

MEMO# 25380

August 3, 2011

August 31st Call to Discuss New FINRA Rule Requiring Registration of Operations Professionals

[25380]

August 3, 2011

TO: COMPLIANCE MEMBERS No. 35-11

OPERATIONS MEMBERS No. 17-11

TRANSFER AGENT ADVISORY COMMITTEE No. 63-11 RE: AUGUST 31ST CALL TO DISCUSS
NEW FINRA RULE REQUIRING REGISTRATION OF OPERATIONS PROFESSIONALS

As you may know, the SEC recently approved amendments to FINRA's Registration Categories Rule, Rule 1230, to create a new registration category of representatives – an "Operations Professional." Last month, FINRA sent out a notice of this rule change and its requirements. [\[1\]](#) The rule requires FINRA members to identify their "covered persons" by October 17, 2011 and have such persons pass qualifying examinations (if not already registered with FINRA in another capacity) before October 17, 2012. The requirements of this rule are briefly summarized below.

Members of the Institute have raised issues regarding whether this rule impacts persons not employed by or associated with FINRA member firms – e.g., transfer agent personnel acting on behalf of a mutual fund issuer. To assist our members with these issues, we have retained outside counsel to provide a thorough analysis of these issues.

We have scheduled a conference call on Wednesday, August 31, 2011 from 2-3:30 for our outside counsel to present the analysis to members and answer questions member raise before or during the call regarding the impact and reach of this new rule. To participate in this call, contact Gwen Kelly of the Institute at 202-326-5818 or at gwen.kelly@ici.org no later than close of business on Friday, August 26th. To submit questions in advance for discussion during the call, please provide them to Gwen or tamara@ici.org by August 26th.

Overview of Rule 1230's Requirements

Covered Persons

Rule 1230 defines three categories of covered persons:

1. Senior management with direct responsibility over the covered functions (defined below);
2. Any person designed by senior management as a supervisor, manager, or other person responsible for approving or authorizing work, including the work of other persons, in direct furtherance of the covered functions; and
3. Persons with the authority or discretion materially to commit a member firm's capital in direct furtherance of the covered functions or to commit a member firm to any material contract or agreement (written or oral) in direct furtherance of the covered functions.

Covered Functions

The covered persons subject to the new registration requirements include are those who engage in one or more of the following covered functions "on behalf of a member (regardless of their employing entity e.g., a member firm, an affiliate or a third-party service provider)" [\[2\]](#):

1. Client on-boarding (customer account data and document maintenance);
2. Collection, maintenance, re-investment (i.e., sweeps) and disbursement of funds;
3. Receipt and delivery of securities and funds, account transfers;
4. Custody and firm account management and reconciliation;
5. Settlement;
6. Trade confirmations and account statements;
7. Defining and approving business requirements for sales and trading systems and any other systems related to the covered functions;
8. Defining and approving business security requirements and policies for information technology relating to the covered functions; and
9. Posting entries to a member's books and records in connection with the covered functions to ensure integrity and compliance with the federal securities laws and regulations and FINRA rules.

Registration/Qualification Requirements

As noted above, members are required to identify their covered persons who perform a covered function no later than October 17, 2011. Such persons must be register with FINRA (or amend an existing registration with FINRA) by December 16, 2011. New registrants who do not hold a current registration, such as a Series 6, 9/10, 14, 24, or 26 license, will be required to pass a new qualifying examination, a Series 99, by October 17, 2012 and comply with continuing education requirements.

FINRA's Notice

The confusion for our members results from the following statements in FINRA's Notice:

[P]ersons subject to [this new] registration category are considered associated persons of a member firm insofar as they are performing regulated broker-dealer functions on behalf of the member firm, irrespective of their employing entity, and are subject to all FINRA rules applicable to associated persons and/or registered persons. Associated person status is not determined at the discretion

of a member firm based on the location from which particular personnel are performing functions on behalf of the firm; associated person status attaches to persons who are involved in the securities and investment banking business of a member firm and the covered functions represent a part of that business of a firm.

FINRA notes that a persons' job title and/or employer may not be clearly indicative of his or her obligation to register as an Operations Professional. Firms must view each person's responsibilities in connection with the covered functions . . . independently to determine who must register. The Operations Professional registration category is function-based and, therefore, not conditioned upon an individual's relationship to a particular department within a firm. [Emphasis added.]

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Senior Associate Counsel

endnotes

[1] See Operations Professionals: SEC Approves Operations Professional Registration Category and Consolidated FINRA Continuing Education Rule, FINRA Regulatory Notice 11-33 (July 2011) (the "FINRA Notice"), which is available at: <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p123960.pdf>.

[2] FINRA Notice at p. 3. This list has been condensed from the full list in the FINRA Notice to capture only those functions that may be relevant to our members.

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