

Regulatory Notice

09-70

Registration and Qualification Requirements

FINRA Requests Comment on Proposed Consolidated FINRA Rules Governing Registration and Qualification Requirements

Comment Period Expires: February 1, 2010

Executive Summary

As part of the process of developing a new consolidated rulebook (the Consolidated FINRA Rulebook),¹ FINRA is requesting comment on a proposal to streamline and amend the FINRA registration and qualification rules.

The text of the proposed rules is available as Attachment B on our Web site at www.finra.org/notices/09-70.

Questions regarding this *Notice* should be directed to:

- Afshin Atabaki, Assistant General Counsel, Office of General Counsel, at (202) 728-8902; or
- Joe McDonald, Director, Testing and Continuing Education Department, at (240) 386-5065.

December 2009

Notice Type

- Request for Comment
- Consolidated FINRA Rulebook

Suggested Routing

- Compliance
- Legal
- Operations
- Registration
- Senior Management

Key Topic(s)

- Examination
- Principal
- Qualification
- Registration
- Representative

Referenced Rules & Notices

- Information Notice 3/12/08
- NASD IM-1000-2 and IM-1000-3
- NASD Rules 1021 and 1022
- NASD IM-1022-1 and IM-1022-2
- NASD Rules 1031 and 1032
- NASD Rules 1041, 1042 and 1043
- NASD Rules 1050, 1060(a), 1070 and 1080
- NASD Rule 1100
- NASD Rule 3010(e)
- NTMs 87-47, 89-78, 95-37, 99-49, 00-50, 01-51, 03-37, 04-81 and 07-04
- NYSE Rule 10 and Its Interpretation
- NYSE Rule Interpretations 311(b)(5)/01, /02, /03 and (g)/01
- NYSE Rule 321.15
- NYSE Rule 344 and Its Interpretation
- NYSE Rule 345 and Its Interpretation
- Regulatory Notices 07-55, 08-24, 09-41 and 09-55



Financial Industry Regulatory Authority

Action Requested

FINRA encourages all interested parties to comment on the proposed rules. Comments must be received by February 1, 2010.

Members and other interested parties can submit their comments using the following methods:

- Emailing comments to pubcom@finra.org; or
- Mailing comments in hard copy to:

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

To help FINRA process and review comments more efficiently, persons should only use one method to comment on the proposal.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA Web site. Generally, FINRA will post comments on its site one week after the end of the comment period.²

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be approved by the SEC, following publication for comment in the *Federal Register*.³

Background

The Exchange Act requires FINRA to prescribe standards of training, experience and competence for persons associated with FINRA members. Accordingly, FINRA has adopted registration and qualification requirements (registration rules) to ensure that persons associated with FINRA members attain and maintain specified levels of competence and knowledge. The current FINRA registration rules include both NASD Rules and certain NYSE Rules,⁴ some of which pertain specifically to persons engaged in NYSE floor activities. (The similarities and differences between the current NASD Rules and NYSE Rules are described in greater detail in Attachment A.)

In general, the registration rules: (1) require that associated persons engaged in a member's investment banking or securities business be registered in an appropriate registration category and pass prescribed qualification examinations or obtain a waiver; (2) exempt certain associated persons from the registration requirement; and (3) provide for permissive registration of certain persons.

Proposal

FINRA proposes to transfer the NASD Rules into the Consolidated FINRA Rulebook with certain changes that take into account requirements under the NYSE Rules. The most significant proposed changes are described generally below. However, FINRA urges member firms to carefully review the entire proposed rule text (in Attachment B at www.finra.org/notices/09-70) to understand the full extent of the proposed changes. (All provisions discussed below will be transferred to the registration and qualification section in the Consolidated FINRA Rulebook unless stated otherwise.)

A. Registration Requirements (Proposed FINRA Rule 1210)

Among other things, proposed FINRA Rule 1210 will expressly differentiate between an “active” and “inactive” registration status and will integrate the provisions regarding required and permissive registrations into a single rule.

1. Required Active Registration of Persons Engaged in the Investment Banking or Securities Business of a Member (Proposed FINRA Rule 1210(a))

FINRA proposes to consolidate and streamline the provisions in current NASD Rules 1021(a) and 1031(a) that require associated persons engaged in the investment banking or securities business of a member to register in a principal or representative category appropriate to their assigned functions. FINRA will presume that such registrations are “active” unless it is otherwise notified that they are “inactive” as described below.⁵

FINRA also proposes to consolidate in this rule the provisions in the various registration categories that prohibit persons from functioning in any registered capacity other than that for which they are registered. FINRA further proposes to delete NASD IM-1000-3 (potential disciplinary implications of failing to register a representative) as superfluous, since the failure to register a representative as required under current NASD Rule 1031(a) is in fact a violation.

2. Permissive Inactive Registration of Persons Engaged in a Bona Fide Business Purpose of a Member (Proposed FINRA Rule 1210(b))

Currently, NASD Rules 1021(a) and 1031(a) provide for permissive registration as a principal or representative of a person who performs legal, compliance, internal audit, back-office operations or similar responsibilities for a member (and permit a member to maintain the registration of such person).

FINRA proposes to expand this provision by permitting a member to register as a principal or representative any associated person (or maintain the registration of such person), provided that such person is engaged in a bona fide business purpose of the member.

Under the proposal, a person registered *solely* pursuant to this permissive registration category (*i.e.*, not otherwise required to be registered based on his or her functions) is deemed to have an “inactive” registration upon notification to FINRA of such registration status. Also, the member must notify FINRA when the inactive registration status has been terminated. Such person will be an associated person for all purposes, but will be considered a registered person only for purposes of the following provisions:⁶

- FINRA By-Laws and Schedule A to the By-Laws (fees and charges);
- Forms U4 and U5;
- The FINRA consolidated registration rules;
- Current NASD Rule 1120 (applicable continuing education requirements);
- Current NASD Rule 3010(a)(5) (which requires the assignment of each registered person to an appropriately registered supervisor);⁷
- Current NASD Rule 3010(a)(7) (which requires participation in an annual compliance meeting); and
- Current NASD Rule 3010(e) (which addresses personnel background investigations).

Among other purposes, these provisions ensure that such person maintains an appropriate level of competence and knowledge and is subject to a level of supervision commensurate with his or her status.

The proposed rule will supersede the existing permissive registration provisions. Therefore, those persons currently registered based solely on performing legal, compliance, internal audit, back-office operations or similar responsibilities who seek to maintain such permissive registrations will have to become appropriately registered in accordance with the proposed rule.

Additionally, the proposed rule permits a person who is required to be registered as a principal or representative based on his or her assigned functions to register, or maintain registrations, in non-required principal or representative categories by virtue of being engaged in a bona fide business purpose of the member. For instance, a person who is registered as a General Securities Representative and General Securities Principal, but whose functions only require him to be registered as a General Securities Representative, could maintain his registration as a General Securities Principal. However, all of such person’s registrations will be deemed “active” registrations, subjecting such person to all FINRA Rules applicable to a registered person. Notwithstanding the status of such person’s registrations as active, the proposed rule also requires that such person be appropriately supervised to ensure that he or she is not acting outside the scope of his or her assigned functions. For instance, if the person in the example above is assigned to function *only* as a General Securities Representative, he may not perform any of the functions of a General Securities Principal.

The proposed rule further provides that a person whose sole registration is a permissive registration as a Compliance Officer (this category is described in greater detail below) by virtue of being engaged in a bona fide business purpose of the member (*i.e.*, not required to register as a Compliance Officer or in any other category of registration) may have an active or inactive registration with respect to such registration; however, the person must be engaged in compliance activities at the member to have an active registration. If a member elects to designate such person as having an active registration, such person will be subject to the same requirements as any other person with an active registration.

In 2007, FINRA filed with the SEC a similar proposal that was never published for comment in the *Federal Register*.⁸ FINRA intends to withdraw that proposal in conjunction with filing these consolidated rules. The reasons to allow permissive registration for those engaged in a bona fide business purpose of the member remain largely the same.

First, a member may have a foreseeable need to move an associated person whose principal or representative registration has lapsed for more than two years back into a position that will require or permit such person to be registered. Currently, such persons are required to re-register and re-test (or obtain a waiver of the applicable qualification examinations). Second, the proposed rule allows members to develop a depth of associated persons with registrations in the event of unanticipated personnel changes and also encourages greater regulatory literacy. Finally, the proposed rule eliminates an inconsistency in the rules, which permit certain persons to obtain permissive registrations, but not others who equally are engaged in other bona fide business purposes of the member.

Members will need to distinguish between functions that require an active registration and functions that permit a bona fide business purpose inactive registration and require notification to FINRA. Members should register an associated person as “inactive” only if they reasonably believe that such person will not be performing functions that require registration.

3. Permissive Inactive Registration of Persons Engaged in the Business of a Financial Services Industry Affiliate of a Member (Proposed FINRA Rule 1210(c))

NASD Rules 1021(a) and 1031(a) also permit a member to register as a principal or representative a person who is engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member (or maintain the registration of such person).

