("FinOp") or an Introducing Broker-Dealer FinOp. Principal Financial Officers and Principal Operations Officers will be required to be registered as either a FinOp or Introducing Broker-Dealer FinOp, as applicable, and must be registered in the CRD system as Operations Professionals. With respect to these requirements, because Principal Financial Officers and Principal Operations Officers must also be registered as either FinOps or Introducing Broker-Dealer FinOps, they will not be required to pass the Operations Professional (Series 99) examination in order to register as Operations Professionals, as they already hold a qualifying registration.

Firms that are not self-clearing or do not provide clearing services are not required to designate separate individuals to serve as the Principal Financial Officer, Principal Operations Officer, and FinOp or Introducing Broker-Dealer FinOp. Firms that self-clear or provide clearing services, unless granted a limited-size waiver from FINRA, must designate separate individuals to serve as Principal Financial Officer and Principal Operations Officer. Such individuals, however, may also carry out FinOp responsibilities. A firm may designate multiple Principal Operations Officers in accordance with the Proposed Rules, but may not designate multiple Principal Financial Officers.

Additional Principal Registration Categories

The Proposed Rules establish three new principal registration categories: (a) Compliance Officer; (b) Investment Banking Principal; and (c) Private Securities Offerings Principal.

- *Compliance Officer.* Under the Proposed Rules, individuals designated on Form BD as Chief Compliance Officer, with the exception of firms engaged in limited investment banking or securities business, must register as a Compliance Officer. Individuals who are currently registered as both General Securities Representatives and as General Securities Principals and maintain those registrations on or after October 1, 2018, will be able to register as a Compliance Officers without having to pass any additional examinations. An individual who meets these requirements and is also designated on Form BD as Chief Compliance Officer as of October 1, 2018, will automatically be granted registration as a Compliance Officer. On or after October 1, 2018, individuals who do not meet an exemption from the examination requirements will be required to either pass the General Securities Representative examination (including passing the SIE) and pass the General Securities Principal examination, or pass the Compliance Official examination (Series 14).
- *Investment Banking Principal.* Under the Proposed Rules, principals who are responsible for supervising certain investment banking activities[5] are required to register as Investment Banking Principals. Individuals who are currently registered as both Investment Banking Representatives and as General Securities Principals and maintain those registrations on or after October 1, 2018, will automatically be granted registration as Investment Banking Principals on October 1, 2018. On or after October 1, 2018, individuals who do not meet an exemption from the examination requirements will be required to pass both the Investment Banking Representative examination (including passing the SIE) and pass the General Securities Principal examination.
- *Private Securities Offerings Principal.* Under the Proposed Rules, principals who are solely responsible for supervising specified activities relating to private securities offerings may register as Private Securities Offerings Principals, instead of registering as General Securities Principals. Individuals who are currently registered as both Private Securities Offerings Representatives and as General Securities Principals and maintain those registrations on or after October 1, 2018, will automatically be granted registration as Private Securities Offerings Principals on October 1, 2018. On or after October 1, 2018, individuals who do not meet an exemption from the examination requirements will be required to pass both the Private Securities Offerings Representative examination (including passing the SIE) and pass the General Securities Principal examination.

Under the Proposed Rules, an individual is not eligible to register as an Investment Banking Principal or Private Securities Offerings Principal solely by virtue of being registered as a General Securities Representative and General Securities Principal.

Permissive Registrations

FINRA member firms will be permitted under the Proposed Rules to permissively register or maintain the registration of any associated person or any individual engaged in the investment banking or securities business of a non-U.S. securities affiliate or subsidiary of the member.[6] This expands the current categories of permissive registrations, which include individuals performing legal, compliance, internal audit, back-office operations, or similar responsibilities for a firm; individuals engaged in the investment banking or securities business of a non-U.S. securities affiliate or subsidiary of a firm; and individuals performing administrative support functions for registered persons of a firm. Permissively registered individuals will be considered registered persons of the member firm and subject to all FINRA rules relevant to their activities.

Firms must have adequate supervisory systems and procedures in place to ensure that individuals who are permissively registered do not act outside of their registered function. A permissively registered individual does not need to be directly supervised by a registered person, although the

member firm must assign a supervisor registered with the firm who is responsible for periodically verifying that the permissively registered individual is not acting outside the scope of his or her registered function. This registered supervisor must have at least the same level of registration as the permissively registered individual (i.e., if the individual is permissively registered as a principal, the registered supervisor must also be a principal), although the registered supervisor does not need to be registered in the same representative or principal registration category as the permissively registered individual.

Registered Persons Functioning as Principals

Under the Proposed Rules, registered representatives will now be permitted to function as principals of a firm for a period of 120 calendar days—an increase from the current 90-day period—before being required to pass the appropriate principal-level qualification examination. Firms will also be able to designate current principals to serve in another principal category (e.g., a current General Securities Principal can be designated to serve as a Municipal Securities Principal) for the same 120-day period. Registered representatives who are designated as principals in this manner, however, including with respect to principal categories that do not have pre-requisite representative-level registration requirements, must have at least 18 months of experience functioning as a registered representative within the immediately preceding 5 years.

