

FINRA Proposes New Registration and Examination Rules

The proposed consolidated rules bifurcate the representative-level examination program and introduce greater flexibility in obtaining and maintaining registrations.

On March 8, 2017, the Financial Industry Regulatory Authority (FINRA) filed a proposed rule change with the Securities Exchange Commission (SEC) to adopt consolidated registration rules, restructure the representative-level qualification examination and amend continuing education requirements (the Proposed Rules).¹ In addition to consolidating most of the existing National Association of Securities Dealers (NASD) rules pertaining to registration and examination, the Proposed Rules set forth a new base representative-level examination called the Security Industry Essentials (SIE) and introduce greater flexibility in obtaining and maintaining registrations.²

Security Industry Essentials (SIE) Basic Knowledge Examination

Under the Proposed Rules, new registrants are required to take the SIE as a preliminary general knowledge examination prior to taking a specialized representative-level knowledge examination appropriate to their job function at a FINRA member firm.³ Any person, including persons that are not associated with a member firm, is eligible to take the SIE.⁴ However, passing the SIE alone is not sufficient for acting as a registered representative of a member firm; rather, individuals must also pass the specialized representative or principal level examination associated with their job function.⁵ All representative and principal level examinations, other than the SIE, require association with a member firm.

It is expected that persons seeking entry-level positions in the securities industry will look to obtain the SIE qualification early in or prior to their job search, essentially pre-qualifying candidates for registered representative positions.⁶ FINRA members will be able to view the SIE passing status of an individual seeking employment with on the CRD system.⁷

Individuals who are registered with a member firm on the effective date of the Proposed Rules will be eligible to maintain their registrations without being subjected to any additional requirements and will be deemed to have passed the SIE for purposes of any further registrations.⁸ Additionally, individuals who are not currently registered with a member firm but who were registered within two years prior to the effective date of the Proposed Rules will be eligible to maintain their registrations, provided that they re-register with FINRA within two years of their last registration.⁹

Expiration Dates of Examinations

The SIE qualification will remain valid for four years without being registered with a member firm.¹⁰ Notably, however, the Proposed Rules retain the two-year expiration period for representative-level and principal-level examinations that are currently in effect under NASD Rules.¹¹ That is, individuals are still

only afforded two years after their last registration as a representative or principal of a FINRA member before being required to retake the appropriate representative- or principal-level exam, except in certain cases discussed further below.¹²

Permissive Registration

Currently, NASD Rules 1021(a) and 1031(a) limit a firm's ability to "permissively" register and maintain the registrations of certain persons who are not actively engaged in the investment banking or securities business of the firm. Specifically, such permissive registration is permitted for either of the following:

1. At the representative and principal level for (A) persons performing legal, compliance, internal audit, back-office operations or similar responsibilities and (B) persons engaged in the investment banking or securities business of a foreign securities affiliate.
2. Only at the representative level for persons performing administrative functions for registered persons.¹³

The Proposed Rules simplify this structure by permitting *any* associated person to obtain and maintain *any* registration applicable to the member firm.¹⁴ That is, the scope of possible registrations is limited by the parameters of the authority granted to the firm with which the person is associated. With regards to persons engaged in the investment banking or securities business of a foreign securities affiliate, the Proposed Rules retain the current allowance.¹⁵

The Proposed Rules also provide that a person who obtains solely a permissive registration can be supervised on a day-to-day basis by a non-registered person.¹⁶ However, the permissive registrant must be assigned to a registered supervisor per FINRA Rule 3110(a)(5) who will be responsible for periodically contacting the registrant's day-to-day supervisor to verify that the registrant is not acting outside the scope of his or her assigned functions.¹⁷

By expanding permissive registration, individuals who are not registered may be encouraged to seek registration, or those who have limited registrations may seek to broaden their registrations, thereby expanding the talent pool for member firms and providing valuable backup for currently registered employees.

