



September 1, 2011

## FINRA Implements the Operations Professional Designation

After substantial debate and comments between FINRA and its membership, FINRA recently issued [Notice to Members 11-33](#) and notified membership that covered persons will have to qualify and register as an Operations Professional, pursuant to FINRA Rule 1230(b)(6) (“The Rule”), effective October 17, 2011. “Covered persons” include: (i) senior management with direct responsibility over covered functions; (ii) any person designated by senior management as a supervisor, manager or other person responsible for approving or authorizing work, including work of other persons, in direct furtherance of each of the covered functions; and (iii) persons with the authority or discretion materially to commit a firm's capital in direct furtherance of the covered functions or to commit a firm to any material contract or agreement (written or oral) in direct furtherance of the covered functions.

### Covered Functions

The Rule states that any person who is deemed to be a “covered person” and engages in any of the functions listed below will be required to qualify and register as an Operations Professional. The “covered functions” include:

- Client on-boarding (customer account data and document maintenance).
- Collection, maintenance, re-investment (*i.e.*, sweeps) and disbursement of funds.
- Receipt and delivery of securities and funds, and account transfers.
- Bank, custody, depository and firm account management and reconciliation.
- Settlement, fail control, buy ins, segregation, possession and control.
- Trade confirmation and account statements.
- Firm margin functions.
- Stock loan and securities lending.
- Prime brokerage services to other broker-dealers and financial institutions.
- Approval of pricing models used for valuations.
- Financial control, including general ledger and treasury functions.
- Contributing to the process of preparing and filing financial regulatory reports.
- Defining and approving 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.
- Defining and approving business security requirements and policies for information technology, including, but not limited to, systems and data, in connection with the covered functions.

- Defining and approving information entitlement policies in connection with the covered functions.
- 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.

When determining who is a covered person, firms will have to establish risk management guidelines and procedures to assist the firm in determining if individuals are in fact covered. Thus, individuals whose activities are limited to performing a function ancillary to a covered function, or whose function is to serve a role that can be viewed as supportive of or advisory to the performance of a covered function (e.g., internal audit, legal or compliance personnel who review but do not have primary responsibility for any covered function), or whose activities are of a clerical or ministerial nature or are in a support role, will not have to register as an Operations Professional. However, the process does not appear to be that simple. It is interesting to note that FINRA made the observation that to the extent a FINOP is the firm's only Operations Professional, the FINOP would have to register a second time as an Operations Professional, in spite of the fact the acronym for FINOP stands for Financial and Operations Principal.

Of greater concern to industry professionals is that the functions of the Operations Professional can go beyond those performed by the member firm, and are targeted to include services provided by affiliates and third party service providers. Thus, to the extent supervision or management of the covered functions are performed by an affiliate, or a third party service provider, the individuals performing the functions will have to be associated with the firm and registered as an Operations Professional. Additionally, their activities will need to be supervised by the firm, and such supervision will need to be integrated into the policies and procedures of the respective firms.

With respect to introducing brokers that have a clearing or carrying relationship, many covered functions are performed by the carrying or clearing firm. FINRA has stated that individuals who provide such covered functions for introducing firms and are registered with a carrying or clearing firm will not have to be registered with both firms. However, even though introducing brokers will not have to register the Operations Professional of the clearing or carrying firm, the introducing broker will have to appoint an Operations Professional to coordinate with the clearing firm, and thus be responsible for the supervision of the covered functions. Additionally, FINRA did not address how the firms Operations Professionals would address their obligation to confirm that clearing firm personnel who provide covered functions were in fact registered.

### **Registration and Examination Requirements**

Firms must identify those persons required to register as an Operations Professional as of October 17, 2011 (Day-One Professionals) and registration must be complete by December 16, 2011. Day-One Professionals will have to pass the Series 99 unless they hold the Series 6, 7, 17, 37 or 38, 4, 9/10, 14, 16, 24, 26, 27, 28, 51, or 53, or have held the registrations for two years immediately prior to registration. However, individuals having the aforementioned licenses will not automatically be registered as an Operations Professional. They will also have to opt in by completing a Form U 4 requesting the Series 99, commencing October 17, 2011. To the extent there are no other deficiencies (e.g., fingerprints); the Operations Professional registration will be approved automatically at the time of the request.

Day-One Professionals not possessing one of the required registrations have two choices to qualify as an Operations Professional. They can take the Series 99, or take one of the other qualifying examinations and then opt in for the Series 99. They will then have twelve months from October 17, 2011 to qualify as Operations Professional, and may act in the capacity during the twelve month period. The 60-day identification period and the 12-month transition period to pass a qualification examination only apply to Day-One Professionals. A Non-Day-One Operations Professional will have 120 days to qualify from the time they request such designation, and they may act in the capacity for the 120 day period.

### **Continuing Education**

FINRA has also established continuing education requirements for Operations Professionals by replacing NASD Rule 1120 (Continuing Education Requirements) with FINRA Rule 1250. Operations Professionals will be required to complete firm element and regulatory element of continuing education.

### **Action Items**

In order to comply with the October 17th deadline, and stay in compliance thereafter, we would recommend that you take the following action as soon as possible:

- Identify the covered functions related to your firms activities;
- Identify covered persons with responsibility over covered functions (internal, affiliates, third party vendors). Additionally, you should document the rationalization for future reference, should FINRA question the decision process;
- Modify your written supervisory procedures to address the requirements of the Rule;
- Coordinate the registration and licensing of affiliates or third party vendors, to the extent necessary;
- Commence the registration process by October 17, 2011 so as to assure covered persons are registered prior to December 16, 2011 (for those persons with two year experience and that are currently qualified), or October 17, 2012 for those persons who will have to take qualifying examinations;
- Track and monitor the registration status of those persons requiring registration to ensure that they are properly licensed; and
- Once individuals are registered monitor compliance with the firm element for continuing education.

We hope that this information has been helpful to you. Should you have any additional questions or concerns, please feel free to contact Daniel E. LeGaye or Michael Schaps by [e-mail](#) or phone, at 281-367-2454, or consult with your legal counsel or compliance consultant.

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