

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59484; File No. SR-FINRA-2009-006)

March 2, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to a New Limited Representative Registration Category for Investment Banking Professionals

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 February 17, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”), and amended on February 27, 2009,³ the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

FINRA is proposing to establish NASD Rule 1032(i), a new limited representative registration category for investment banking professionals. The proposed rule change also sets forth the registration requirements for principals who supervise investment banking activities.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 to SR-FINRA-2009-006 replaced and superseded the original rule filing.

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

Section 15A(g)(3) of the Act⁴ requires FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. In accordance with that provision, FINRA has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with FINRA members have attained specified levels of competence and knowledge.

NASD Rule 1031 requires that each person associated with a member who functions as a representative must be registered in a category appropriate to the function that person performs. The rule defines a "representative" as, among others, a person associated with a member who is "engaged in the investment banking or securities business for the member including the functions of supervision, solicitation or conduct of business in securities or who [is] engaged in the training of persons associated with a member for any of these functions." Pursuant to NASD Rule 1032, a person who functions as a registered representative must pass the General Securities Representative (Series 7) examination or certain equivalent examinations, unless such

⁴ 15 U.S.C. 78q-3(g)(3).

person's activities are so limited as to qualify him or her for a limited representative category for which a more dedicated examination is prescribed.

The proposed rule change would create a new limited representative category—Limited Representative-Investment Banking—for persons whose activities are limited to investment banking, including those who work on the equity and debt capital markets and syndicate desks. More specifically, the proposed registration category would encompass those associated persons whose activities primarily involve: (1) advising on or facilitating debt or equity securities offerings through a private placement or a public offering, including but not limited to origination, underwriting, marketing, structuring, syndication, and pricing of such securities and managing the allocation and stabilization activities of such offerings, or (2) advising on or facilitating mergers and acquisitions, tender offers, financial restructurings, asset sales, divestitures or other corporate reorganizations or business combination transactions, including but not limited to rendering a fairness, solvency or similar opinion. The proposed registration category would not cover individuals whose investment banking work is limited to public (municipal) finance offerings or direct participation program offerings as defined in NASD Rule 1022(e)(2). The proposed registration category further would not cover individuals whose investment banking work is limited to effecting private securities offerings as defined in NASD Rule 1032(h)(1)(A).

FINRA is in the process of developing an accompanying qualification examination that will provide a more targeted assessment of the job functions performed by the individuals that would fall within the proposed registration category.⁵ The exam would be taken in lieu of the

⁵ The examination itself, including the content outline and test specifications, and fees associated with it will be the subject of separate proposed rule changes after Commission approval of this proposed rule change to establish the new registration category.

Series 7 exam (or equivalent exams) by the individuals who perform solely those job functions. Any person whose activities go beyond those proposed for the Limited Representative-Investment Banking registration category would be required to separately qualify and register in the appropriate category or categories of registration attendant to such activities.

Those who already hold the Series 7 registration, as well as those who have passed the United Kingdom (Series 17) or Canada (Series 37/38) Modules of the Series 7 examination or hold a Limited Representative-Corporate Securities (Series 62) registration, would be “grandfathered” and not required to take the new qualification exam. Such individuals would be provided a period of six months during which they may “opt in” to the Limited Representative-Investment Banking registration, provided that at the time the proposed rule change is implemented, such individuals are engaged in investment banking activities covered by the proposed rule change.⁶ Those individuals who choose to opt in would still retain their Series 7 registered representative registration in addition to the investment banking registration. After the six-month opt in period, any individual holding a Series 7 registration that wishes to engage in the specified investment banking activities would be required to pass the Limited Representative-Investment Banking exam.

To ease the transition and to allow firms time to create qualification examination preparation programs, FINRA would permit new Limited Representative-Investment Banking candidates who are in the process of qualifying in the new registration category when the rule becomes effective to take either the Series 7 or Limited Representative-Investment Banking exam. This accommodation would remain in effect for six months after the implementation date of the proposed rule change.

⁶ No associated persons of a member will be eligible for the opt in unless the member’s current Form BD indicates that the member engages in investment banking activities.

FINRA understands that some member firms have created training programs in which certain new employees are exposed to the firm's various business lines by rotating among departments, including investment banking, where the employee's activities might fall within the proposed definition of a Limited Representative-Investment Banking. Depending on the activities performed by the employee during the training program, the firm may or may not require the employee to pass the Series 7 examination and become a registered representative. In recognition of such training programs, the proposed rule change would not require an employee placed in such programs to register as a Limited Representative-Investment Banking for a period of up to six months from the time the employee first engages in activities that otherwise would trigger registration as a Limited Representative-Investment Banking. This exception would be available for up to two years after the employee commences the training program. Firms that wish to avail themselves of this exception would be required to maintain documents evidencing the details of the training program and identifying the program participants who engage in activities that otherwise would require registration as a Limited Representative-Investment Banking and the date on which such participants commenced such activities.

Individuals who wish to act as a general principal for activities set forth in the proposed rule change would be required to obtain the proposed Limited Representative-Investment Banking registration—either by opting in or passing the exam—and also pass the General Securities Principal exam. Such individuals would be limited to acting as a general principal for the investment banking activities covered by the proposed rule change. Individuals who wish to function in the capacity of general principal for broader securities-related activities would be required to take another appropriate qualification examination, such as the Series 7 or Series 62, in addition to the General Securities Principal exam. Those individuals currently functioning as

a general principal supervising investment banking activities as described in the proposed rule change would be granted the same six-month grace period during which they could opt in to the Limited Representative-Investment Banking registration.

FINRA believes the creation of a proposed Limited Representative-Investment Banking registration and accompanying exam would provide for a more targeted assessment of the competency of investment banking personnel to perform their unique job functions and, as a result, translate into better quality service for investors. FINRA further believes that the proposed requirement for principals who supervise investment banking activities to register and qualify as a Limited Representative-Investment Banking will enhance investor protection and member compliance with applicable FINRA rules and the federal securities laws. Finally, FINRA believes that the proposed rule change would enable members to allocate their training resources more efficiently.

The implementation date will be 90 days after the effectiveness of a future proposed rule change to establish the corresponding qualification examination.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6),⁷ 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 and Section 15A(g)(3) of the Act,⁸ which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members.

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78o-3(g)(3).

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR-FINRA 2009-006 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 No. SR-FINRA-2009-006. 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 Web site (<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 changes 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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 No. SR-FINRA-2009-006 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).