

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65580; File No. SR-FINRA-2011-060)

October 17, 2011

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 14, 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, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 1230(b)(6) (Operations Professional) to provide persons who are required to register as an Operations Professional from October 18, 2011 through December 16, 2011 and must pass a qualification examination to qualify as an Operations Professional until April 14, 2012 to pass the Operations Professional qualification examination (or an eligible qualification examination),³ during which time such persons may function as an Operations Professional.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ FINRA Rule 1230(b)(6)(D) sets forth an exception to the Operations Professional qualification examination requirement for persons who currently hold certain

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA, on the Commission’s website at <http://www.sec.gov>, 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 FINRA Rule 1230(b)(6), which establishes a registration category and qualification examination requirement for certain operations personnel – Operations Professionals.⁴ FINRA is expanding its registration

registrations (each an “eligible registration”) or have held one during the two years immediately prior to registering as an Operations Professional. The exception also applies to persons who do not hold an eligible registration, but prefer an alternative to taking the Operations Professional examination. Such persons may register in an eligible registration category (subject to passing the corresponding “eligible qualification examination” or obtaining a waiver) and use such registration to qualify for Operations Professional registration.

⁴ See Securities Exchange Act Release No. 64687 (June 16, 2011), 76 FR 36586 (June 22, 2011) (Order Approving File No. SR-FINRA-2011-013). In addition to adopting FINRA Rule 1230(b)(6), the rule change adopted NASD Rule 1120 (Continuing Education Requirements) as new FINRA Rule 1250 (Continuing Education Requirements) with certain changes, including expanding the scope of “covered registered persons” subject to the Firm Element to include persons registered as Operations Professionals. See also Securities Exchange Act Release

provisions to require registration of certain individuals (“covered persons”) who are engaged in, responsible for or supervising certain member operations functions (“covered functions”) to enhance the regulatory structure surrounding these areas.⁵

FINRA Rule 1230(b)(6)(E)(i) provides that any person who is required to register as an Operations Professional as of October 17, 2011 (a “Day-One Professional,” *i.e.*, a person who meets the depth of personnel criteria as a covered person and is engaged in one or more covered functions as of October 17, 2011) must request registration as an Operations Professional via Form U4 in the Central Registration Depository (“CRD[®]”) within 60 days after October 17, 2011 (*i.e.*, on or before December 16, 2011). Any Day-One Professional who must pass the Operations Professional qualification examination⁶ (or an eligible qualification examination) to qualify for Operations Professional registration is allowed a period of 12 months beginning on October 17, 2011 to pass such

No. 65222 (August 30, 2011), 76 FR 55443 (September 7, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2011-041) and Securities Exchange Act Release No. 65221 (August 30, 2011), 76 FR 55441 (September 7, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2011-042).

⁵ See Regulatory Notice 11-33 (July 2011) and Regulatory Notice 11-42 (September 2011).

⁶ Candidates for the Series 99 examination will be able to schedule and take the examination starting on October 17, 2011. Because this is a new examination for a new registration category, FINRA will be assessing the effectiveness of the examination by, in part, evaluating the candidates’ performance during the first 60 days of the administration of the examination. Therefore, candidates who take the examination within the first 60 days (between October 17, 2011 and December 16, 2011) will not receive their test results on the day that they take the examination. Instead, such candidates’ firms will be notified of test results (*i.e.*, the candidate’s score and whether the candidate has passed or failed the examination) on or shortly after December 16, 2011. The test results will be posted to the CRD system at that time. Candidates who fail the examination during the initial 60-day rollout will be provided an opportunity to retake the examination at no additional cost.

qualifying examination, during which time such person may function as an Operations Professional.

FINRA Rule 1230(b)(6)(E)(ii) provides that any person who is required to register as an Operations Professional after October 17, 2011 (a “non-Day-One Professional,” i.e., a person who does not meet the depth of personnel criteria as a covered person and/or is not engaged in one or more covered functions as of October 17, 2011, or persons hired after October 17, 2011, who will be subject to the registration requirements) must register as an Operations Professional and, if applicable, pass the Operations Professional qualification examination (or an eligible qualification examination) prior to engaging in any activities that would require such registration. However, any non-Day-One Professional who must pass the Operations Professional qualification examination (or an eligible qualification examination) to qualify for Operations Professional registration is allowed a period of 120 days beginning on the date such person requests Operations Professional registration to pass such qualifying examination, during which time such person may function as an Operations Professional.

