
FINRA Proposes New Registration and Qualification Requirements for Certain Operations Personnel

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FINRA has proposed establishing a new broker-dealer registration category, the Operations Professional.¹ This proposal (the "FINRA proposal") is one of the many regulatory responses to the Madoff scandal.² The addition of this new registration category would expand examination and registration requirements to personnel with decision-making and/or oversight authority with regard to certain operations functions. The FINRA proposal makes clear that persons subject to the new Operations Professional registration category would be considered associated persons of a firm irrespective of their employing entity and would be subject to all FINRA rules applicable to associated persons. To allow time for current operations personnel to comply with the new requirements, the FINRA proposal includes a six- to nine-month transition period beginning on the date any new registration category takes effect. The proposal is out for comment until July 12, 2010.

Personnel Subject to New Requirement

The operations personnel covered by the proposal would be those who are directly responsible for ensuring that tasks within the covered operations functions, discussed below, are "performed correctly and in accordance with industry rules, firm protocols, and policies and procedures," as well as those personnel "who are charged with protecting the functional and control integrity of the covered functions for the firm." More specifically, the following persons would be required to register with FINRA as Operations Professionals:

- (1) Senior management with responsibility over the covered functions;
- (2) Supervisors, managers or other persons responsible for approving or authorizing work in direct furtherance of the covered functions, including work of other persons in the covered functions;
- (3) Persons with the authority or discretion to commit the firm's capital in direct furtherance of the covered functions or to commit the firm to any contract or agreement (written or oral) in direct furtherance of the covered functions (including,

e.g., a person who has the discretion to commit the firm to any contract or agreement involving securities lending or borrowing activities).

The new requirements would not apply to persons who perform a covered function, but whose responsibilities are below these three specified levels. Additionally, the proposed registration category would not extend to persons who perform a function ancillary to a covered function or whose role can be viewed as supportive of, or advisory to, the performance of a covered function, such as internal audit, legal or compliance personnel. The new requirements also would not apply to persons who are engaged solely in "clerical or ministerial" activities in any of the covered functions.³

Covered Functions

The Covered Operations Functions would be:

- Development and approval of pricing models used for valuations;
- Trade confirmation, account statements, settlement, margin;
- Stock loan/securities lending;
- Prime brokerage (services to other broker-dealers and financial institutions);
- Client on-boarding (customer account data and document maintenance);
- Capturing of business requirements for sales and trading systems and any other systems related to the covered functions, and validation that these systems meet such business requirements;
- With respect to the covered functions, defining and approving business security requirements and policies for information technology (including, but not limited to, systems and data);
- Defining information entitlement policy in connection with the covered functions;
- Financial Controller (including general ledger);
- Collection, maintenance, re-investment (i.e., sweeps) and disbursement of funds;
- Bank, custody, depository and firm account management and reconciliation;
- Segregation, possession and control, fail control, buy ins;
- Receipt and delivery of securities and funds, account transfers;
- Financial regulatory reporting; and
- Posting entries to the books and records of a firm in connection with the covered functions.

Qualification Examination and Continuing Education Requirements

Unless covered by the exception discussed below, registered Operations Professionals would have to pass a qualification examination. FINRA has said that the proposed Operations Professional qualification examination is not intended to be a competency examination, but would test for general securities industry knowledge with a focus on the regulatory environment. The examination would include the following three topics: (1) professional conduct and ethical considerations, (2) essential product and market knowledge for an operations professional, and (3) knowledge associated with

operations activities. Those personnel subject to the proposed registration category would also be responsible for FINRA's continuing education requirements. The continuing education components associated with the Operations Professional registration category would provide competency training specific to the covered functions.

Exception to Qualification Examination Requirement

FINRA is proposing an exception to the Operations Professional qualification examination requirement for persons that hold the following representative level registration categories, or who have held such registration categories within the two years immediately prior to registering as an Operations Professional: Investment Company Products/Variable Contracts Representative (Series 6), General Securities Representative (Series 7), United Kingdom Securities Representative (Series 17) or Canada Securities Representative (Series 37 or 38). Additionally, persons who hold (or have held) certain principal-level registration categories, which are outlined in the proposal, would be qualified to register as Operations Professionals without passing the Operations Professional examination.

The proposed exception also would apply to persons who do not hold an eligible registration, but prefer an alternative to taking the Operations Professional examination. Such persons would be permitted to register in an eligible registration category (subject to passing the corresponding qualification examination or obtaining a waiver) and use such registration to qualify for Operations Professional registration.

Considerations for Firms

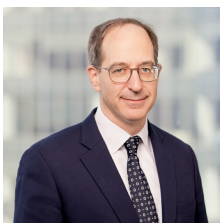
If a new Operations Professional category is created, firms would need to undertake a review of persons performing covered functions and establish criteria to determine who needs to be registered. In addition, pursuant to NASD Rule 3010, firms would need to review and update their policies and procedures to reflect the new registration requirements. If a firm is currently outsourcing any of the covered functions (including to an affiliate), the firm would need to evaluate the potential impact of the FINRA proposal, if any, on such an arrangement.

¹ You can view the full notice [here](#).

² See [The Securities and Exchange Commission Post-Madoff Reforms](#).

³ Section 3(a)(18) of the Securities Exchange Act of 1934 specifically excludes persons involved in solely clerical or ministerial activities from SRO registration requirements.

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