

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change 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),<sup>2</sup> during which time such persons may function as an Operations Professional.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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**1000. MEMBER APPLICATION AND ASSOCIATED PERSON REGISTRATION**

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**1200. REGISTRATION AND QUALIFICATION**

**1230. Registration Categories**

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> FINRA Rule 1230(b)(6)(D) sets forth an exception to the Operations Professional qualification examination requirement for persons who currently hold certain 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.

**(a) Definition of Principal and Principal Registration Categories**

(1) through (11) No Change.

**(b) Definition of Representative and Representative Registration Categories**

(1) through (5) No Change.

**(6) Operations Professional**

**(A) Covered Persons**

Each of the following persons shall be required to register with FINRA as an Operations Professional:

(i) - (iii) No Change.

**(B) Covered Functions**

(i) - (xvi) No Change.

**(C) No Change.**

**(D) Exception**

(i) - (ii) No Change.

**(E) Implementation**

(i) No Change.

(ii) Any person who is required to register as an

Operations Professional [after] from October 1[7]8, 2011 through

December 16, 2011 shall register as an Operations Professional

and, if applicable, pass the Operations Professional qualification

examination (or an eligible qualification examination listed in

paragraph (b)(6)(D) of this Rule) prior to engaging in any activities

that would require such registration; provided, however, any such

person who must pass the Operations Professional qualification examination (or an eligible qualification examination listed in paragraph (b)(6)(D) of this Rule) to qualify for Operations Professional registration shall be allowed [a period of 120 days beginning on the date such person requests Operations Professional registration] until April 14, 2012 to pass such qualifying examination, during which time such person may function as an Operations Professional.

(iii) Any person who is required to register as an Operations Professional on or after December 17, 2011 shall register as an Operations Professional and, if applicable, pass the Operations Professional qualification examination (or an eligible qualification examination listed in paragraph (b)(6)(D) of this Rule) prior to engaging in any activities that would require such registration; provided, however, any such person who must pass the Operations Professional qualification examination (or an eligible qualification examination listed in paragraph (b)(6)(D) of this Rule) to qualify for Operations Professional registration shall 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.

(7) through (14) No Change.

••• **Supplementary Material:** -----

.01 through .07 No Change.

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(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

At its meeting on April 14, 2010, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA requests the Commission to find good cause pursuant to Section 19(b)(2) of the Act<sup>3</sup> for approving the proposed rule change prior to the 30th day after its publication in the Federal Register to provide clarification regarding the implementation process in FINRA Rule 1230(b)(6)(E) for the persons described herein. The effective date of the proposed rule change will be October 17, 2011, the effective date of FINRA Rule 1230(b)(6) (Operations Professional).

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

(a) Purpose

On June 16, 2011, the Commission approved FINRA Rule 1230(b)(6), which establishes a registration category and qualification examination requirement for certain

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<sup>3</sup> 15 U.S.C. 78s(b)(2).

operations personnel – Operations Professionals.<sup>4</sup> FINRA is expanding its registration 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.<sup>5</sup>

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<sup>®</sup>”) 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 examination<sup>6</sup>

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<sup>4</sup> 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 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).

<sup>5</sup> See Regulatory Notice 11-33 (July 2011) and Regulatory Notice 11-42 (September 2011).

<sup>6</sup> 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.,

(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 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

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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.

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.<sup>7</sup>

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

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

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.

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).

As noted in Item 2 of this filing, the effective date of the proposed rule change will be October 17, 2011, the effective date of FINRA Rule 1230(b)(6) (Operations Professional).

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that FINRA rules

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<sup>8</sup> 15 U.S.C. 78q-3(b)(6).

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 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).

**4. 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.

**5. 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.

**6. Extension of Time Period for Commission Action**

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>9</sup>

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

FINRA requests the Commission to find good cause pursuant to Section 19(b)(2) of the Act<sup>10</sup> for approving the proposed rule change prior to the 30th day after its publication in the Federal Register.

Because FINRA believes the proposed rule change provides 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, FINRA requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

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<sup>10</sup> 15 U.S.C. 78s(b)(2).