



May 1, 2017

*Submitted electronically*

Brent Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: SR-FINRA-2017-007: Proposed Rule Change to Adopt Consolidated FINRA Registration Rules, Restructure the Representative-Level Qualification Examination Program and Amend the Continuing Education Requirements**

Dear Mr. Fields:

Fidelity Investments (“Fidelity”)<sup>1</sup> appreciates the opportunity to comment on the Securities and Exchange Commission (“SEC”) notice on the Financial Industry Regulatory Authority’s (“FINRA’s”) proposed rule change to adopt consolidated registration rules, restructure the representative-level qualification examination program and amend the continuing education (“CE”) requirements among other changes (“Proposal”).<sup>2</sup> Fidelity generally agrees with views expressed by the Securities Industry and Financial Markets Association (“SIFMA”) in its comment letter on the Proposal. We submit this letter to supplement SIFMA’s comment letter with our own views on certain specific positions.

#### **A. Executive Summary**

Our comments include the following points:

- **Strong Support.** Fidelity strongly supports the Proposal.
- **Securities Industry Essentials exam (“SIE”).** Fidelity supports the restructured representative-level exam program and a four year exam expiration period for the SIE. We believe the four year grace period should also apply uniformly to all representative and principal registrations subject to completion of Regulatory Element CE.

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<sup>1</sup>Fidelity Investments is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing, and many other financial products and services. Fidelity submits this letter on behalf of our broker-dealers and FINRA members Fidelity Brokerage Services LLC, Fidelity Distributors Corporation, Fidelity Investments Institutional Services Company, Inc., and National Financial Services LLC.

<sup>2</sup> SR-FINRA-2017-007. Capitalized terms not defined herein have the meanings ascribed to them in the Proposal.

- Permissive Registrations. Fidelity supports allowing increased permissive registrations but the proposed supervisory requirements should be simplified further.
- Financial Services Affiliate (“FSA”) waiver. Fidelity supports the FSA waiver but the experience requirement should be simplified and there should be an FSA waiver “claw back” opportunity.
- Requirements for Registered Persons to Function as Principals for a Limited Period. Fidelity supports allowing a representative to function as a principal for a limited period of 120 days but the experience requirements should be removed or simplified.
- Implementation. Fidelity supports an aggressive target for implementation but we have some concerns regarding impact on technology.
- Harmonization. Broker-dealer registration rules should be harmonized across securities regulators.

#### **B. Fidelity strongly supports the Proposal subject to specific comments below**

Fidelity strongly supports the Proposal but also recommends certain improvements noted below. Fidelity has previously advocated for certain aspects of the Proposal and we appreciate FINRA’s willingness to evolve its longstanding registration structure and restrictions based on industry feedback and a changing workforce. We believe the proposed changes offer substantial benefits without compromising investor protection.

#### **C. Fidelity supports the restructured representative-level exam program and a four year exam expiration period**

Fidelity supports the proposed representative-level exam structure including creating a general knowledge SIE to be combined with specialized knowledge “top off” exams to correspond to existing categories of registration. We agree that allowing individuals to take the SIE who have no prior securities industry experience or current association with a member firm will benefit prospective job candidates including recent college graduates who will be able to establish stronger industry qualifications. It will also benefit member firms that will be able to identify and recruit candidates with a demonstrated entry-level interest and aptitude in the securities industry. We agree the proposed structure will remove certain inefficiencies present today with respect to duplicative general knowledge content contained in different representative-level qualification exams.

Fidelity also supports having a four year expiration period for the SIE and believes FINRA should adopt a uniform four year exam grace period for all representative and principal registrations rather than maintaining the current two year standard. Individuals could maintain required levels of competence and knowledge during an inactive grace period through completion of Regulatory Element CE, which now may be completed online remotely.

**D. Fidelity supports allowing increased permissive registrations but the proposed supervisory requirements should be simplified**

We support the proposed approach of allowing any individual associated with a member firm to maintain permissive registrations rather than just those individuals who perform certain roles such as legal, compliance, internal audit, back-office operations or similar responsibilities.

We support FINRA's stated intent of expanding the scope of permissive registrations, and do not believe the rule change is meant to disqualify persons in the existing permissive registration categories (i.e. legal, audit, compliance, back office) from registering. We note that, in some cases, functions such as legal and internal audit are centralized functions that are not organizationally within the broker-dealer. We do not believe FINRA intends to exclude those individuals from being registered under the Proposal.

We agree that individuals and firms will benefit from this change through improved regulatory literacy within employee ranks, increased career development and job mobility and stronger "bench strength" when managing resource needs that may arise due to business reorganizations, relocations or changes in market conditions.

We agree that individuals who are permissively registered should be subject to all FINRA rules relevant to their activities and that supervision must be adequate to ensure they do not act outside the scope of assigned functions and veer into performing activities that require registration. We also agree that a permissively registered individual's direct manager should not need to be registered provided the individual is assigned to another supervisor who is registered and who periodically contacts the unregistered direct manager to verify the individual does not act outside assigned functions.