The proposed rule expands these provisions by permitting a member to register as a principal or representative any individual (or maintain the registration of such person) who is engaged in the business of a financial services industry affiliate of the member that controls, is controlled by or is under common control with the member.⁹ Such person will be designated as a Retained Associate and his or her registration deemed an “inactive” registration upon notification to FINRA of such registration status. Also, the member will be required to notify FINRA when such inactive registration status has been terminated.

The “financial services industry,” for purposes of the proposed rule, is defined as any industry regulated by the SEC, Commodity Futures Trading Commission, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

The proposed rule permits a person to be designated as a Retained Associate with one or more members for ten consecutive years (commencing on the date the person is initially designated as a Retained Associate), subject to the following:

- First, to mitigate the risk of customer confusion that might be caused by frequent switching between a person’s Retained Associate status and active or other inactive statuses, a Retained Associate who subsequently enters an active registration or a bona fide business purpose inactive registration must remain in such registration(s) for at least a consecutive 12-month period to be eligible for any years that may be remaining on his or her Retained Associate period. This 12-month period may be split between different members. However, a person’s active registration or bona fide business purpose inactive registration cannot run concurrently with the person’s Retained Associate inactive registration.
- Second, FINRA will toll a Retained Associate’s inactive registration period day-for-day for each day that such person is in active registration, provided that the person is in active registration for at least a consecutive 12-month period and FINRA is properly notified of such person’s period of active registration.
- Third, a person will forfeit any remaining Retained Associate period if such person subsequently engages in other business activities instead of those that require an active registration or permit a bona fide business purpose or Retained Associate inactive registration.
- Fourth, to facilitate such person’s transition from one member to another, the proposed rule provides such person up to 30 days following the submission of a Form U5 to enter active registration or a bona fide business purpose or Retained Associate inactive registration with another member. Such person will forfeit any remaining Retained Associate period if he or she does not enter active registration or a bona fide business purpose or Retained Associate inactive registration with another member within 30 days following the submission of a Form U5.

The following scenarios illustrate the application of the proposed rule:

Scenario (After an Initial Period as a Retained Associate With the Financial Services Industry Affiliate of Member A)	Remaining Retained Associate Period
Person A enters a Retained Associate inactive registration with the financial services industry affiliate of Member B within 30 days following the submission of his Form U5.	Not forfeited; not tolled
Person A enters an active registration or a bona fide business purpose inactive registration with Member A for a consecutive 7-month period and then returns to work at the financial services industry affiliate of Member A.	Forfeited
Person A enters an active registration with Member A for a consecutive 12-month period.	Tolled (for each day of active registration)
Person A enters an active registration with Member A for a consecutive 7-month period and within 30 days following the submission of his Form U5 he enters an active registration with Member B for a consecutive 5-month period.	Tolled (for each day of active registration)
Person A enters a bona fide business purpose inactive registration with Member A for a consecutive 12-month period.	Not forfeited; not tolled
Person A enters a bona fide business purpose inactive registration with Member A for a consecutive 7-month period and within 30 days following the submission of his Form U5 he enters a bona fide business purpose inactive registration with Member B for a consecutive 5-month period.	Not forfeited; not tolled
Person A enters an active registration or a bona fide business purpose inactive registration with Member B 60 days following the submission of his Form U5 by Member A.	Forfeited
Person A engages in other business activities instead of entering an active registration or a bona fide business purpose or Retained Associate inactive registration.	Forfeited

While a Retained Associate generally will not be considered a registered person (or an associated person), such person will be subject to the following provisions:¹⁰

- FINRA By-Laws and Schedule A to the By-Laws;
- Forms U4 and U5;
- The FINRA consolidated registration rules;
- Current NASD Rule 1120;
- Current NASD Rule 3010(a)(5);¹¹
- Current NASD Rule 3010(a)(7);
- Current NASD Rule 3010(e);
- Current NASD Rule 3050 (which addresses personal securities transactions through other members or financial institutions);
- Current NASD Rule 3070 (relating to reporting requirements);
- FINRA Rule 5130 (the New Issue Rule); and
- FINRA Rule 8000 and 9000 Series (relating to investigations, sanctions and disciplinary procedures).

Similar to the provisions in the bona fide business purpose category, these provisions (among other purposes) are designed to ensure that Retained Associates maintain an appropriate level of competence and knowledge and are subject to a level of supervision commensurate with their status.

A person subject to a statutory disqualification will not be eligible to be placed on, or remain in, a Retained Associate status. Among other reasons, this is because a member cannot ensure adequate supervision of all activities engaged in by such person, as ordinarily is required of a member who seeks to associate with a disqualified person.

FINRA believes that an expansion of the permissive registration categories to include Retained Associates is appropriate for reasons similar to those underlying the permissive registration of persons engaged in a bona fide business purpose of a member (*e.g.*, foreseeable need to move such persons back into a position that will require registration, developing a depth of persons with registrations in the event of unanticipated personnel changes, encouraging greater regulatory literacy through registration).¹² FINRA further believes the time and manner limitations are appropriate to guard against abuse of the privilege.

4. Notification Requirements for Persons Serving in the Armed Forces of the United States (Proposed FINRA Rule 1210(d))

To enhance the efficiency of the notification process for registered persons serving in the Armed Forces (current NASD IM-1000-2), FINRA proposes to amend the provision to require that the member with which such person is registered promptly notify FINRA of such person's return to active employment with the member and that, in the case of a sole proprietor, the sole proprietor promptly notify FINRA of his or her return to active participation in the investment banking or securities business.

5. Two-Principal Requirement (Proposed FINRA Rule 1210(e))

FINRA proposes to amend the two-principal requirement (current NASD Rule 1021(e)(1)) to clarify that a member is required to have a minimum of two General Securities Principals who have satisfied the General Securities Representative, United Kingdom Securities Representative or Canada Securities Representative prerequisite. Alternatively, if the member's business is limited to investment company and variable contracts products or direct participation programs, the member may opt to have two Investment Company and Variable Contracts Products Principals or Direct Participation Programs Principals, respectively.

Currently, a sole proprietor member (without any other associated persons) is not subject to the two-principal requirement since such member is operating as a one-person firm. Given that one-person firms may be organized in legal forms other than a sole proprietorship (such as a single-person limited liability company), FINRA proposes to modify the exception to clarify that any member with only one associated person is excluded from the two-principal requirement.

In addition, the proposed rule clarifies that existing members as well as new applicants may request a waiver of the two-principal requirement (current NASD Rule 1021(e)(2)). The proposed rule similarly clarifies that the provision requiring additional principals for members with certain types of operations (current NASD Rule 1021(e)(3)) applies to existing members as well as new applicants.

The proposed rule further clarifies that all members are required to have an appropriately registered Chief Compliance Officer (current NASD Rule 1022(a)(1)) and Financial and Operations Principal (or Introducing Broker-Dealer Financial and Operations Principal, as applicable) (current NASD Rules 1022(b) and (c)) and provides that all members are required to have an appropriately registered Principal Financial Officer and Principal Operations Officer (as discussed further below). Additionally, the proposed rule clarifies that a member engaged in certain investment banking activities must have a General Securities Principal who has also satisfied the Investment Banking Representative prerequisite requirement (current NASD Rules 1022(a)(1) and 1032(i)) and that a member engaged in certain research activities must have a Research Principal (current NASD Rule 1022(a)(5)).

6. Personnel Background Investigations (Proposed FINRA Rule 1210(f))

FINRA proposes to transfer into the proposed rule with non-substantive changes the provision regarding background investigations (current NASD Rule 3010(e)).

7. Impermissible Registrations (Proposed FINRA Rule 1210(g))

Consistent with the proposed changes to the registration requirements discussed above, FINRA proposes to replace the provisions prohibiting the “parking” of registrations (current NASD Rules 1021(a) and 1031(a)) with provisions prohibiting a member from registering or maintaining the registration of a person unless it is an active registration or a bona fide business purpose or Retained Associate inactive registration. The proposed rule also permits a member to maintain the inactive registration of a registered person serving in the Armed Forces of the United States, which is consistent with the current registration requirements.

B. Qualification Examination Requirements and Waiver of Requirements (Proposed FINRA Rule 1220)

Among other things, proposed FINRA Rule 1220 integrates the qualification examination requirements and waiver of requirements into a single rule.

1. Qualification Examinations (Paragraphs (a), (b) and (d) through (g) of Proposed FINRA Rule 1220)

The proposed rule consolidates for simplification the general provisions requiring a person to pass an appropriate qualification examination (including any applicable prerequisite) before such person’s registration can become effective (current NASD Rules 1021(a) and 1031(a)). The proposed rule clarifies that a person is not subject to this requirement if such person obtains a waiver of the applicable examination(s) or is registering solely as a Securities Lending Representative, Securities Lending Supervisor or Proctor (which, as noted below, do not require an examination).

The proposed rule streamlines the general provisions regarding the examination process (current NASD Rules 1070(a), (b) and (c)). FINRA proposes to transfer into the proposed rule with non-substantive changes the provision regarding waiting periods for retaking failed examinations (current NASD Rule 1070(e)).

