



NASAA

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May 1, 2017

Submitted electronically to rule-comments@sec.gov

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Release No. 34-80371, File Number SR-FINRA-2017-007

Dear Mr. Fields:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),¹ I hereby submit the following comments in response to Release No. 34-80371, File Number SR-FINRA-2017-007, entitled Notice of Filing of a Proposed Rule Change to Adopt Consolidated FINRA Registration Rules, Restructure the Representative-Level Qualification Examination Program and Amend the Continuing Education Requirements (“Proposal”).²

In NASAA’s view the Proposal seeks to achieve two main goals: first, restructure FINRA’s current representative-level examinations program, and second, make significant changes to FINRA’s current registration rules as they relate to passive registrations. NASAA addresses each of these issues in turn and appreciates the opportunity to offer its comments on these proposed rule changes.

FINRA Representative-Level Qualification Examinations Restructuring

NASAA generally supports FINRA’s proposed representative-level qualification examinations restructuring as outlined in the Proposal. The primary change described in the Proposal would create a two-tier examination structure that would require individuals to pass two examinations before becoming registered with a FINRA member. Individuals would first be required to take and pass the Securities Industry Essentials (“SIE”), an examination FINRA has proposed would cover “basic product knowledge; the structure and function of the securities industry markets; regulatory agencies and their functions; and regulated and prohibited

¹ NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other to protect investors at the grassroots level and promote fair and open capital markets.

² 82 Fed. Reg. 17,336 (Apr. 10, 2017).

practices.”³ Individuals would then be required to take and pass “a specialized knowledge examination appropriate to their job functions at the firm with which they are associating.”⁴

The Proposal indicates that individuals need only pass the SIE once, and should they seek additional registrations with a firm, individuals would only need to take the appropriate specialized knowledge examination. This format, in which individuals take a core examination (the SIE) followed by specialized “top off” examinations, streamlines the qualification process, but appears to be structured to cover the essential subject matter. Further, FINRA has proposed to allow individuals to take the SIE without any prior association with a FINRA member, a significant change from the current examinations structure, which requires individuals to first become associated with a FINRA member before taking any FINRA examinations. FINRA, however, has made clear that passing the SIE alone is not enough to engage in conduct that requires registration with a FINRA member.

FINRA has engaged NASAA, among other stakeholders, throughout its development of the restructuring plan outlined in the Proposal, including the proposed core/top-off structure and opening the SIE to individuals not already associated with FINRA members. This outreach has allowed NASAA to offer many of its views regarding the restructuring while FINRA was developing the Proposal, including feedback on the proposed restructuring’s impact on individuals’ state registrations. As stated above, NASAA generally supports the proposed restructuring and looks forward to continuing to work with FINRA as it implements the changes outlined in the Proposal.

Proposed Changes to FINRA’s Registration Rules

The second goal of the Proposal is to implement a series of changes to FINRA’s current registration rules. FINRA first proposed similar changes to its registration rules in 2009.⁵ NASAA opposed the 2009 proposed rule changes and continues to have significant concerns with the registration rule changes detailed in the Proposal.⁶ NASAA continues to believe that the permissive registration scheme described in the Proposal “runs contrary to the provisions of the Exchange Act requiring FINRA to prescribe standards of training, experience, and competence for individuals engaged in the investment banking or securities business.”⁷

As with the rule changes originally proposed in 2009, the current Proposal would significantly alter the way in which FINRA handles permissive registrations. The Proposal would allow “any associated person [of a FINRA member] to obtain and maintain any

³ *Id.* at 17,339.

⁴ *Id.*

⁵ See FINRA Regulatory Notice 09-70 (December 2009) available at <http://www.finra.org/sites/default/files/NoticeDocument/p120490.pdf>.

⁶ See Letter from Melanie Senter-Lubin, Maryland Securities Commissioner and NASAA CRD Steering Committee Chair, to Marcia Asquith, FINRA Corporate Secretary, dated Mar. 1, 2010 (“2010 NASAA Comment Letter”) available at <http://www.finra.org/sites/default/files/NoticeComment/p121067.pdf>.

⁷ *Id.* at 2.

registration permitted by the member.”⁸ Currently, FINRA members cannot maintain the registrations of individuals that have ceased performing the investment banking or securities activities associated with that registration, with limited exceptions for legal, compliance, internal audit, back office operation, or roles with similar responsibilities.⁹ FINRA has consistently prohibited this practice, commonly known as “parking a registration.” The Proposal eliminates some of the workability concerns related to FINRA’s originally proposed permissive registration model.¹⁰ However, NASAA remains concerned that the Proposal’s permissive registration scheme would eliminate any prohibition on the parking of registrations, a practice that could allow unqualified individuals to maintain FINRA registrations.¹¹ Further, as NASAA stated in its prior comments, the current proposal relies too heavily on FINRA’s continuing education requirement to assess the skills and qualifications of permissive registrants. NASAA continues to believe that continuing education, while a critically important supplement, cannot be a substitute for FINRA’s qualification examinations program.¹²

As in the prior proposal, FINRA articulates a business reason for allowing an expanded permissive registration scheme—that it would allow firms increased flexibility in making personnel and staffing decisions—but fails to offer a sound regulatory rationale for such a scheme.¹³ FINRA attempts to offer a regulatory justification for its proposed permissive regulatory scheme by noting that “allowing registration in additional categories encourages great regulatory understanding.”¹⁴ This conclusory statement does not satisfy NASAA’s concern that, if implemented, the changes detailed in the Proposal could result in potentially unqualified individuals acting in registered capacities.

For example, under FINRA’s currently proposed permissive registration scheme, an individual registered as a General Securities Representative could also qualify as a General Securities Principal but never act in such a capacity. This permissive registration as a General Securities Principal could not occur under the rules in place today. However, as described in the Proposal, this individual could be assigned to work in a non-registered capacity for ten years only to subsequently be assigned to a role as a General Securities Principal. In this instance, an individual could be assigned to a role as a General Securities Principal without ever having acted in that capacity or having to demonstrate their qualifications for more than a decade. Under the current registration scheme, this could not occur as any registration that an individual maintains lapses two years after they are no longer acting in that capacity and such individuals must either retake the qualification examination or seek a waiver from FINRA.¹⁵ In NASAA’s view, the

⁸ 82 Fed. Reg. at 17,338.

⁹ See NASD Rules 1021(a) and 1031(a).

¹⁰ As originally proposed FINRA would have created three registration categories: active, permissive inactive, and retained associate. The Proposal simplifies this structure by removing the distinction between active and inactive and simplifying the retained associate model.

¹¹ See 2010 NASAA Comment Letter, *supra* note 6 at 3.

¹² See *id.* at 2.

¹³ See 82 Fed. Reg. at 17,338.

¹⁴ *Id.*

¹⁵ See NASD Rule 1021(c) and 1031(c).

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current registration scheme should be maintained absent a significant reworking of the proposed permissive registration scheme detailed in the Proposal.

NASAA supports FINRA's efforts to streamline its qualification examinations program, but cannot support, at least in its current form, FINRA's proposed permissive registration scheme.

NASAA welcomes an opportunity to discuss these issues further. If you have any questions about these comments, please contact NASAA's General Counsel, A. Valerie Mirko, at [REDACTED] or ([REDACTED]).

Sincerely,



Mike Rothman
NASAA President
Minnesota Commissioner of Commerce