



VOICE OF INDEPENDENT BROKER-DEALERS  
AND INDEPENDENT FINANCIAL ADVISORS

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## VIA ELECTRONIC MAIL

November 14, 2011

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

RE: SR-FINRA-2011-060 – Proposed Rule Change to Amend the Implementation Provision in  
FINRA Rule 1230(b)(6) (Operations Professional)

Dear Ms. Murphy:

On March 4, 2011, the Financial Industry Regulatory Authority (FINRA) filed SR-2011-013<sup>1</sup> (Proposed Rule) with the Securities and Exchange Commission. In the Proposed Rule, FINRA sought to adopt FINRA Rule 1230(b)(6) which would establish a registration category and qualification examination requirement for certain operations personnel. The Proposed Rule also changed NASD Rule 1120 (Continuing Education Requirements) to FINRA Rule 1250 (Continuing Education Requirements) in the Consolidated FINRA Rulebook and implemented continuing education requirements for these operations personnel.

On April 8, 2011, the Financial Services Institute (FSI)<sup>2</sup> submitted a comment letter in response to FINRA's initial Proposed Rule regarding FINRA Rule 1230(b)(6).<sup>3</sup> In our initial comment letter, we outlined several concerns with the Proposed Rule. We argued that the objectives laid out in the Proposed Rule could be achieved with a less expansive and less expensive approach, and specifically urged the SEC to drop the testing component of the Proposed Rule and narrow the breadth of the covered functions through well-crafted definitions of the terms. We also requested that the Proposed Rule more specifically address functions shared by introducing broker-dealers and their clearing firms.

On June 15, 2011, the SEC received from FINRA a Proposed Partial Amendment to the Proposed Rule (Amendment) and a Response to Comments.<sup>4</sup> The amendment changed the Proposed Rule in response to requests by commenters to clarify the categories of covered persons, to accept certain alternative

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<sup>1</sup> SR-FINRA-2011-013, available at <http://sec.gov/rules/sro/finra/2011/34-64080.pdf>,  
<http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p123266.pdf>.

<sup>2</sup> The Financial Services Institute is an advocacy organization for the financial services industry – the only one of its kind – FSI is the voice of independent broker-dealers and independent financial advisors in Washington, D.C. Established in January 2004, FSI's mission is to create a healthier regulatory environment for their members through aggressive and effective advocacy, education and public awareness. FSI represents more than 125 independent broker-dealers and more than 16,000 independent financial advisors, reaching more than 15 million households. FSI is headquartered in Atlanta, GA with an office in Washington, D.C.

<sup>3</sup> FSI Comment Letter in response to SR-FINRA-2011-013, available at <http://www.sec.gov/comments/sr-finra-2011-013/finra2011013-8.pdf>.

<sup>4</sup> Exchange Act Release 64687, available at <http://www.sec.gov/rules/sro/finra/2011/34-64687.pdf>.

qualification examinations in place of the proposed Operations Professional Examination and extend the 120-day grace period for registration of non-Day-One Professionals to those who would be associated with a clearing member. FINRA declined to provide additional amendments to the Proposed Rule as requested by commenters. On June 16, 2011, the SEC approved the Proposed Rule and the Amendment to the Proposed Rule on an accelerated basis.<sup>5</sup>

On October 14, 2011, FINRA submitted to the SEC SR-2011-060 (Implementation Amendment).<sup>6</sup> The Implementation Amendment proposed to amend FINRA Rule 1230(b)(6) to provide persons that are (a) required to register as an Operations Professional from October 18, 2011 through December 16, 2011, and (b) must pass a qualification examination to qualify as an Operations Professional, until April 14, 2012 to pass the required examination. On October 17, 2011 the SEC approved the Implementation Amendment to Rule 1230(b)(6) on an accelerated basis.<sup>7</sup>

FSI welcomes this opportunity to comment on the Implementation Amendment. We support the Proposed Rule's goal of enhancing investor protection by providing additional training and education to individuals who supervise broker-dealer operations. While we continue to have many of the same concerns we raised in our previous comment letter, we applaud FINRA for providing additional time for Operations Personnel to comply with the qualification examination requirements contained in FINRA Rule 1230(b)(6).

#### Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisors – or approximately 64% percent of all practicing registered representatives – operate in the IBD channel.<sup>8</sup> These financial advisors are self-employed independent contractors, rather than employees of the IBD firms. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisors are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisors affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisors are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals

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<sup>5</sup> Id.

<sup>6</sup> SR-FINRA-2011-060, available at

<http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p124701.pdf>.

<sup>7</sup> Exchange Act Release No. 65580, available at <http://www.sec.gov/rules/sro/finra/2011/34-65580.pdf>.

<sup>8</sup> Cerulli Associates at <http://www.cerulli.com/>.

from existing clients or other centers of influence.<sup>9</sup> Independent financial advisors get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisors have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisors. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisors play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to insure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

#### Comment on the Implementation Amendment

Under FINRA Rule 1230(b)(6)(E) as initially adopted, persons required to register as an Operations Professional after October 17, 2011 were required to register with FINRA and were provided a period of 120 to pass the required qualification examination. Under the Implementation Amendment, persons required to register as an Operations Professional between October 18 and December 16, 2011 will be given between 179 and 120 additional days (i.e., until April 14, 2012) to pass any required qualification examination.<sup>10</sup>

The amendment also provides that persons required to (a) register as Operations Professionals on or after December 17, 2011, and (b) to pass a qualification examination will be allotted 120 days from the date such person requests registration to pass the required examination. A person falling under this provision will also be allowed to function as an Operations Professional during the 120-day period.<sup>11</sup>

FSI applauds FINRA for providing additional time to pass the required qualifications examination for persons required to register as Operations Professionals between October 18 and December 16, 2011. Such changes are likely to facilitate compliance with the registration and qualification examination process, especially in light of the fact that many individuals that will be required to register under the rule will need to study for and pass an examination for which there is no established history.

#### Conclusion

We remain committed to constructive engagement in the regulatory process and support the Implementation Amendment's adoption. We welcome the opportunity to work with the SEC and FINRA to enhance investor protection and broker-dealer compliance efforts.

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<sup>9</sup> These "centers of influence" may include lawyers, accountants, human resources managers, or other trusted advisors.

<sup>10</sup> SR-FINRA-2011-060, available at

<http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p124701.pdf>.

<sup>11</sup> Id.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8488.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.  
General Counsel and Director of Government Affairs