The proposed rule also consolidates for simplification the provisions requiring that a person re-test if his or her registration has lapsed for more than two years (current NASD Rules 1021(c), 1031(c) and 1041(c)). The proposed rule clarifies that a person is not subject to this requirement if he or she obtains a waiver of the applicable examination(s) or is registering solely as a Securities Lending Representative, Securities Lending Supervisor or Proctor.

Further, FINRA proposes to amend the provision permitting a member to designate any representative to function as a principal for a limited period (current NASD Rule 1021(d)) to require the designation of a representative who has been registered as a representative in active registration for at least 18 months within the five-year period immediately preceding such designation. This change is intended to ensure that such persons have an appropriate level of registered representative experience. The proposed rule clarifies that such person must fulfill all applicable prerequisite registration, fee and examination requirements prior to his or her designation as a principal. The proposed rule also extends the time period that such person may function as a principal prior to passing the applicable principal examination from 90 calendar days to 120 calendar days (since the current window in CRD for passing an examination is 120 calendar days). A person registered as an Order Processing Assistant Representative or registered solely as a Securities Lending Representative, Securities Lending Supervisor or Proctor will be prohibited from functioning as a principal under this provision because of the very limited scope of his or her registered representative activities. Finally, the proposed rule clarifies that members that lose their sole Registered Options Principal are subject to separate requirements (current NASD IM-1022-1).

2. Waivers (Proposed FINRA Rule 1220(c))

FINRA proposes to transfer into the proposed rule with non-substantive changes the provision regarding waiver of examination requirements (current NASD Rule 1070(d)).

C. Registration Categories (Proposed FINRA Rule 1230)

Among other things, proposed FINRA Rule 1230 integrates the following registration categories into a single rule: principal, representative, Order Processing Assistant Representative, Proctor and Research Analyst.

1. Definition of Principal (Proposed FINRA Rule 1230(a)(1))

The proposed rule streamlines the definition of the term “principal” (current NASD Rule 1021(b)) and clarifies that a member’s chief executive officer and chief financial officer (or equivalent officers) are considered principals based solely on their status. The proposed rule also clarifies that the term “principal” includes any other associated person who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under FINRA Rules. Further, the proposed rule codifies existing guidance regarding the term “actively engaged in the management of the member’s investment banking or securities business.”¹³

2. General Securities Principal (Proposed FINRA Rule 1230(a)(2))

FINRA proposes to eliminate the grandfathering provision for persons who were registered as principals prior to the adoption of the General Securities Principal registration category (current NASD Rule 1022(a)(1)) since it is outdated. As discussed below, FINRA also proposes to move the provision regarding the registration of Chief Compliance Officers to a new stand-alone registration category for Compliance Officers and create a stand-alone registration category for Research Principals. Additionally, the proposed rule clarifies that:

- A person registered solely as a General Securities Principal is not qualified to function as a Research Principal, Principal Financial Officer or Principal Operations Officer;
- Registration as a United Kingdom Securities Representative or Canada Securities Representative is an acceptable alternative prerequisite to the General Securities Representative prerequisite;¹⁴ and
- Registration as a Corporate Securities Representative or Private Securities Offerings Representative will satisfy the prerequisite registration requirement, provided that such persons have limited supervisory responsibilities (consistent with their representative category).

3. Research Principal (Proposed FINRA Rule 1230(a)(3))

The proposed rule creates a stand-alone registration category for Research Principals (current NASD Rule 1022(a)(5)) and modifies the examination requirements for those persons. By way of background, the Analysis (Series 86) portion of the Research Analyst examination tests knowledge of fundamental analysis and valuation of equity securities and the Regulatory Administration and Best Practices (Series 87) portion of the Research Analyst examination tests knowledge of applicable rules and regulations pertaining to research. The Supervisory Analyst (Series 16) examination tests both knowledge of applicable rules and regulations and fundamental analysis and valuation. Currently, a Research Principal is required to be registered as a General Securities Principal and pass either the Series 87 or the Series 16 examination. FINRA believes that a Research Principal will be able to carry out his or her supervisory responsibilities more effectively by having an appropriate level of knowledge of fundamental analysis and valuation. Therefore, the proposed rule requires that a Research Principal pass the General Securities Principal examination¹⁵ and (1) the Series 86 and Series 87 examinations or (2) the Series 16 examination.

A person registered as a Research Principal immediately prior to the effective date of the proposed rule will be grandfathered. The proposed rule also codifies existing guidance regarding exceptions from the Research Principal requirement for principals responsible for reviewing and approving third-party research reports, principals assigned to supervise for compliance with only the disclosure provisions of NASD Rule 2711 and Supervisory Analysts who are permitted pursuant to FINRA Rules to approve research reports.¹⁶

4. Compliance Officer (Proposed FINRA Rule 1230(a)(4))

FINRA proposes to establish a new stand-alone registration category for Compliance Officers, which will also contain the Chief Compliance Officer registration requirement (current NASD Rule 1022(a)(1)). The proposed rule revises and redesignates as the Compliance Officer examination the current Compliance Official examination—an NYSE requirement¹⁷ applicable to persons responsible for day-to-day compliance activities and other persons directly supervising ten or more compliance personnel. FINRA believes that the role of the Chief Compliance Officer has critical importance and that a Compliance Officer examination tailored to the functions performed by a Chief Compliance Officer is the most appropriate examination for those individuals. The General Securities Representative, United Kingdom Securities Representative or Canada Securities Representative examination will be the prerequisite to the Compliance Officer examination.

The proposed rule will require all persons designated as Chief Compliance Officers on Schedule A of Form BD to register as Compliance Officers and pass the Compliance Officer examination before their registrations can become effective, subject to the following provisions intended to facilitate the transition to the new examination.

- A person designated as a Chief Compliance Officer on Schedule A of Form BD, or registered as a Compliance Official, immediately prior to the effective date of the proposed rule will be qualified to register as a Compliance Officer without having to pass the Compliance Officer examination.
- A person designated as a Chief Compliance Officer on Schedule A of Form BD after the effective date of the proposed rule, but before the introduction of the Compliance Officer examination, will be required to pass the General Securities Principal examination (and the General Securities Representative, United Kingdom Securities Representative or Canada Securities Representative prerequisite) to qualify to register as a Compliance Officer. This requirement will apply to all members. Such persons will not be required to pass the Compliance Officer examination after its introduction.

- A person designated as a Chief Compliance Officer on Schedule A of Form BD after the effective date of the proposed rule and the introduction of the Compliance Officer examination will be required to pass the Compliance Officer examination to qualify to register as a Compliance Officer, unless such person has earned the FINRA Institute at Wharton Certified Regulatory and Compliance Professional™ (CRCP™) designation.

FINRA believes that the General Securities Principal qualification examination in combination with the CRCP designation, which provides an in-depth understanding of the foundation, theory and practical application of securities laws and regulation, is appropriately tailored to the functions performed by a Chief Compliance Officer. Therefore, the proposed rule provides that a person who has passed the General Securities Principal qualification examination (and the General Securities Representative, United Kingdom Securities Representative or Canada Securities Representative prerequisite) and has earned the CRCP designation will be qualified to register as a Compliance Officer without having to pass the Compliance Officer examination.

5. Financial and Operations Principal, Introducing Broker-Dealer Financial and Operations Principal, Principal Financial Officer and Principal Operations Officer (Proposed FINRA Rule 1230(a)(5))

The proposed rule maintains the requirement that a member have a Financial and Operations Principal or Introducing Broker-Dealer Financial and Operations Principal, as applicable, but merges these registration categories (current NASD Rules 1022(b) and (c)) for simplification.

Additionally, the proposed rule modifies the NASD and NYSE requirements that members designate and register Chief Financial Officers (current NASD Rules 1022(b) and (c)) and Chief Financial Officers and Chief Operations Officers (current NYSE Rule Interpretations 311(b)(5)/02 and /03), respectively. FINRA does not believe it necessary for an officer to have the title of Chief Financial Officer or Chief Operations Officer for purposes of these provisions so long as the designated person performs the same functions.

More specifically, the proposed rule requires members to designate: (1) a Principal Financial Officer with primary responsibility for financial filings and the related books and records; and (2) a Principal Operations Officer with primary responsibility for the day-to-day operations of the business, including overseeing the receipt and delivery of securities and funds, safeguarding customer and firm assets, calculation and collection of margin from customers and processing dividend receivables and payables and reorganization redemptions and those books and records related to such activities.

Consistent with the current examination requirements, the proposed rule requires that a member's Principal Financial Officer and Principal Operations Officer register as Financial and Operations Principals (or Introducing Broker-Dealer Financial and Operations Principals, as applicable).

Since the financial and operational activities of members that neither self clear nor provide clearing services are limited, such members may designate the same person as the Principal Financial Officer, Principal Operations Officer and Financial and Operations Principal (or Introducing Broker-Dealer Financial and Operations Principal) (*i.e.*, such members are not required to designate different persons to function in these capacities).