Examination Changes

The Proposed Rules make a number of changes to the representative-level qualification examinations, which are designed primarily to eliminate redundancies in the testing of general securities knowledge across the representative-level examinations, and also retire a number of existing representative-level registration categories. These changes are described in further detail below, and summarized in chart-form in Appendix A.

Securities Industry Essentials Examination (SIE)

In connection with the Proposed Rules, FINRA will be restructuring its representative-level qualification examinations. Effective October 1, 2018, individuals seeking representative-level registration will be required to pass the SIE examination, as well as a revised function-specific qualification examination (e.g., General Securities Representative (Series 7)). Certain current and former registered representatives will be given credit for passing the SIE without having to sit for the exam. The SIE is designed to eliminate redundant testing of general securities knowledge across the representative-level examinations, including knowledge of basic products, the structure and function of the securities industry, the regulatory agencies and their functions, and regulated and prohibited practices. The revised function-specific examinations will focus on knowledge relevant to the day-to-day activities, responsibilities, and job functions of representatives. Individuals will be able to schedule the SIE and any function-specific examination(s) on the same day, subject to testing center availability. The SIE will be subject to a four-year expiration period, unlike the two-year registration lapse period that will continue to be applicable for representative- and principal-level registrations.

Individuals may continue to apply to become registered representatives prior to October 1, 2018. Such individuals will sit for the existing representative-level examinations, regardless of whether the examination takes place prior to October 1, 2018 (i.e., an individual who applies for registration on September 29, 2018, could sit for an existing representative-level examination in November of 2018). Individuals who attempt and fail an existing representative-level examination, and are precluded from sitting for the same exam until after October 1, 2018, will be required to take and pass the SIE and function-specific examination on his or her next attempt. If this occurs, however,

the individual will not have to wait the typical 30-day period before sitting for the SIE and function-specific examination (e.g., an individual who fails the current Series 7 examination on September 29, 2018 could sit for the SIE and revised Series 7 examination on October 5, 2018).

All associated persons will be eligible to sit for the SIE. In addition, individuals not associated with a member firm, such as the general public, will be permitted to sit for the SIE, although passing the SIE alone will not qualify an individual for registration with FINRA. Associated persons who sit for the SIE will be subject to the SIE Rules of Conduct, which, among other things, requires individuals to attest that mere passage of the SIE does not qualify an individual to engage in investment banking or securities business. Individuals not associated with a member firm will be required to agree to be subject to the SIE Rules of Conduct. Firms will be able to register associated persons for the SIE through CRD, and FINRA is developing a separate system to allow associated persons not seeking registration as a representative and individuals not associated with a firm to enroll and pay the SIE examination fee.

Eliminated Representative Level Registration Categories

In connection with the Proposed Rules, the following registration categories and examinations are being retired:

- Assistant Representative – Order Processing (Series 11);
- United Kingdom Securities Representative (Series 17);
- Canada Securities Representative – with options (Series 37);
- Canada Securities Representative – no options (Series 38);
- Registered Options Representative (Series 42);
- Corporate Securities Representative (Series 62); and
- Government Securities Limited Representative (Series 72).

An individual currently registered in one of these categories will be grandfathered by FINRA and may maintain his or her registrations until the individual is terminated and remains terminated for a period of two years.

Research Analyst and Principal and Supervisory Analyst Qualification Requirements

Under the proposed rules, individuals seeking registration as a Research Analyst will no longer be required to pass the General Securities Representative examination. Instead, individuals will be required to pass the SIE and revised Research Analyst qualification examinations (Series 86 and 87). In addition, individuals seeking registration as a Research Principal may now either pass the Research Analyst and General Supervisory Principal qualification examinations, or, alternatively, qualify and register as a Supervisory Analyst (Series 16) and pass the General Supervisory Principal qualification examination. In connection with these changes, FINRA is eliminating the experience prerequisite for individuals seeking registration as a Supervisory Analyst, which required that individuals seeking registration have at least three years of experience involving securities or financial analysis in the immediately preceding six years.

Conclusion

With the Proposed Rules, FINRA seeks to streamline the examination and registration process by establishing the SIE and revising many of the current qualification examinations. The Proposed Rules also introduce additional principal registration categories and requirements, while also retiring a number of existing representative-level registration categories and qualification examinations. Finally, through implementation of the Waiver Program, FINRA seeks to provide

flexibility to allow individuals to move between member firms and their non-U.S. or U.S. financial services industry affiliates without having to re-take qualification examinations upon their return to a member firm, provided that certain conditions are met. While the Proposed Rules are substantially similar to the NASD and NYSE rules that are being consolidated, there are certain key differences, such as those outlined above, which should be considered and understood before the October 1, 2018 implementation date.

Appendix A

Examination and Registration Changes under the Proposed Rules

The below chart captures the principal- and representative-level examination and registration changes under the Proposed Rules, as well as the addition of the Principal Financial Officer and Principal Operations Officer designations.[7] For more information please see the discussion above.

To view all formatting for this article (eg, tables, footnotes), please access the original here.

Shearman & Sterling LLP

Russell D. Sacks, Jennifer D. Morton, Steven Blau, Jenny Ding Jordan and P. Sean Kelly

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