



NASAA

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May 2, 2011

*Via Electronic Mail*

Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

RE: File Number SR-FINRA-2011-013; Notice of Filing of Proposed Rule Change to  
Establish a Registration Category, Qualification Examination and Continuing Education  
Requirements for Certain Operations Personnel

Dear Ms. Murphy:

The North American Securities Administrators Association, Inc. (“NASAA”)<sup>1</sup> submits the following comments in response to FINRA’s above referenced rule proposal to establish a registration category for operations professionals (“the proposal”). As a general proposition, NASAA supports an examination, licensing, and continuing education requirement for individuals engaged in the operations of broker-dealers. However, as proposed, the testing requirements would be waived for individuals who hold any one of 15 FINRA registrations. NASAA believes that these broad exemptive provisions will undermine the regulatory goal of the proposal. NASAA expressed this concern to FINRA when it first published this proposal in the form of a regulatory notice. Subsequently FINRA removed one registration category from the list of exemptions, but declined to make the substantive changes NASAA believes are required to remedy the serious deficiencies in the proposal.

As explained by FINRA in the proposal, the development of this new registration category and the accompanying examination and continuing education requirements arose out of FINRA’s concern with the increasing complexity of the financial services industry and the “importance of services provided by personnel in operations departments.”<sup>2</sup> FINRA also expresses concern for the potential for “regulatory gaps in the area of registration and education requirements for individuals performing and overseeing [broker-dealer] operations function.”<sup>3</sup> To address these issues, FINRA has proposed a new registration category for operations professionals.

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<sup>1</sup> NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

<sup>2</sup> 76 FR 15012 (March 18, 2011).

<sup>3</sup> *Id.*

As proposed, individuals who fall within one or more of three categories and who perform one or more of 16 enumerated functions will be required to register with FINRA as operations professionals. To provide reasonable assurance that these individuals understand their professional responsibilities, FINRA would require passing a qualification examination covering three key content areas: professional conduct and ethical considerations; essential product and market knowledge; and knowledge associated with operations activities. The professional conduct and ethical considerations part of the examination will “assess knowledge of what are considered serious violations of securities industry rules.”<sup>4</sup> In the product and market knowledge section of the examination a candidate will be tested on his or her knowledge of major product categories such as equities, debt, packaged securities, options, and markets. The third content area is knowledge associated with operations activities. This part of the examination will be designed to assess a candidate’s “broad-based knowledge” of the operations functions of broker-dealers including the underlying rules governing these operations.<sup>5</sup>

The development and implementation of a registration category for operations professionals as proposed by FINRA seems well suited to address the regulatory gaps noted by FINRA. Further, the content of the exam is targeted to assess the critical knowledge areas including an assessment of a candidate’s understanding of the operations functions of broker-dealers and the regulations governing those functions. However, the exemptions listed in the proposal are so extensive that they will dilute the qualification process and undermine the regulatory purpose of the proposal.

FINRA asserts that the proposed exemptions are appropriate given the overlap in the content of the proposed operations professional examination with various other examinations FINRA administers. FINRA states, without providing specific detail, that it has reviewed the content outlines of various examinations and concluded that anyone who, within the last two years, has passed one of 15 exams will be qualified to waive into an operations professional registration. Without any significant detail beyond the assertion that such overlap exists, it is difficult to conclude that the exemptions are in fact warranted.

While it is inevitable that overlap will exist for examinations administered by FINRA, such overlap alone is not sufficient justification to accept one examination in lieu of another. Further, given the nature of the tasks carried out or supervised by an operations professional it seems inappropriate to grant a waiver to an individual who has only demonstrated basic knowledge of certain investment products. For instance, included among the examinations that would qualify an individual to opt-in to an operations professional registration are the Series 6, an examination that limits the products an individual may sell to investment company securities and variable contracts; the Series 4, an examination for individuals supervising options transactions; the Series 16, an examination required for the preparation and approval of research reports; the Series 26, an examination required to qualify as a principal for transactions in investment company and variable products; and the Series 51 and Series 53, examinations that focus on supervising transactions in municipal securities. The limited nature of these examinations alone

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<sup>4</sup> 76 FR 15014 (March 18, 2011).

<sup>5</sup> *Id.*

seems insufficient to meet the standards set forth in the proposal for persons conducting or supervising the operations of a broker-dealer.

Although NASAA has supported exceptions to registration requirements in prior regulatory proposals, we have done so when the new qualification examination requirements are promulgated with the understanding those exempted are already performing the activities that the examination would test and their experience might substitute for the examination. Such is not the case in the rule proposal. For example, any individual holding the Series 6 could opt-in to the operations professional registration without any additional testing. As noted above, the Series 6 is a registration category that *limits* an individual to transactions in investment company and variable insurance products. How does providing an exemption for individuals who have completed an examination that only qualifies them to sell a limited category of products or supervise the sale of such products advance the regulatory goals of the proposal? We could ask the same question of the Series 7. While the Series 7 covers many more products, the exam, taken alone, does not demonstrate that an individual is qualified to carry out or supervise the operations of a broker-dealer.

That the content of the various exams may overlap with that of the proposed operations professional examination is not reason alone to justify a waiver. Rather, the question is more appropriately whether the individual is qualified, based on testing and experience, to waive into the operations professional registration category. The purpose of the operations professional registration regime is to demonstrate that an individual understands the important operations of a broker-dealer and the regulations governing those operations. That he or she has passed a test with overlapping content should not be the basis for granting an exemption.

If FINRA's concern is with the extent of overlapping content between existing examinations and the operational professional test, NASAA would suggest FINRA develop a targeted operations examination to be taken in conjunction with other exams. For example, a person holding a Series 7 who would be required to register as an operations professional would not be required to take and pass the entire operations examination. Rather, the person could opt to take a "top off" exam with targeted content that would limit the degree of overlap with the examination the person has successfully completed. NASAA believes this is a better alternative than providing blanket waivers.

In closing, NASAA supports testing, registration and continuing education requirements for individuals who perform broker-dealer operations functions. Along with playing an integral role in a firm's business, these individuals supervise firm functions that include handling client funds, accounts, and transactions. Therefore, we believe that a testing, licensing, and continuing education program geared to the regulations and procedures in operations process would enhance investor protection. Given the crucial function of these individuals, NASAA would continue to urge FINRA to revise the rule proposal to narrow the category of exemptions in favor of a waiver regime limited to those individuals who not only hold a registration commensurate with

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the responsibilities of individuals performing or supervising operations but also demonstrate experience in conducting or supervising the operations of a broker-dealer.

Sincerely,

A handwritten signature in black ink that reads "David S. Massey". The signature is written in a cursive style with a large, looping initial "D" and a long horizontal flourish extending to the right.

David S. Massey

NASAA President and

North Carolina Deputy Securities Administrator