Given the level of financial and operational responsibility at clearing and self-clearing members, FINRA believes that it is necessary for such members to designate separate persons to function as Principal Financial Officer and Principal Operations Officer. Such persons may also carry out the other responsibilities of a Financial and Operations Principal (*e.g.*, supervision of individuals engaged in financial and operational activities). The proposed rule also provides that a clearing or self-clearing member that is limited in size and resources may, pursuant to the FINRA Rule 9600 Series, request a waiver of the requirement to designate separate persons to function as Principal Financial Officer and Principal Operations Officer.

6. Registered Options Principal (Paragraph (a)(6) and Supplementary Material .02 and .03 of Proposed FINRA Rule 1230)

FINRA proposes to convert into supplementary material the provision in the Registered Options Principal category (current NASD Rule 1022(f)) regarding security futures activities, together with similar provisions in the General Securities Sales Supervisor (current NASD Rule 1022(g)) and General Securities Representative (current NASD Rule 1032(a)) categories. Consistent with FINRA Rule 2360 (Options), which allows a General Securities Sales Supervisor (in addition to a Registered Options Principal) to also approve the opening of an options account, the proposed rule provides that a General Securities Sales Supervisor may supervise options activities pursuant to FINRA Rule 2360.

As discussed below, FINRA is proposing to eliminate the Options Representative category (current NASD Rule 1032(d)). Therefore, the proposed rule eliminates from the Registered Options Principal category the Options Representative prerequisite. The proposed rule also removes the Corporate Securities Representative co-prerequisite since it is tied to the Options Representative prerequisite. Consequently, a person registering as a Registered Options Principal after the effective date of the proposed rule must satisfy one of the remaining prerequisites—the General Securities Representative, United Kingdom Securities Representative or Canada Securities Representative prerequisite. A person registered as a Registered Options Principal immediately prior to the effective date of the proposed rule will be grandfathered from the new prerequisite requirement.

In addition, the provision regarding members that lose their sole Registered Options Principal (current NASD IM-1022-1) will be transferred with non-substantive changes into supplementary material.

7. Government Securities Principal (Proposed FINRA Rule 1230(a)(7))

The proposed rule eliminates the grandfathering provision for persons who were registered as principals prior to the 1988 adoption of the Government Securities Principal category since the provision is outdated.

Further, the proposed rule clarifies that: (1) a person registering as a Government Securities Principal is required to satisfy the General Securities Representative, United Kingdom Securities Representative, Canada Securities Representative or Government Securities Representative (current NASD Rule 1032(g)) prerequisite; and (2) a General Securities Principal who has satisfied the General Securities Representative, United Kingdom Securities Representative or Canada Securities Representative prerequisite (or who is also registered as a Government Securities Representative) is qualified to function as a Government Securities Principal without having to register separately as such.

8. Investment Company and Variable Contracts Products Principal and Direct Participation Programs Principal (Paragraphs (a)(8) and (a)(9) of Proposed FINRA Rule 1230)

The proposed rule clarifies that a General Securities Principal who has satisfied the General Securities Representative, United Kingdom Securities Representative or Canada Securities Representative prerequisite is qualified to function as an Investment Company and Variable Contracts Products Principal (current NASD Rule 1022(d)) or as a Direct Participation Programs Principal (current NASD Rule 1022(e)) without having to register separately in such categories.

9. General Securities Sales Supervisor (Paragraph (a)(10) and Supplementary Material .04 of Proposed FINRA Rule 1230)

Consistent with FINRA Rule 2360 (Options), FINRA proposes to add “approval of customer accounts” to the list of permissible supervisory activities of a General Securities Sales Supervisor.

Currently, for purposes of compliance with NASD Rule 2210 (Communications with the Public), a General Securities Sales Supervisor is permitted to approve most sales literature, but is not permitted to provide final approval of advertisements. However, as detailed in *Regulatory Notice 09-55*, FINRA is proposing to amend the communications rules, including NASD Rule 2210, to combine the definitions of advertisement, sales literature and independently prepared reprint into a single category—retail communications. Since FINRA is proposing to remove the distinction between

advertisements and sales literature as part of the communications rules, FINRA also proposes to amend the General Securities Sales Supervisor registration category to remove the restriction from providing final approval of advertisements. Thus, the proposed rule permits a General Securities Sales Supervisor to approve retail communications to the same extent a General Securities Sales Supervisor may currently approve sales literature.

Further, the provision explaining the General Securities Sales Supervisor category (current NASD IM-1022-2) will be transferred into supplementary material with changes consistent with the proposed changes to the General Securities Sales Supervisor registration category.

10. Supervisory Analyst (Proposed FINRA Rule 1230(a)(11))

NYSE Rules require that an individual who is responsible for approving research reports be registered and qualified as a Supervisory Analyst. Pursuant to NASD Rules (current NASD Rules 1050(f)(3)(A), 2210(b)(1)(B) and 2711(h)(13)(C) and existing guidance¹⁸), a Supervisory Analyst may approve research reports in lieu of a Research Principal. If a member elects to have a Supervisory Analyst approve research, then a Research Principal must supervise the overall conduct of the Supervisory Analyst and Research Analyst.

Consistent with NASD Rules and existing guidance, FINRA proposes to adopt a stand-alone permissive registration category for Supervisory Analysts. A person may register as a Supervisory Analyst, provided his or her activities are limited to approving research reports pursuant to the applicable rules and the person passes the Supervisory Analyst examination. Unlike the current NYSE requirement, the proposed rule does not require evidence of appropriate experience. Rather than passing the entire Supervisory Analyst examination, a person may obtain a waiver from the securities analysis portion (Part II) of the Supervisory Analyst qualification examination upon verification that the person has passed Level I of the Chartered Financial Analyst examination, which is consistent with the current NYSE provision. The proposed rule further clarifies that a Supervisory Analyst must be supervised by a Research Principal.

11. General Securities Representative (Proposed FINRA Rule 1230(b)(2))

The proposed rule deletes references to the Japan Module of the General Securities Representative examination. Current NASD Rule 1032(a)(2)(D) permits a person registered and in good standing as a representative with the Japanese securities regulators to become qualified as a General Securities Representative by passing the Japan Module of the General Securities Representative examination. The Japan Module, however, was never implemented.

12. Securities Lending Representative and Securities Lending Supervisor (Proposed FINRA Rule 1230(b)(6))

NASD Rules currently do not have a specific registration category for associated persons engaged in securities lending activities and in the direct supervision of such activities. Whether such persons are required to be registered depends on whether they are functioning as “representatives” or “principals” under current NASD Rules. Given the scope of such activities and for tracking and FINRA examination purposes, FINRA believes that it is appropriate to have a specific registration category for such persons similar to the NYSE registration requirements.

The proposed rule generally adopts the NYSE registration requirements for Securities Lending Representatives and Securities Lending Supervisors. The proposed rule requires an associated person who has discretion to commit a member to any contract or agreement (written or oral) involving securities lending or borrowing activities with any other person, and the direct supervisor of the associated person to register as a Securities Lending Representative and Securities Lending Supervisor, respectively. While they will not be subject to a qualification examination at this time, they will be required to register as such for tracking and FINRA examination purposes, regardless of their registrations in other categories.

Unlike the NYSE requirement, the proposed rule does not require such persons to sign an agreement (representing a form of code of ethics), pursuant to which they agree to abide by all policies and procedures established by their employers as well as all applicable federal and state securities laws and NYSE rules. FINRA has determined not to adopt this agreement in its current form at this time in light of the status of such persons as registered persons.

13. Order Processing Assistant Representative (Proposed FINRA Rule 1230(b)(7))

The proposed rule streamlines and consolidates the Order Processing Assistant Representative category (current NASD Rules 1041 and 1042) and clarifies that a person whose sole function is to accept unsolicited customer orders is not required to register as an Order Processing Assistant Representative if he or she chooses to register in another appropriate representative category. However, if the person registers in another appropriate representative category, the person will be precluded from registering as an Order Processing Assistant Representative.

The proposed rule further codifies an existing restriction that prohibits an Order Processing Assistant Representative from accepting customer orders for municipal securities and direct participation programs.¹⁹ The proposed rule also clarifies that Order Processing Assistant Representatives will not be precluded from registering in another registration category, but upon such registration they will lose their Order Processing Assistant Representative registration.

14. Proctor (Proposed FINRA Rule 1230(b)(8))

The proposed rule amends the Proctor category to clarify that persons registered solely as Proctors (current NASD Rule 1043) based on the scope of their activities are subject to the same compensation restrictions as persons registered solely as Order Processing Assistant Representatives; *i.e.*, they may only be compensated through an hourly wage, a salary, or bonuses or other compensation based on a member's profit sharing plan or similar arrangement.

15. Investment Company and Variable Contracts Products Representative (Proposed FINRA Rule 1230(b)(9))

Consistent with the registration provisions of MSRB Rule G-3(a)(ii)(C), the proposed rule amends the Investment Company and Variable Contracts Products Representative category (current NASD Rule 1032(b)) to clarify that such persons are also permitted to engage in the solicitation, purchase or sale of municipal fund securities as defined under MSRB Rule D-12.