Preservation of Registrations When Working for Non-FINRA Member Financial Services Affiliate

The Proposed Rules introduce further flexibility with the registrations of personnel who leave to work for a non-FINRA member financial services affiliate for an extended period. Under the current rules, like all other individuals that terminate their registration, if such persons want to re-register with a FINRA member after two years of non-registration they are required to requalify by examination.¹⁸ The Proposed Rules allow for a registered individual to reserve the ability to waive the re-qualification requirements for a period of up to seven years while working for a non-FINRA member financial services affiliate or affiliates of their employer if the following conditions are met:

1. The individual must have been registered with a FINRA member firm for a total of five years within the past 10 years, the most recent year of which must have been with their current employer.

2. When the individual transitions to the affiliate, the employer must, in addition to filing a Form U5 terminating the individual's registration, notify FINRA that the individual will be working for a financial services affiliate.
3. The individual must continue to satisfy the Regulatory Element of Continuing Education and have no pending or adverse regulatory matters or statutory disqualifications.
4. The individual must continuously work for a financial services affiliate or affiliates of the FINRA member since the last Form U5 filing.

Under the Proposed Rules, if the above conditions are met, the person would be granted a waiver of the requalification requirements upon re-registering with a member within the seven-year period.¹⁹ In addition, such persons are not limited to re-registering with their former employer, and in fact, are free to re-register with any FINRA member.²⁰

The Proposed Rules are only forward-looking in that they do not set forth a mechanism for extending this waiver to individuals who, on the effective date of the Proposed Rules, will be working at a financial services affiliate of a FINRA Member for which they previously worked.

Expected Timeline

If the SEC approves FINRA's proposed rule change, FINRA will announce an effective date for the proposed rule change to be no later than 18 months following the date of such approval. FINRA has stated that it expects to implement the SIE examination system in March 2018.²¹

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Endnotes

- ¹ SR-FINRA-2017-007, Proposed Rule Change to Adopt Consolidated FINRA Registration Rules, Restructure the Representative-Level Qualification Examination Program and Amend the Continuing Education Requirements, *available at* <http://www.finra.org/industry/rule-filings/sr-finra-2017-007> (Proposed Rules).
- ² The Proposed Rules are based on earlier sets of proposed rules on registrations and examinations on which FINRA had sought comment per Regulatory Notice 09-70 (December 2009) and Regulatory Notice 15-20 (May 2015) and incorporate some adjustments based on comments received. Under the new proposed framework, Proposed Rule 1210 sets forth the general registration, examination and continuing education requirements whereas Proposed Rule 1220 sets forth the specific registration categories.
- ³ Proposed Rules *at* 14-23.
- ⁴ Proposed Rules *at* 16.
- ⁵ Proposed Rules *at* 16.
- ⁶ See Proposed Rules *at* 16.
- ⁷ Proposed Rules *at* 22.
- ⁸ Proposed Rules *at* 20.
- ⁹ Proposed Rules *at* 20.
- ¹⁰ Proposed Rules *at* 31.
- ¹¹ Proposed Rules *at* 30-32.
- ¹² In the Proposed Rules, FINRA acknowledged that it received comments regarding extending the grace period offered with regards to representative-level and principal-level examinations and stated that it will consider as part of a separate proposal the possibility of extending the two-year expiration period applicable to these exams. See Proposed Rules *at* 32.
- ¹³ NASD Rule 1021(c), NASD Rule 1031(c).
- ¹⁴ Proposed Rules *at* 12.
- ¹⁵ Proposed Rules *at* 12.
- ¹⁶ Proposed Rules *at* 14.
- ¹⁷ Proposed Rules *at* 14.
- ¹⁸ See NASD Rule 1021(c), NASD Rule 1031(c).
- ¹⁹ Proposed Rules *at* 36-37.
- ²⁰ See Proposed Rules *at* Page 35.
- ²¹ Proposed Rules *at* 22.