

FINRA PROPOSES A LIMITED REGISTRATION CATEGORY FOR INVESTMENT BANKING PROFESSIONALS

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On March 2, 2009, the Securities and Exchange Commission (SEC) published for notice and comment amendments to a rule change proposed by the Financial Industry Regulatory Authority (FINRA) that would allow investment banking professionals to advise on and facilitate, among other things, private placement offerings and mergers and acquisitions without having to pass the General Securities Representative (Series 7) exam. FINRA's proposal can be viewed at www.sec.gov/rules/sro/finra/2009/34-59484.pdf.

If approved by the SEC as proposed, the new Rule 1032(i) would create a new category of professional for FINRA-member firms called a "Limited Representative-Investment Banking." Individuals whose activities are limited to investment banking would be required to pass a newly created qualification exam in lieu of the Series 7 exam and associate with a FINRA-member firm in the limited capacity of an investment banking representative. FINRA is currently developing this qualification exam, which will target the responsibilities of, and services provided by, investment banking professionals.

Importantly, the new Rule and the new category of representative would not apply to private placement finders and consultants "whose investment banking work is limited to effecting private securities offerings." Rule 1032(h) covers these individuals by establishing the "Limited Representative-Private Securities Offerings" category. This category is available for individuals who have passed the Series 82 exam and whose work is limited to effecting sales in private securities offerings. However, the new Rule would provide a new licensing procedure for private placement finders whose work also includes public offerings and/or mergers and acquisitions.

In its proposal, FINRA acknowledges that the Series 7 exam is largely irrelevant to investment banking activities because it is designed for retail salespersons. Topics such as margin rules and options trading are not relevant to investment banking activities because investment banking professionals do not have retail customers. The new Limited Representative-investment Banking exam would focus on advising businesses on capital raising transactions and mergers and acquisitions.

As proposed, Rule 1032(i) would cover persons engaged in the following transactions:

- (1) debt or equity securities offerings through a private placement or a public offering, including but not limited to origination, underwriting, marketing, structuring, syndication, and pricing of such securities and managing the allocation and stabilization activities of such offerings, or
- (2) mergers and acquisitions, tender offers, financial restructurings, asset sales, divestitures or other corporate reorganizations or business combination transactions, including but not limited to rendering a fairness, solvency or similar opinion.



The Rule would “grandfather” current Registered Representatives from having to take the new exam. If those individuals are engaged in investment banking activities on the date the Rule becomes effective, they can register for the newly created category within six (6) months of the effective date of the Rule. The Rule would also require a firm’s investment banking supervisor, who currently is required to pass only the Series 24 exam, to also either pass the new exam or register as an investment banking representative under the grandfather provision, if applicable.

If approved by the SEC, the Rule will be implemented 90 days after the effective date of a FINRA rule change establishing the new investment banking exam. The SEC is accepting comments on the proposed Rule until March 31, 2009. Interested persons may submit comments through the SEC’s Internet comment form located at <http://www.sec.gov/rules/sro.shtml>.

If you would like more information on this or other legal issues, please contact John Cleary at 619.515.3221 or your regular Procopio attorney.