16. Representatives Engaged in Options Activities (Proposed FINRA Rule 1230.01)

FINRA believes that there is diminishing utility in the Options Representative category. Therefore, FINRA proposes to eliminate this category and instead require that a representative engaged in options activities register as a General Securities Representative, United Kingdom Securities Representative or Canada Securities Representative, which is consistent with the current NYSE requirements. A person registered as an Options Representative immediately prior to the effective date of the proposed rule will be grandfathered from this requirement.

17. Qualification Examination Requirements for Foreign Associates (Proposed FINRA Rule 1230.05)²⁰

Pursuant to current NASD Rule 1100, a Foreign Associate may function as a registered representative, including acting as a trader or the registered person responsible for servicing the accounts of a foreign national. However, Foreign Associates are exempt from the requirement to pass a qualification examination and are not subject to continuing education requirements.

Considering the type of interaction that Foreign Associates may have with customers, FINRA believes there is no reason such persons should not demonstrate the same level of competence and knowledge required of their counterparts in the United States. The proposed rule therefore eliminates the Foreign Associate category and requires that a person registered as a Foreign Associate immediately prior to the effective date of the proposed rule register in an appropriate registration category (and pass any applicable examination) within one year of the effective date of the proposed rule.

18. Other Provisions Transferring With Non-Substantive Changes (Paragraphs (a)(2)(B), (b)(1), (b)(3) through (b)(5) and (b)(10) through (b)(13) of Proposed FINRA Rule 1230))

FINRA proposes to transfer into the proposed rule with non-substantive changes the following registration categories and provisions:

- General Securities Principal responsible for supervising investment banking activities (current NASD Rule 1022(a)(1));²¹
- Definition of the term “Representative” (current NASD Rule 1031(b));
- Direct Participation Programs Representative (current NASD Rule 1032(c));
- Corporate Securities Representative (current NASD Rule 1032(e));
- Equity Trader (current NASD Rule 1032(f));
- Government Securities Representative (current NASD Rule 1032(g));
- Private Securities Offerings Representative (current NASD Rule 1032(h));
- Investment Banking Representative (current NASD Rule 1032(i));²² and
- Research Analyst (current NASD Rule 1050).

D. Associated Persons Exempt from Registration (Proposed FINRA Rule 1240)²³

1. Active Versus Inactive

Current NASD Rule 1060(a)(2) exempts from registration those associated persons who are not actively engaged in the investment banking or securities business. This exemption relates to the current provisions prohibiting the “parking” of registrations, which, among other things, prohibit a member from maintaining a registration for any person who is no longer active in the member’s investment banking or securities business. The proposed changes to the registration requirements render the exemption obsolete; therefore, FINRA proposes to delete the exemption.

2. Codification of Guidance Regarding Contact with Prospective Customers (Proposed FINRA Rule 1240.01)

FINRA proposes to codify existing guidance permitting unregistered persons to have limited contact with prospective customers (subject to certain restrictions).²⁴

3. Rescission of Guidance Regarding Unregistered Persons Who Occasionally Receive Unsolicited Customer Orders (Paragraph (a) and Supplementary Material .02 of Proposed FINRA Rule 1240)

FINRA proposes to rescind existing guidance permitting unregistered administrative personnel to occasionally receive an unsolicited customer order at a time when appropriately qualified representatives or principals are unavailable.²⁵ FINRA believes that to accept customer orders a person must be appropriately registered. The proposed rule clarifies that the function of accepting customer orders is not considered a clerical or ministerial function (current NASD Rule 1060(a)(1)) and that associated persons who accept customer orders under any circumstances are required to be appropriately registered and qualified.

4. Other Exemptions from Registration (Paragraphs (b) and (c) of Proposed FINRA Rule 1240)

Current NASD Rule 1060(a)(4)(A) exempts from registration associated persons whose functions are related solely and exclusively to effecting transactions on the floor of a national securities exchange, provided they are registered as floor members with such exchange. Since exchanges have registration categories other than the floor member category, FINRA proposes to amend this provision to clarify that the exemption applies to associated persons solely and exclusively effecting transactions on the floor of a national securities exchange, provided they are appropriately registered with such exchange.

FINRA proposes to transfer into the proposed rule with non-substantive changes the remaining exemptions from registration (current NASD Rules 1060(a)(3) and (a)(4)(B) through (D)).

E. NYSE Provisions Proposed for Deletion²⁶

FINRA proposes to delete the following NYSE provisions as they are substantially similar to the proposed consolidated registration rules, otherwise incorporated as described above, rendered obsolete by the proposed approach reflected in the registration rules, or addressed by other rules:

- NYSE Rule 10 (definition of “registered representative”);²⁷
- NYSE Rule Interpretations 10/01 and 345(a)/01 (clerical and ministerial exemption from registration);
- NYSE Rule Interpretation 311(b)(5)/01 (qualification requirements for principal executives);
- NYSE Rule Interpretations 311(b)(5)/02 and /03 (relating to the designation and registration of a Chief Financial Officer and a Chief Operations Officer);
- NYSE Rule Interpretation 311(g)/01 (requirement that certain members have at least two general partners);
- NYSE Rule 321.15 (registration of certain employees of a foreign subsidiary);
- NYSE Rule 344 and its Interpretation (Research Analyst and Supervisory Analyst categories);
- NYSE Rules 345(a), 345.10, 345.15(2) through 345.15(4) and NYSE Rule Interpretation 345.15/02 (representative categories);²⁸
- NYSE Rules 345.11(a) and (b) and NYSE Rule Interpretation 345.11/01 (personnel background investigations);
- NYSE Rule 345.11(c) and NYSE Rule Interpretation 345.11/02 (Form U4 recordkeeping obligations);
- NYSE Rules 345.12, 345.13, 345.17 and 345.18 and NYSE Rule Interpretations 345.12/01 and 345.18/01 (Forms U4 and U5 filing requirements);
- NYSE Rule 345.15(1)(a) (examination requirement);
- NYSE Rule 345.15(1)(b) and NYSE Rule Interpretation 345.15/01 (examination waivers);
- NYSE Rule Interpretation 345(a)/02 (independent contractor status);
- NYSE Rule Interpretation 345(a)/03 (status of persons serving in the Armed Forces);
- NYSE Rule Interpretation 345(b) (provisions regarding officers);²⁹ and
- NYSE Rule 345.16 (requirement to provide information regarding employees).

Endnotes

- 1 The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA member firms, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The FINRA Rules apply to all FINRA member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice 03/12/08* (Rulebook Consolidation Process).
- 2 FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See *Notice to Members (NTM) 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
- 3 Section 19 of the Securities Exchange Act of 1934 (Exchange Act or SEA) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and rules thereunder.
- 4 For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.
- 5 The proposal contains several provisions that require notification to FINRA. FINRA will advise members through a *Regulatory Notice* of the manner of the required notifications.
- 6 Some of these provisions are subject to pending proposals related to the rulebook consolidation process.
- 7 For purposes of the proposed rule, the assigned registered supervisor will only be responsible for supervising such person's activities to ensure that such person is not engaged in any activities that will require registration and is complying with the provisions applicable to such person based on his or her status as a (permissively) registered person.
- 8 See SR-FINRA-2007-004.
- 9 Persons who are currently registered pursuant to this permissive category, to the extent that they seek to maintain such registrations, will have to be appropriately registered in accordance with the proposed rule. Additionally, FINRA is proposing to delete NYSE Rule 321.15 (which requires the registration of certain employees of a foreign subsidiary). Thus, persons who are currently registered pursuant to NYSE Rule 321.15, to the extent that they seek to maintain such registrations, will also have to be appropriately registered in accordance with the proposed rule.
- 10 See *supra* note 6.
- 11 For purposes of the proposed rule, the assigned registered supervisor will only be responsible for supervising such person's activities to ensure that such person is: (1) in fact engaged in the business of the member's financial services industry affiliate; (2) not engaged in any activities that will require registration or make such person eligible for inactive registration by engaging in a bona fide business purpose of the member; and (3) complying with the provisions applicable to such person based on his or her status as a Retained Associate.