However, we believe the proposed supervisor assignment protocol for permissive registration is overly complicated and unnecessary. FINRA is proposing to allow an individual who is permissively registered as a representative to be assigned to a supervisor that is a representative *or* principal, but an individual who is permissively registered as a principal must only be assigned to a supervisor that is also a principal. We appreciate the symmetry of the proposed approach but believe it is too complicated for the permissively registered population who are not engaging in activities requiring registration. This will require a disproportionate effort to implement and maintain relative to the supervisory protections achieved. This requirement would also prevent a permissively registered representative with a Series 7 from supervising another permissively registered individual who he or she directly manages merely because the direct report has a Series 26 that is not actively used. In that circumstance, another supervisor with a principal registration would also need to be assigned to that direct report. The manager is best positioned to supervise a direct report and this should not be compromised for permissively registered due to not having a principal registration.

We believe FINRA should allow a permissively registered individual, whether qualified as a representative or principal, to be assigned for supervision to another registered individual without regard to whether the supervisor is a representative or principal. FINRA Rule 3110(a)(5) even contemplates the assignment of a registered person to an appropriately registered

representative(s) *or* principal(s) responsible for supervising that person's activities. The supervisory standard for the permissively registered should not be stricter than that set forth under the more broadly applicable supervision rules.

**E. Fidelity supports the FSA waiver but the experience requirements should be simplified and there should be an FSA waiver “claw back” opportunity**

We have advocated for and strongly support the FSA waiver that will allow individuals in good standing who transfer to a financial services affiliate of a member firm to return to a member firm within seven years without having to requalify for registration. This is a welcome improvement to current restrictions that would result in the expiration of an individual's registrations if they do not return to a member firm within two years.

Fidelity appreciates FINRA's willingness to propose this new approach that will support employee job mobility to non-broker-dealer financial services affiliates. Employees changing jobs is a common scenario in large financial institutions and often one that involves senior level employees who may be proactively required or encouraged to move to various companies within a diversified organization over a period of years.

We believe the FSA waiver is an improvement over the “Retained Associate” structure discussed in FINRA Regulatory Notice 09-70 and we appreciate that the current Proposal does not include complex tolling and forfeiture provisions. We support the well-reasoned eligibility requirements that include continuous work for a financial services affiliate; compliance with Regulatory Element CE; and the lack of adverse regulatory disclosure matters. However, we believe the FSA waiver registration experience formula, which requires registration for a total of five years out of the most recent ten year period, and the most recent year with the designating member, is unnecessarily strict, complicated and arbitrary.

Fidelity requests that the registration experience requirement under Supplementary Material 1210.09(a) for the FSA waiver be simplified. We believe that firms will most often designate more senior level employees for the FSA waiver in connection with predetermined development programs and expectations of further job mobility within a large organization. In this circumstance, we do not believe a lengthy tenure of registration is particularly relevant to eligibility for the designation. We also believe the experience requirement should be simple and straightforward for firms to calculate in order to facilitate compliance. Therefore, we request that FINRA adjust the proposed minimum registration requirement for FSA waiver eligibility to a more reasonable standard of having been registered for at least a total of two years.

Fidelity also supports the proposed “portability” of the FSA waiver and the prospect that an individual designated for an FSA waiver by one member firm could return from working for that designating firm's financial services affiliate and be granted the FSA waiver from requalification by any other member firm, whether it was affiliated or not with the designating member firm. FINRA makes this intended flexibility clear in the Proposal<sup>3</sup> but we believe this should be further reinforced within Supplementary Material 1210.09 language itself (e.g. by

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<sup>3</sup> SR-FINRA-2017-007: On Page 35 of 623, FSA waiver scenarios are provided at footnote 39 including Example 3 with one firm (Firm A) designating an individual for a waiver and another presumably unaffiliated firm (Firm B) submitting a waiver to register the individual.

changing “a member” to “any member”) or through more direct explanations or examples within Supplementary Material 1210.09.

Finally, Fidelity requests that there be an FSA waiver “claw back” opportunity period to recapture registrations that may otherwise be lost due to the timing of the Proposal. We request that individuals who were terminated from a member firm within two years of the Proposal’s approval date, and who meet the eligibility requirements including continuously working for a financial services affiliate of a member firm, be eligible for FSA waiver designation when the new rules are implemented. This proposed approach will help avoid perceived unfair or disparate treatment of similarly situated individuals arising solely due to the timing of the Proposal’s approval.

