

DRAFT

“Operations Plus” Professional Registration

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Background

- 1. Given the growing complexity of the financial services industry and the importance of services provided by the so-called “back-office” personnel, the SEC has expressed concern about the potential for regulatory gaps in the area of licensing and education requirements for those performing operational functions.**
- 2. Historically, registration requirements under federal and state law and self-regulatory organization rules have applied to, among others, those individuals with customer contact providing advice (sales persons and investment bankers), those effecting securities transactions (traders) and their supervisors and others who perform critical functions within the firm.**
- 3. SEC asked FINRA to review operational functions that also play an important role in the business of a broker-dealer and have a meaningful touch on clients’ funds, accounts or transactions, with a focus toward possibly enhancing regulation in that area of registration.**

Identify Appropriate Operations Functions

- **Areas historically associated with back-office or operations also include technology and finance. To ensure that the appropriate areas and functions are being considered for possible licensing and education requirements, FINRA is soliciting input from:**
 - **Broker-Dealers**
 - **Industry Groups**
 - **Public**

Please note: going forward this document refers to the “Operations Professional” and is intended to refer to all individuals that will be subject to this registration.

Identify Appropriate Operations Registration Criteria

- **FINRA has developed a proposed set of principles, distilled from historical trends, that it believes should drive the process for identifying the breadth and depth of registration. We are soliciting feedback from broker-dealers and industry groups to determine:**
 - Whether the proposed set of principles captures the correct scope
 - How to address situations whereby particular functions, for which registration requirements are being contemplated, might be outsourced to other regulated or non-regulated entities
 - To what levels the registration requirements should be extended
 - If new exams should be developed (e.g., covering overall general securities business) or if existing exams or modified versions of them (e.g., Series 7, 24, 27, etc.) will suffice

Existing Set of Principles

The principles driving NASD Rules 1021 and 1031 are that those engaged in or supervising the securities or investment banking business of a member firm be qualified and registered persons. These existing rules generally apply to:

Supervision of the firm's securities and investment banking business

- Executive Management (including CEO, COO, CCO and CFO)
- Business or Line Supervisors

Sales

- Brokers who solicit and service customer accounts and/or provide investment advice
- Those who prepare and approve for publication advertising and research reports

Trading

- Securities Traders who buy and sell securities for the account of their employer (authority to act and commit firm, contractually and/or monetarily)

Investment Banking

- Those who solicit and structure investment banking transactions for corporations and municipalities

Proposed Set of Principles

- **Expanded to include as qualified and registered persons certain individuals engaged in, or supervising, activities relating to sales and trading support, and handling of customer assets**
 - Sales and trading support
 - Pricing of securities
 - Order management, settlement and clearance, and securities lending/borrowing
 - Defining the requirements for, or supervising the development of, systems designed for trading, pricing securities, allocating assets or otherwise directly impacting a customer's account or the firm's overall proprietary trading activity
 - Control over cash or securities of a member and its customers and control over the accuracy and integrity of the books and records of a member
 - Control over compliance with SEA Rules 15c3-1 and 15c3-3
 - Handling or transferring of securities/cash (including into special reserve banks or between depositories)
 - Posting entries to the regulatory and financial books and records of the firm

Functions for Possible Inclusion in “Operations Plus” Registration

- Development and approval of pricing models used for valuations
- Trade confirmation, account statements, settlement, margin
- Stock loan/securities lending
- Prime brokerage (services to other broker-dealers and financial institutions)
- Client On-Boarding (customer account data and document maintenance)
- Capturing of business requirements for sales and trading systems and validation that the system meets the business requirements
- Defining and approving business requirements and policy for information security and IT security
- Defining information entitlements policy in connection with the covered functions
- Financial Controller (including general ledger)
- Collection, maintenance, re-investment (*i.e.*, sweeps) and disbursement of funds
- Bank, custody, depository and firm account management and reconciliation function
- Segregation, possession and control, fail control, buy ins
- Receipt and delivery of securities and funds; account transfers
- Financial regulatory reporting
- Posting entries to the books and records of a firm in connection with the covered functions

Depth or Level of Staff

- **“Operations Plus” Professionals subject to the qualification and registrations will be those who serve in an oversight or quality control function. These individuals will include:**
 - Senior Managers who manage or oversee the staff performing covered functions
 - Supervisors, managers or other persons responsible for approving or authorizing the work of other personnel in the covered functions
- **If the number of Operations Plus personnel is such that less than five employees would be licensed, then the firm should strongly consider requiring the registration of additional personnel.**
- **Grandfathering of individuals into the new registration that currently hold certain registrations (exact list of registrations/exams to be determined).**

Elements of the Qualification Examination and Continuing Education Programs

- Given the diversity of functions for possible inclusion with the qualification and registration of Operations Professionals, the general consensus was to develop a single qualifying exam with a regulatory focus.
- Develop a Regulatory Element of Continuing Education Program unique for Operations Professionals.
- Amend existing continuing education rule (NASD Rule 1120(b)) to require firms to deliver Firm Element training to those Operations Professionals subject to the new qualification and registration requirements.

Qualification Examination

Examination Overview

- The qualification examination for Operations Professionals performing critical custody, accounting, and account maintenance functions will be developed to address issues associated with the protection of customer and firm accounts. For those who are subject to the registration requirement, the proposed new examination will provide reasonable assurance that the Operations Professional is able to understand his or her professional responsibilities, including key regulatory and control themes, as well as identifying and escalating red flags that may harm the customer, the member firm, another member firm, the integrity of the marketplace or the public in general. The breadth and depth of coverage will be determined through the use of testing industry standards used to develop examinations and will include input and advice from Operations Professionals active in the securities industry.

What is the expected content of the proposed exam?

- The proposed exam will cover:
 - A broad understanding of a broker-dealer's business at a basic level.
 - A basic understanding of the operations functions that support a broker-dealer's business.
 - Regulations designed to achieve investor protection and market integrity that drive the operational processes and procedures conducted at a broker-dealer.

Continuing Education – Regulatory Element

- The Regulatory Element Program for Operations Professionals would be required for those not previously registered and who fall under the new Operations Professional registration category.
- The goal for the new Regulatory Element Program:
 - Provide education for Operations Professionals to maintain and improve understanding of the regulatory and ethical aspects associated with their functions.
 - Provide education in identifying suspicious activities and/or red flags that could harm member firms, customers, other firms, issuers of securities, or the integrity of the marketplace.
 - Provide educational opportunities in specific functional areas that would be self-selected by the Operations Professionals during their CE sessions.
 - Provide education that assists the Operations Professionals in keeping up with changes in the industry and regulations that impact their work since taking the qualification examination.

Continuing Education – Regulatory Element

- What will the content of the proposed Regulatory Element Program cover?
 - Broad understanding and knowledge of a broker-dealer's business at a basic level.
 - Basic understanding of the operations functions that support a broker-dealer's business.
 - Basic understanding of industry regulations designed to achieve investor protection and market integrity that drive the operational processes and procedures that are conducted at a broker-dealer.
- The breadth and depth of coverage in each module would be determined through the use of continuing education industry standards used to develop content and would include input and advice from Operations Professionals active in the securities industry.
- Participants would be required to complete scenario-based cases from modules organized into three major content themes that follow the structure of the qualification exam.

Continuing Education – Firm Element

- **Operations Professionals subject to the new registration category would be required to participate in Firm Element training.**
- **There would be an expectation that the language of NASD Rule 1120 would need to be amended to encompass the Operations Professionals covered under the new registration category.**