© 2009 FINRA. All rights reserved. FINRA and other trademarks of the Financial Industry Regulatory Authority, Inc. may not be used without permission. *Regulatory Notices* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

Endnotes continued

- 12 In 2005, the NYSE filed a proposal, SR-NYSE-2005-59, with the SEC to permit a member to maintain the registration (as a retained associate) of a person employed by a financial services industry affiliate of the member. The NYSE proposal has not been published for comment in the *Federal Register*.
- 13 See *NTM 99-49* (June 1999).
- 14 The proposed consolidated registration rules provide similar clarifications regarding these prerequisite categories in the context of other registration categories (with the exception of the General Securities Sales Supervisor category, which requires the General Securities Representative prerequisite).
- 15 A person may qualify to function as principal or representative based on a combination of registrations and examinations. For instance, a person who is registered as a General Securities Sales Supervisor and passes the General Securities Principal Sales Supervisor Module (Series 23) examination also satisfies the General Securities Principal examination requirement. See *NTM 03-37* (July 2003).
- 16 See *NTMs 04-81* (November 2004) and *07-04* (January 2007).
- 17 The NYSE Compliance Official requirement (NYSE Rule 342.13(b) and NYSE Rule Interpretation 342(a)(b)/02) is proposed to be deleted as part of the proposed changes to the supervision rules. See *Regulatory Notice 08-24* (May 2008).
- 18 See *NTM 04-81*.
- 19 See *NTM 89-78* (December 1989).
- 20 FINRA will address NASD Rule 1090 (Foreign Members), which relates to members that do not maintain an office in the United States responsible for preparing and keeping financial and other required reports, as part of a separate phase of the rulebook consolidation.
- 21 See *Regulatory Notice 09-41* (July 2009).
- 22 See *id.*
- 23 FINRA will address the foreign finder provision (current NASD Rule 1060(b)), the corresponding NYSE provision (NYSE Rule Interpretation 345(a)(i)/03) and NYSE Rule Interpretations 345(a)(i)/01 and /02 (relating to compensation paid to non-registered persons and compensation paid for advisory solicitations) as part of a separate phase of the rulebook consolidation. See *Regulatory Notice 09-69* (December 2009).
- 24 See *NTM 00-50* (August 2000).
- 25 See *NTM 87-47* (July 1987).
- 26 The NYSE registration requirements for certain supervisors (NYSE Rules 342(d) and .13(a) and NYSE Rule Interpretation 342.13/01) are proposed to be deleted as part of the proposed changes to the supervision rules. See *Regulatory Notice 08-24*. Supervisors registered as General Securities Principals or General Securities Sales Supervisors will not lose these registrations since these categories will be maintained as part of the FINRA registration rules. Supervisors registered solely by having passed the General Module (Series 10) of the General Securities Sales Supervisor examination (or the historical equivalent to the Series 10) will lose these stand-alone registrations. However, FINRA will consider upon request the Series 10 registration, among other considerations, in determining whether to grant such persons a waiver of a principal examination.

Endnotes continued

- 27 FINRA believes that the definition of the term “representative” in current NASD Rule 1031(b) is more consistent with the functions customarily performed by a registered representative.
- 28 FINRA also is proposing to delete the NYSE registration requirements relating to commodities solicitors (NYSE Rule 345.15(5)) and floor members and floor clerks (NYSE Rule Interpretation 345.15/02) as these activities are not within the scope of the proposed registration rules.
- 29 This is a conforming change. The corresponding NYSE Rule, NYSE Rule 345(b), was deleted as part of a prior rule change. See Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (Order Approving SR-FINRA-2008-036).

Attachment A

Comparison of Current Rules Regarding Registration and Qualification Requirements

The table below explains the similarities and differences between current NASD and NYSE rules regarding registration and qualification requirements. FINRA proposes to transfer the NASD rules into the Consolidated FINRA Rulebook with certain changes that take into account requirements under the NYSE rules. FINRA urges member firms to carefully review the entire proposed rule text in Attachment B at www.finra.org/notices/09-70 to understand the full extent of the proposed changes.

Similar Requirements	
Description	Applicable FINRA/NASD/NYSE Provisions
General Registration/Qualification Requirements	
FINRA By-Laws and NASD and NYSE Rules require that members file Forms U4 and U5, including any amendments, and that such filings be made through the Central Registration Depository.	Article V, Sections 2 and 3, of the FINRA By-Laws FINRA Rule 1010 NYSE Rule 345.12, .13, .17 and .18 NYSE Rule Interpretation 345.12/01 and .18/01
NASD and NYSE Rules remind members of their Form U4 recordkeeping obligations under the Exchange Act.	FINRA Rule 1010 NYSE Rule 345.11(c) NYSE Rule Interpretation 345.11/02
NASD and NYSE Rules require members to investigate the background of prospective personnel.	NASD Rule 3010(e) <i>Regulatory Notice 07-55</i> NYSE Rule 345.11(a) NYSE Rule Interpretation 345.11/01
NASD and NYSE Rules require an applicant for registration to provide, upon a member's request, a copy of his or her Form U5.	NASD Rule 3010(f) ¹ NYSE Rule 345.11(b)
NASD and NYSE Rules set forth provisions regarding the status of registered persons serving in the Armed Forces of the United States.	NASD IM-1000-2(a) and (b) NYSE Rule Interpretation 345(a)/03
NASD and NYSE Rules set forth a general requirement that persons pass an appropriate qualification examination (including any applicable prerequisites) before their registration can become effective.	NASD Rules 1021(a) and 1031(a) NYSE Rule 345.15(1)(a)
NASD and NYSE Rules provide that if a person does not register with a member within two years of his or her last registration, his or her qualification will lapse and the person must then re-test as applicable to function in a registered category.	NASD Rules 1021(c), 1031(c) and 1041(c) NYSE Rule Interpretation 345A(a)/04

Similar Requirements	
Description	Applicable FINRA/NASD/NYSE Provisions
NASD and NYSE Rules provide an exemption from registration for associated persons whose functions are solely and exclusively clerical or ministerial.	NASD Rule 1060(A)(1) <i>NTM 87-47</i> NYSE Rule Interpretations 10/01 and 345(a)/01
NASD and NYSE Rules set forth provisions regarding waiver of the applicable qualification examinations.	NASD Rule 1070(d) NYSE Rules 342.13 and 345.15(1)(b) NYSE Rule Interpretations 344/01 and 345.15/01
NASD and NYSE Rules set forth waiting periods for retaking failed examinations.	NASD Rule 1070(e) <i>Information Memorandum 04-16</i>
NASD and NYSE Rules require that examinations be kept confidential.	NASD Rule 1080 <i>Information Memorandum 88-37</i>
FINRA and NYSE Rules require members to provide information regarding their employees.	FINRA Rule 8210 NYSE Rule 345.16
Requirements Applicable to Principals/Supervisors/Representatives	
NASD and NYSE Rules require that certain supervisory personnel have at least one year of direct experience or two years of related experience in the subject area that they supervise.	NASD Rule 1014(a)(10)(D) NYSE Rule 342.13(a)
NASD and NYSE Rules require that members engaged in options transactions with the public have an associated person registered and qualified as a Registered Options Principal.	NASD Rules 1021(e)(3) and 1022(f) NYSE Rule 720 ²
NASD and NYSE Rules set forth specific registration and qualification requirements for associated persons engaged in security futures activities.	NASD Rules 1022(f)(5), 1022(g)(3), 1032(a)(2)(A) and 1032(d)(4) NYSE Rule Interpretation 345A(b)(2)(i)/02 <i>Information Memorandum 03-43</i>
NASD and NYSE Rules require that a representative register and qualify as a General Securities Representative. Alternatively, if the representative does not engage in municipal securities activities, NASD and NYSE Rules permit the representative to register and qualify as a United Kingdom Limited Securities Representative or Canada Limited Securities Representative.	NASD Rules 1031(a) and 1032(a) NYSE Rule 345.10 and .15(2) NYSE Rule Interpretation 345.15/02 <i>Information Memoranda 91-09 and 96-06</i>

Similar Requirements	
Description	Applicable FINRA/NASD/NYSE Provisions
NASD and NYSE Rules provide that a representative is not required to register as a General Securities Representative if the person's activities are so limited as to qualify such person for one or more of the limited categories of representative registration, including an Investment Company and Variable Contracts Products Representative or a Direct Participation Programs Representative.	NASD Rule 1032(a)(1), (b) and (c) NYSE Rule 345.15(3) NYSE Rule Interpretation 345.15/02
NASD and NYSE Rules require that an associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report be registered and qualified as a Research Analyst.	NASD Rule 1050 NYSE Rule 344, .10 and .12 NYSE Rule Interpretation 344/01 and /02
NASD and NYSE Rules require that an associated person designated as a Proctor for the purposes of in-firm delivery of the Regulatory Element be registered as a Proctor. Proctors are not subject to a qualification examination. Associated persons who are registered in other registration categories may be designated as Proctors without having to register as such.	NASD Rules 1120(a)(6)(E) and 1043 NYSE Rule Interpretation 345A(a)/03E <i>Information Memorandum 02-49</i>

Differing Requirements	
Description	Applicable FINRA/NASD/NYSE Provisions
General Registration/Qualification Requirements	
NASD Rules set forth provisions regarding the deferment of the lapse of registration requirements in NASD Rules 1021(c), 1031(c), and 1041(c) for formerly registered persons serving in the Armed Forces of the United States.	NASD IM-1000-2(c)
NASD Rules include a provision regarding the disciplinary implications of failing to register a representative.	NASD IM-1000-3