The proposed rule change would amend FINRA Rule 1230(b)(6)(E) to afford non-Day-One Professionals who must register as an Operations Professional within the first 60 days of the effective date of FINRA Rule 1230(b)(6), and must pass a qualification examination to qualify, additional time to pass the Operations Professional qualification examination (or an eligible qualification examination). Under FINRA Rule 1230(b)(6)(E)(ii), as non-Day-One Professionals, such persons are required to pass a qualification examination within 120 days of requesting registration as an Operations

Professional and do not get the benefit of the 12-month period to pass a qualification examination available only to Day-One Professionals.

The content outline for the Operations Professional examination was posted on FINRA's website on August 23, 2011. Given the short time period between August 23, 2011 and October 17, 2011, the effective date of FINRA Rule 1230(b)(6), test preparation and firm training materials may not be readily available for candidates who must register within the first 60 days of the effective date of the rule and do not have the benefit of the 12-month period to pass an examination for Day-One Professionals. Accordingly, non-Day-One Professionals who must register as an Operations Professional on or before December 16, 2011 may have difficulty preparing for and passing the Operations Professional examination within 120 days of requesting registration as an Operations Professional.⁷

The proposed rule change would provide that any person who is required to register as an Operations Professional from October 18, 2011 through December 16, 2011 must register as an Operations Professional and, if applicable, pass the Operations Professional qualification examination (or an eligible qualification examination) prior to engaging in any activities that would require such registration. However, any such person who must pass the Operations Professional qualification examination (or an eligible qualification examination) to qualify for Operations Professional registration would be allowed until April 14, 2012 to pass such qualifying examination, during which time such person may function as an Operations Professional.

⁷ See letter from John Polanin and Claire Santaniello, Co-Chairs, Compliance and Regulatory Policy Committee 2011, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated September 30, 2011 (Re: Release No. 34-65222; File No. SR-FINRA-2011-041).

Any person who is required to register as an Operations Professional on or after December 17, 2011 would be required to register as an Operations Professional and, if applicable, pass the Operations Professional qualification examination (or an eligible qualification examination) prior to engaging in any activities that would require such registration. However, any such person who must pass the Operations Professional qualification examination (or an eligible qualification examination) to qualify for Operations Professional registration would be allowed a period of 120 days beginning on the date such person requests Operations Professional registration to pass such qualifying examination, during which time such person may function as an Operations Professional.

FINRA notes that members are responsible for tracking and monitoring their associated persons to ensure that they are registered, and conducting their activities, in compliance with the time frames described in FINRA Rule 1230(b)(6)(E).

The effective date of the proposed rule change will be October 17, 2011, the effective date of FINRA Rule 1230(b)(6) (Operations Professional).

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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. Given the short time period between the posting of the content outline for the Operations Professional examination on FINRA's website on August 23, 2011 and October 17, 2011, the effective date of FINRA Rule 1230(b)(6), non-Day-One

⁸ 15 U.S.C. 78o-3(b)(6).

Professionals who must register as an Operations Professional within the first 60 days of the effective date of FINRA Rule 1230(b)(6), and pass the Operations Professional examination (or an eligible qualification examination) to qualify, may have difficulty preparing for and passing such examination within 120 days of requesting registration as an Operations Professional. FINRA believes it is appropriate to provide such persons until April 14, 2012 to pass the Operations Professional qualification examination (or an eligible examination).

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Act,⁹ and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act which requires, among other things, that the rules of a registered national securities association be designed to prevent fraudulent

⁹ 15 U.S.C. 78o-3. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, because, by providing additional time for non-Day-One Professionals who must register as an Operations Professional within the first 60 days of the effective date of FINRA Rule 1230(b)(6) to pass the qualification examination, the proposed rule change will provide additional time for improvements in examination preparation resources for the new registrants, enhancing registrants' abilities in their roles, and will improve FINRA members' ability to comply with the rule.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁰ for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register. The Commission finds good cause for approving the proposed rule on an accelerated basis because the proposed rule will assist member firms in transitioning to the new requirement for registration of Operations Professionals and provide needed clarification in response to concerns regarding the ability of non-Day-One Professionals who must register as an Operations Professional within the first 60 days of the effective date of FINRA Rule 1230(b)(6), and pass a qualification examination to qualify, to prepare for and pass the Operations Professional qualification examination (or an eligible qualification examination) within 120 of requesting registration as an Operations Professional. Accelerating the approval of this proposed rule to coincide with the effective date of the registration requirements will permit these non-Day-One Professionals to take the extended examination window into account when they schedule their examinations.

IV. Solicitation of Comments

¹⁰ 15 U.S.C. 78s(b)(2).

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-2011-060 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-2011-060. 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-2011-060 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,¹¹ that the proposed rule change (SR-FINRA-2011-060) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Elizabeth M. Murphy
Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).