



April 8, 2011

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

Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed FINRA Rule 1230(b)(6)
File Number SR-FINRA-2011-013

Dear Ms. Murphy:

Janney Montgomery Scott LLC (“Janney” or “we”) appreciates the opportunity to provide comments regarding Financial Industry Regulatory Authority Inc.’s (“FINRA”) proposed FINRA Rule 1230(b)(6). Specifically, Janney would like to comment on proposed Rule 1230(b)(6)(E)(ii) which requires a “non-Day-One Professional” who works for a clearing member firm to take and pass the Operations Professional qualification examination prior to engaging in any activities that would require such registration.

According to the proposed rule, non-Day-One Professionals employed by non-clearing members have the benefit of a 120-day grace period beginning on the date that such person requests Operations Professional registration via Form U4 in CRD to pass such qualifying examination, during which time such person may function as an Operations Professional. In its rule filing with the Securities and Exchange Commission (“SEC”), FINRA explains its reasoning for granting the exception to employees of non-clearing members but not to clearing members as follows: “FINRA believes that allowing a person associated with a non-clearing member to function as an Operations Professional for a 120-day period will enable these firms to manage their more limited staffs to comply with the proposed registration requirements without disrupting those firms’ obligations to customers.”

Janney is concerned that limiting the 120-day grace period to non-clearing member firms will lead to clearing member firms being forced to place potentially inexperienced or unqualified employees in a supervisory role simply because those employees are properly registered as Operations Professionals. In addition, the covered functions as currently set out in the proposed rule encompass both clearing and non-clearing functions. Certainly, clearing firms should not be subject to stricter requirements



than non-clearing firms when attempting to appropriately staff the supervisory position for a non-clearing covered function.

Janney does not dispute that, generally, clearing member firms are more likely to have larger staffs than non-clearing member firms. However, clearing member firms are no more likely to have a qualified, trained, properly registered Operations Professional to take over the supervisory role of a specific covered function than a non-clearing member. Whether a firm is a clearing or non-clearing member, it will staff each of its departments to appropriately perform the functions required of that department. Janney does not provide its departments that handle clearing functions with additional supervisory staff just to address the possibility that a supervisor of such a department might resign, transition to another area or otherwise relinquish their supervisory role. Indeed, FINRA cannot expect that clearing firms should have additional supervisory staff on standby for each department that handles a covered function under the proposed rule.

Requiring clearing member firms to immediately replace an Operations Professional with another Operations Professional significantly restricts a clearing firm's autonomy when deciding how to fill a newly vacated position. Instead of being able to fill the position based on a candidate's experience and training, a clearing firm might be forced to fill the position, at least on a temporary basis, based solely on an employee's qualification as an Operations Professional, even if the employee has no work experience in the area where the position is available.

If this portion of the proposed rule is not amended to expand the grace period to all member firms, Janney and other clearing firms could find ourselves in a position whereby we will be forced to appoint an otherwise unqualified person to handle supervisory responsibilities of a covered function simply because that unqualified person has the required Operations Professional registration. Certainly it cannot be FINRA's intention to force clearing members to appoint employees as supervisors over departments in which they have no experience and no training simply because they have passed a regulatory exam.

Janney believes that allowing a non-registered employee with experience in the requisite department to function as an Operations Professional during a 120-day grace period while preparing to take the required examination will allow clearing firms to staff their departments with people that have appropriate experience and training in the covered function.

In addition, Janney notes that FINRA recently issued FINRA Regulatory Notice 11-14 which requests comment on proposed Rule 3190 (Use of Third-Party Service Providers). FINRA intends the proposed rule to clarify FINRA's guidance on obligations and supervisory responsibilities for certain functions that members outsource to third-party service providers. The comment period for proposed Rule 3190 expires on May 13,



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2011. Clearly, the registration requirements contained in proposed Rule 1230(b) will have a significant impact on member firms' use of third-party service providers. Since that is the case, Janney requests that FINRA agree to extend the time by which the SEC needs to act on the Operations Professional rule until May 13, 2011, to coincide with the comment deadline for FINRA Regulatory Notice 11-14. This will allow member firms to consider these closely related proposed rules in the same timeline.

We appreciate the opportunity to provide our views. If you have questions, please contact the undersigned at (215) 665-6424.

Sincerely,

Matthew J. Gavaghan
Associate General Counsel