Differing Requirements	
Description	Applicable FINRA/ NASD/NYSE Provisions
<p>NASD Rules prohibit a member from maintaining a principal or representative registration with FINRA for any person who is no longer active in the member's investment banking or securities business, who is no longer functioning as a principal or representative as defined under the rules, or where the sole purpose is to avoid the re-testing requirement applicable to persons whose registration in such categories has lapsed for more than two years. These rules also prohibit a member from making application for the registration of a person as principal or representative where the member does not intend to employ the person in its investment banking or securities business.</p> <p>However, the rules permit a member to maintain, or make application for, the registration as a principal or representative of a person who performs legal, compliance, internal audit, back-office operations (e.g., cashiering, accounting, settling, and the record keeping of customers' cash or margin accounts) or similar responsibilities for the member. In addition, the rules permit a member to maintain, or make application for, the registration as a principal or representative of a person who is engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.</p>	NASD Rules 1021(a) and 1031(a)
<p>NYSE Rules require that certain persons apply to the NYSE for Approved Person status.³ Natural persons applying for Approved Person status are required to submit a Form U4 and register as an Approved Person. Approved Persons are not subject to a qualification examination.</p>	NYSE Rules 2(c) and 304(e) ⁴ <i>Information Memorandum 00-21</i>
<p>NYSE Rules provide that an independent contractor is deemed an employee of a member for purposes of the NYSE Rules and require that the member comply with certain requirements when entering into an arrangement with any person asserting independent contractor status, including a requirement that the independent contractor execute a "consent to jurisdiction" form.⁵</p>	NYSE Rule Interpretation 345(a)/02
<p>NASD Rules provide that the following associated persons are not required to be registered: (1) associated persons who are not actively engaged in the investment banking or securities business; (2) associated persons whose functions are related solely and exclusively to the member's need for nominal corporate officers or for capital participation; and (3) associated persons whose functions are related solely and exclusively to: effecting transactions on the floor of a national securities exchange and who are registered as floor members with such exchange, transactions in municipal securities, transactions in commodities or transactions in security futures (provided that any such person is registered with a registered futures association).</p>	NASD Rule 1060(a)
<p>NASD Rules provide general information relating to the examination process.</p>	NASD Rule 1070(a), (b) and (c)

Differing Requirements	
Description	Applicable FINRA/ NASD/NYSE Provisions
Requirements Applicable to Principals/Supervisors/Representatives	
NYSE Rules require that an employee of a non-U.S. registered foreign subsidiary whose duties (involving the purchase or sale of U.S. securities) correspond to those of a registered representative file a Form U4 and be approved by the NYSE as a registered representative of the parent member.	NYSE Rule 321.15 <i>Information Memorandum</i> 93-54
NASD Rules require that a principal register and qualify as a General Securities Principal. ⁶ The term “principal” includes sole proprietors, officers, partners, managers of offices of supervisory jurisdiction and directors who are actively engaged in the management of the member’s investment banking or securities business, such as supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions. An associated person registered solely as a General Securities Principal is not qualified to function as a Financial and Operations Principal; Introducing Broker-Dealer Financial and Operations Principal; Registered Options Principal; General Securities Sales Supervisor; Municipal Securities Principal; or Municipal Fund Securities Limited Principal, unless the General Securities Principal is also registered and qualified in these other categories.	NASD Rules 1021(a), 1021(b) and 1022(a) <i>NTM 99-49</i>
NASD Rules provide that a principal is not required to register as a General Securities Principal if the person’s activities are so limited as to qualify such person for one or more of the limited categories of principal registration, including a Financial and Operations Principal, an Introducing Broker-Dealer Financial and Operations Principal, a Registered Options Principal, an Investment Company and Variable Contracts Products Principal, a Direct Participation Programs Principal, General Securities Sales Supervisor or Government Securities Principal.	NASD Rule 1022(a) through (h) NASD IM-1022-2
NYSE Rules require that persons designated by a member to be in charge of any office of the member, any regional or other group of offices, or any sales department or activity pass the General Securities Sales Supervisor examination. The General Securities Principal examination and the General Module (Series 10) of the General Securities Sales Supervisor examination are acceptable alternative examinations to the General Securities Sales Supervisor examination. However, persons that pass these alternative examinations cannot supervise options or municipal securities activities.	NYSE Rule 342(d) and .13(a) NYSE Rule Interpretation 342.13/01
NYSE Rules require that “principal executives” be appropriately qualified to perform their assigned functions.	NYSE Rule 311.17 NYSE Rule Interpretation 311(b)(5)/01

Differing Requirements	
Description	Applicable FINRA/ NASD/NYSE Provisions
NASD Rules require that a member's Chief Compliance Officer (CCO) designated on Schedule A of the member's Form BD be registered as a General Securities Principal. If the member's activities are limited to investment company and variable contracts products, direct participation programs or government securities, the member's CCO may instead be registered as an Investment Company and Variable Contracts Principal, Direct Participation Programs Principal or Government Securities Principal, respectively. In addition, for purposes of the CCO requirement for Dual Members, FINRA recognizes the Compliance Official examination as an acceptable alternative to the principal examination requirements for General Securities Principal, Investment Company and Variable Contracts Principal and Direct Participation Programs Principal, as applicable. The NASD Rules also include a grandfathering provision for certain CCOs.	NASD Rule 1022(a)(1) FINRA Rule 3130(a) <i>NTM 01-51</i>
<p>NYSE Rules require that Compliance Officials, the person (or persons) designated by a member to direct day-to-day compliance activity (such as the CCO) and each other person designated by the member to directly supervise ten or more persons engaged in compliance activity, pass the Compliance Official qualification examination.</p> <p>If a member's commissions and other fees from its public business (retail and institutional) are under \$500,000 in the preceding calendar year and it introduces to another broker-dealer, the member's Compliance Officials are exempt from the Compliance Official qualification examination requirement. Compliance Officials that supervise ten or more persons whose compliance responsibilities are limited to the registration of individuals with regulatory bodies are also exempt from the Compliance Official qualification examination requirement.</p> <p>If a member is conducting a specialist business in addition to a public business, the member's Compliance Officials are also required to pass the Compliance Official for Specialist Firm qualification examination. However, if a member's activities are limited to the execution of orders on the NYSE floor and it does not conduct any public business, the member's Compliance Officials are subject only to the Compliance Official for Specialist Firm qualification examination requirement.</p>	NYSE Rule 342.13(b) NYSE Rule Interpretation 342(a)(b)/02
NASD Rules require that a General Securities Principal who is responsible for supervising investment banking activities as described in NASD Rule 1032(i) also be registered as an Investment Banking Representative.	NASD Rule 1022(a)(1)

Differing Requirements	
Description	Applicable FINRA/ NASD/NYSE Provisions
NASD Rules require that a member's Research Principal, a principal who is responsible for supervising the overall conduct of a Research Analyst or Supervisory Analyst or who is responsible for approving research reports (other than a principal responsible for reviewing and approving third-party research reports, a principal assigned to supervise for compliance with only the disclosure provisions of NASD Rule 2711 or a Supervisory Analyst who is permitted to approve research reports), be registered as either a General Securities Principal and pass the Regulatory Administration and Best Practices (Series 87) portion of the Research Analyst examination or a General Securities Principal and pass the Supervisory Analyst examination.	NASD Rule 1022(a)(5) <i>NTMs 04-81 and 07-04</i>
NASD Rules permit a Supervisory Analyst to approve research reports. If a member elects to have a Supervisory Analyst approve research, then a Research Principal must supervise the overall conduct of the Supervisory Analyst and Research Analyst.	NASD Rules 1050(f)(3)(A), 2210(b)(1)(B) and 2711(h)(13)(C) <i>NTM 04-81</i>
NYSE Rules require that an individual who is responsible for approving research reports be registered and qualified as a Supervisory Analyst. Such person is required to present evidence of appropriate experience (which means having at least three years prior experience within the immediately preceding six years involving securities or financial analysis) and pass the Supervisory Analyst qualification examination. Rather than passing the entire Supervisory Analyst qualification examination, such person may obtain a waiver from the securities analysis portion (Part II) of the Supervisory Analyst qualification examination upon verification that the person has passed Level I of the Chartered Financial Analyst examination.	NYSE Rules 344, 344.11 and 472(a)(2) NYSE Rule Interpretation 344/03 and /04
NASD Rules require that a principal who is responsible for the financial and operational management of a member that has a minimum net capital requirement of \$250,000 under SEA Rules 15c3-1(a)(1)(ii) and 15c3-1(a)(2)(i), or a member that has a minimum net capital requirement of \$150,000 under SEA Rule 15c3-1(a)(8), be designated, registered and qualified as a Financial and Operations Principal. Such members also are required to designate a Chief Financial Officer (CFO) who is required to be registered and qualified as a Financial and Operations Principal. In addition, NASD Rules require that a principal who is responsible for the financial and operational management of a member that is subject to the net capital requirements of SEA Rule 15c3-1, other than a member that is subject to the net capital requirements of SEA Rules 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), be designated, registered and qualified as a Financial and Operations Principal or an Introducing Broker-Dealer Financial and Operations Principal. Such members also are required to designate a CFO who is required to be registered and qualified as a Financial and Operations Principal or an Introducing Broker-Dealer Financial and Operations Principal.	NASD Rules 1021(e)(3), 1022(b) and (c)

