

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65137; File No. SR-FINRA-2011-040)

August 15, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Amend the Supplementary Material to FINRA Rule 1230(b)(6) (Operations Professional)

On August 12, 2011, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice and order to solicit comment on the proposed rule change and approve the proposed rule change on an accelerated basis.

I. Description of Proposed Rule Change

FINRA is proposing to amend the supplementary material to FINRA Rule 1230(b)(6) (Operations Professional), FINRA Rule 1230.06 (Scope of Operations Professional Requirement), to clarify the application of the Operations Professional requirements to employees of a foreign broker-dealer whose activities, relating to certain transactions in foreign securities on behalf of a member’s customers, as further detailed herein, are limited to facilitating the clearance and settlement of such transactions.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 16, 2011, the Commission approved SR-FINRA-2011-013, which adopted FINRA Rule 1230(b)(6) (Operations Professional), and its accompanying supplementary material in FINRA Rule 1230.06 (Scope of Operations Professional Requirement), to establish a registration category and qualification examination requirement for certain operations personnel (Operations Professionals).¹ FINRA Rule 1230(b)(6), and its accompanying supplementary material in FINRA Rule 1230.06, takes effect on October 17, 2011.²

Questions have been raised regarding the application of the Operations Professional requirements to employees of a foreign broker-dealer whose activities,

¹ See Securities Exchange Act Release No. 64687 (June 16, 2011), 76 FR 36586 (June 22, 2011) (Order Approving Proposed Rule Change; File No. SR-FINRA-2011-013). This rule change also established continuing education requirements for Operations Professionals and adopted NASD Rule 1120 (Continuing Education Requirements) as FINRA Rule 1250 (Continuing Education Requirements) in the consolidated FINRA rulebook with certain changes.

² See Regulatory Notice 11-33 (July 2011).

relating to certain transactions in foreign securities on behalf of a member's customers, are limited to facilitating the clearance and settlement of such transactions. These arrangements between the member and the foreign broker-dealer involve transactions in foreign securities to be executed by the foreign broker-dealer on the foreign market, where the foreign broker-dealer accepts the member's customer's instructions to settle the transactions on a DVP/RVP basis through the foreign clearing system and settle directly with the customer's custodian.

To provide clarification with respect to the application of FINRA Rule 1230(b)(6) to such arrangements, the proposed rule change would amend supplementary material .06 to FINRA Rule 1230(b)(6) to provide that an employee of a foreign broker-dealer whose activities, relating to a transaction in foreign securities on behalf of a customer of a member, are limited to facilitating the clearance and settlement of the transaction shall not be required to register as an Operations Professional pursuant to FINRA Rule 1230(b)(6)(A) where: (1) the member sending the order for a transaction in foreign securities on behalf of the customer to the foreign broker-dealer is not a direct participant of the applicable foreign clearing system; and (2) in executing such order in the foreign market, the foreign broker-dealer accepts the member's customer's instructions to settle the transaction in foreign securities on a DVP/RVP basis through the foreign clearing system and settle directly with a custodian for the customer.³

³ We are approving this rule change as it addresses the application of FINRA Rule 1230(b)(6) to the fact pattern described above. No statement in the proposed rule or this order otherwise affects the Commission's interpretation of any provision of the Securities Exchange Act of 1934, or any rule thereunder, including Rule 15c3-3 (17 CFR 240.15c3-3).

The effective date of the proposed rule change will be October 17, 2011, the effective date of FINRA Rule 1230(b)(6) (Operations Professional) and its accompanying supplementary material in FINRA Rule 1230.06 (Scope of Operations Professional Requirement).

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change would provide clarification in response to questions raised regarding the application of the Operations Professional requirements to employees of a foreign broker-dealer facilitating the clearance and settlement of certain transactions in foreign securities on behalf of a member's customers pursuant to the arrangements described above.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Commission's Findings

⁴ 15 U.S.C. 78o-3(b)(6).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FINRA and, in particular, the requirements of Section 15A of the Act⁵ and the rules and regulations thereunder.

FINRA has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act⁶ for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds good cause, pursuant to Section 19(b)(2), for approving the proposed rule change prior to the 30th day after publication of notice of the filing in the Federal Register. The proposed rule change is intended to clarify the scope of application of FINRA's Rule 1230(b)(6), which rule comes into effect on October 17, 2011.⁷ By accelerating the approval of the proposed rule, and allowing it to become effective on October 17, 2011, the Commission can eliminate uncertainty about the rule's applicability to the persons who are the subject of this interpretation, improve the ability of FINRA members to plan accordingly for the upcoming compliance date of Rule 1230(b)(6), and avoid undue burdens associated with preparing for the registration of persons who will not be required to register under this interpretation.⁸

IV. Solicitation of Comments

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78s(b)(2).

⁷ See Regulatory Notice 11-33 (July 2011) (Operations Professionals).

⁸ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2011-040 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2011-040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3

p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2011-040 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-FINRA-2011-040) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Elizabeth M. Murphy
Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).