**F. Fidelity supports allowing a representative to function as a principal for a limited period of 120 days but the experience requirements should be removed or simplified**

Fidelity supports the proposed increase in the limited period registered persons may function as principals from 90-days to 120-days before passing an appropriate principal qualification exam. We agree it makes sense to match the limited period with the standard exam “window” period provided by FINRA to study and complete a principal exam. However, the proposed registration experience eligibility requirements of at least eighteen months functioning as a representative within the five year period immediately preceding the designation is unnecessarily strict, complicated and arbitrary and should be eliminated or simplified.

FINRA does not currently impose a minimum experience requirement under the current rule that allows a representative to function as a principal for 90-days and the new eligibility requirements will substantially reduce the number of representatives who will be able to take advantage of this relief during the limited period when preparing for the principal exam(s). FINRA also does not impose an experience requirement to function as a principal once a principal exam is completed. However, FINRA does not set forth any specific risks or events it has identified that would justify now imposing a stricter experience standard for when a representative functions as a principal for a limited period.

Fidelity therefore requests that the experience requirement be removed from the proposed rule. The determination of whether to designate a representative to act as principal for a limited period should be left to the firm based upon such factors as the types of activities to be supervised, the system of supervision in place including written supervisory procedures, automated controls and access to registered principals.

In the event FINRA were to require a period of prior experience or registration in order for a representative to be eligible to function as a principal for a limited period, it should be a more simplified standard that would be straightforward for firms to calculate. In the alternative to removing the experience requirement altogether, we request that FINRA require a representative to be registered for at least a total of one year in order to be eligible to function as a principal for a limited period.

### **G. Fidelity supports an aggressive target for implementation but we have some concerns regarding impact on technology**

As noted above, we strongly support the proposed changes subject to certain requests for improvement and simplification and we therefore appreciate FINRA's stated intent to implement the revised structure as soon as March 2018.<sup>4</sup>

However, firm technology enhancements will need to be installed and tested to update internal systems used for registration requests and recordkeeping. These firm systems correspond to FINRA's Central Registration Depository (CRD) system including through the use of routine automated data feeds. The systems and online forms will need to accommodate new registration categories such as the SIE and specialized-knowledge exams as well as allowing for additional permissive registrations and FSA waiver designation status. In addition, some firms have automated controls associated with maintaining appropriate registrations and supervisory assignments that would also need to be adjusted based on the Proposal. Since firm technology budgets, resources and priorities are generally already fully committed through 2017 and final rule details are still subject to comment and review under the rulemaking process, a March 2018 target implementation date may pose some significant challenges.

We therefore request that FINRA work with the industry to develop a reasoned plan for implementation that could involve a staggered approach starting with the FSA waiver (1210.09); Registered Persons Functioning as Principals for a Limited Period (1210.04); and Permissive Registrations (1210.02) as soon as possible and concluding with the SIE and representative-level exam restructure thereafter.

### **H. Broker-dealer registration rules should be harmonized across securities regulators**

The SEC and FINRA should work with other self-regulatory organizations, exchanges and state securities regulators to harmonize rules related to securities registrations. The Proposal will change the representative-level qualification structure and introduce new registration categories and terminology associated with the SIE, specialized-knowledge exams, and the FSA waiver status. In addition, the Proposal will expand permissive registrations and effectively eliminate FINRA's "parking" prohibitions with respect to persons associated with a member firm.

Certain exchanges, SROs and state securities regulators have their own registration requirements that may intentionally be drafted to reference or mirror current FINRA or Form U4 registration categories and terminology that will change once the Proposal is adopted. In addition, many of these securities regulators also impose "parking" prohibitions against

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<sup>4</sup> SR-FINRA-2017-007: On page 22 of 623 FINRA indicates it intends to implement the revised structure in March 2018. On page 4 of 623, FINRA indicates it will announce the effective date in a Regulatory Notice to be published no later than 90 days following approval, and the effective date will be no later than 18 months following approval.

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maintaining registrations for individuals who are not required to be registered that are identical or similar to FINRA's current restrictions.<sup>5</sup>

Large firms can spend substantial resources navigating and managing inconsistent regulatory requirements. More uniform rules across securities regulators will allow firms to redeploy compliance resources on more meaningful efforts. It will also help FINRA to deliver consistent regulatory services to its regulatory clients including executing examinations, audits, and disciplinary actions for certain SROs and exchanges. Therefore, as FINRA's registration rules change due to adoption of the Proposal, there should be a coordinated effort to promote and make consistent and timely updates across the rules of other securities regulators.

Fidelity thanks the SEC for considering our comments. We would be pleased to provide any further information and respond to any questions that you may have.

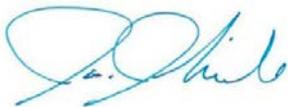
Sincerely,



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Richard J. O'Brien  
Chief Compliance Officer  
National Financial Services LLC



Jason Linde  
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<sup>5</sup> Examples of exchange rules with restrictions against maintaining registrations include BX Rule 1031(a); NASDAQ Rule 1031(a); CBOE Rule 3.6A(a)(1); and C2 Rule 3.4A(a)(1).