Differing Requirements	
Description	Applicable FINRA/ NASD/NYSE Provisions
<p>NYSE Rules require that members designate a CFO and a Chief Operations Officers (COO) and that the CFO and the COO be registered and qualified as a Financial and Operations Principal if the member is a clearing firm or as either a Financial and Operations Principal or an Introducing Broker-Dealer Financial and Operations Principal if the member is an introducing firm.</p> <p>If the member is an introducing firm, the same person may be designated as both the CFO and COO.</p>	NYSE Rule Interpretation 311(b)(5)/02 and /03
NASD Rules require that a principal engaged in government securities activities be registered as a Government Securities Principal. Such persons are not subject to a principal qualification examination. The rules include a grandfathering provision for certain principals.	NASD Rule 1022(h)
<p>NASD Rules provide that a person who is currently registered with a member as a representative and whose duties are changed by the member so as to require registration as a principal may function as a principal for up to 90 calendar days before he or she is required to pass the appropriate qualification examination for principal.</p> <p>In addition, NASD Rules provide that a person who is not registered with a member as a representative and who is required to register as a principal may function as a principal for up to 90 calendar days after first satisfying all applicable prerequisite requirements before he or she is required to pass the appropriate qualification examination for principal.</p>	NASD Rule 1021(d)
NASD Rules require that a member, except a sole proprietorship, have a minimum of two registered principals with respect to each aspect of the member's investment banking and securities business. In situations that indicate conclusively that only one registered principal should be required, FINRA may waive the two-principal requirement pursuant to the Rule 9600 Series and permit such member to have only one registered principal.	NASD Rule 1021(e)(1) and (2)
NYSE Rules require that a member carrying customer accounts have at least two general partners who are natural persons actively engaged in the member's business. ⁷	NYSE Rule Interpretation 311(g)/01
NASD Rules require that members that have one Registered Options Principal promptly notify FINRA and agree to certain conditions if such person is terminated, resigns, becomes incapacitated or is otherwise unable to perform his or her duties.	NASD IM-1022-1

Differing Requirements	
Description	Applicable FINRA/ NASD/NYSE Provisions
NASD Rules define the term “representative” as an associated person, including assistant officer other than a principal, who is engaged in the investment banking or securities business for the member, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a member for any of these functions.	NASD Rule 1031(b)
NYSE Rules define the term “registered representative” as an employee engaged in the solicitation or handling of accounts or orders for the purchase or sale of securities, or other similar instruments for the accounts of customers of his or her employer or in the solicitation or handling of business in connection with investment advisory or investment management services furnished on a fee basis by his or her employer.	NYSE Rule 10
NASD Rules provide that a representative is not required to register as a General Securities Representative if the person’s activities are so limited as to qualify such person for one or more of the limited categories of representative registration, including an Options Representative, a Corporate Securities Representative, Government Securities Representative or Private Securities Offerings Representative.	NASD Rule 1032(a)(1), (d), (e), (g) and (h)
Subject to certain exceptions, NASD Rules require that each representative who, with respect to transactions in equity, preferred or convertible debt securities effected otherwise than on a securities exchange, is engaged in proprietary trading, the execution of transactions on an agency basis or the direct supervision of such activities be registered as an Equity Trader.	NASD Rule 1032(f)
NASD Rules provide that associated persons engaged in investment banking activities are required to be registered as Investment Banking Representatives.	NASD Rule 1032(i)
NASD Rules provide that a person associated with a member is not required to register as a General Securities Representative or in one or more of the limited categories of representative registration if the person’s activities are so limited as to qualify such person for registration as an Order Processing Assistant Representative. An Order Processing Assistant Representative is an associated person whose only function is to accept unsolicited customer orders (other than orders for municipal securities and direct participation programs) for submission for execution by the member. Order Processing Assistant Representatives are subject to certain restrictions regarding their activities and compensation and are subject to certain supervisory requirements. In addition, they may not be registered concurrently in any other capacity.	NASD Rules 1041 and 1042 <i>NTM 89-78</i>

Differing Requirements	
Description	Applicable FINRA/ NASD/NYSE Provisions
<p>NASD Rules provide that associated persons (who are to function as representatives for the member) that meet the “Foreign Associate” criteria are exempt from the requirement to pass a qualification examination. To qualify for the Foreign Associate registration category, an associated person must meet the following criteria: (1) cannot be a citizen, national, or resident of the U.S. or any of its territories or possessions; (2) must conduct all of his or her securities activities in areas outside the jurisdiction of the U.S.; and (3) cannot engage in any securities activities with or for any citizen, national or resident of the U.S.</p> <p>A Foreign Associate may act in any registered representative capacity on behalf of the member, including acting as a trader or the registered person responsible for servicing the accounts of a foreign national.</p> <p>To designate an associated person as a Foreign Associate, a member must: (1) file a Form U4 with FINRA and certify that the person meets the criteria for a Foreign Associate; (2) attest that the person is not disqualified from registration; and (3) certify that service of process for any proceeding by FINRA for such person may be sent to an address designated by the member. If the Foreign Associate is terminated, the member must notify FINRA immediately (by filing a Form U5). Foreign Associates are not subject to continuing education requirements.</p>	<p>NASD Rule 1100 NTM 95-37</p>
<p>NYSE rules require that a securities lending representative (any person who has discretion to commit his or her employer member to any contract or agreement (written or oral) involving securities lending or borrowing activities with any other person) and the direct supervisor of a securities lending representative be registered by filing a Form U4 and sign an agreement (representing a form of code of ethics) as an addendum to the Form U4. The rules also require that such persons complete the regulatory element of the continuing education requirements. However, such persons are not required to pass a qualification examination.</p>	<p>NYSE Rule 345(a) and .10 NYSE Rule Interpretations 345.15/02 and 345A(a)/02</p>
<p>NYSE Rules require that a “Registered Options Representative,” a representative who transacts business with the public in option contracts, pass the General Securities Representative qualification examination.</p>	<p>NYSE Rules 345.10, 345.15(4) and 700(b)(49)⁸ NYSE Rule Interpretation 345.15/02</p>
<p>NYSE Rules require that commodities solicitors, individuals who are engaged in the solicitation or handling of business in, or the sale of, commodities futures contracts, satisfy a solicitor’s examination requirement (acceptable to the NYSE) of a national commodities exchange.</p>	<p>NYSE Rule 345.15(5)</p>

Differing Requirements	
Description	Applicable FINRA/ NASD/NYSE Provisions
NYSE Rules permit floor members and floor clerks who conduct a public business limited to accepting orders directly from “professional customers” for execution on the NYSE floor to pass the Series 7A qualification examination instead of the General Securities Representative qualification examination. The Floor Member qualification examination and the Trading Assistant qualification examination are prerequisites for the Series 7A qualification examination for such floor members and floor clerks, respectively.	NYSE Rule Interpretation 345.15/02
NYSE Rules require that: (1) individuals who work as Front Line Specialist Clerks on the NYSE floor pass the Front Line Specialist Clerk qualification examination; (2) individuals who effect transactions on the NYSE floor pass the Floor Member qualification examination; (3) individuals who work as Trading Assistants on the NYSE floor pass the Trading Assistant qualification examination; and (4) other individuals who work as Floor Employees register as such (however, they are not subject to a qualification examination). Such persons also are subject to certain training requirements. NYSE Rules require that associated persons who conduct a public business (with other than “professional customers” on the NYSE floor) also pass the General Securities Representative qualification examination.	NYSE Rules 35 and 304A(a) NYSE Rule Interpretation 35 ⁹ <i>Information Memorandum</i> 06-36

Endnotes – Attachment A

1. NASD Rule 3010(f) is proposed to be deleted as part of the proposed changes to the supervision rules. *See Regulatory Notice 08-24* (May 2008).
2. NYSE Rule 720 was deleted as part of the changes to the FINRA options rules, which took effect on February 17, 2009. *See Exchange Act Release No. 58932* (November 12, 2008), 73 FR 69696 (November 19, 2008) (Order Approving SR-FINRA-2008-032).
3. An Approved Person is a person who either controls a member or is engaged in a securities or kindred business and is controlled by or under common control with a member.
4. NYSE Rule 304(e) was not incorporated into the FINRA rulebook.
5. The status of independent contractors as associated persons of a member under FINRA and NASD Rules is well settled. *See, e.g.*, Letter from Douglas Scarff, Director, Division of Market Regulation, SEC, to Gordon S. Macklin, President, NASD (June 18, 1992).
6. A person may qualify to function as principal or representative based on a combination of registrations and examinations. For instance, a person who is registered as a General Securities Sales Supervisor and passes the General Securities Principal Sales Supervisor Module (Series 23) examination also satisfies the General Securities Principal examination requirement. *See NTM 03-37* (July 2003).
7. NYSE Rule 311(h), which included a similar provision, was deleted as part of a prior rule change. *See Exchange Act Release No. 58533* (September 12, 2008), 73 FR 54652 (September 22, 2008) (Order Approving SR-FINRA-2008-036).
8. NYSE Rule 700(b)(49) was deleted as part of the changes to the FINRA options rules, which took effect on February 17, 2009. *See Exchange Act Release No. 58932* (November 12, 2008), 73 FR 69696 (November 19, 2008) (Order Approving SR-FINRA-2008-032).
9. NYSE Rules 35 and 304A(a) and NYSE Rule Interpretation 35 were not incorporated into the FINRA rulebook.