

FINRA Announces New Registration and Examination Requirements for Investment Bankers

In Regulatory Notice 09-41, FINRA announced new registration and examination requirements for investment bankers and principals supervising them, which become effective November 2, 2009. FINRA apparently created the new registration category in recognition of the special skills required of investment bankers and the lack of overlap of these skills with the subject matter of the Series 7 (general securities representative) examination.

The new registration (limited representative—investment banking) is required for personnel whose activities include:

1. Advising on or facilitating debt or equity securities offerings through a private placement or a public offering, including origination, underwriting, marketing, structuring, syndication, and pricing of such securities and managing the allocation and stabilization activities of such offerings; or
2. Advising on or facilitating 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 new registration category does not apply to representatives whose work is limited to public (municipal) finance offerings, direct participation programs, or private securities offerings (each of which is the subject of a separate limited registration category), or to retail or institutional sales and trading activities. Representatives and principals engaging in securities activity outside the investment banking area must take the appropriate qualifying exams to engage in those activities.

During a transition period from November 2, 2009 through May 3, 2010, currently registered representatives who have passed the Series 7 or a Series 7-equivalent exam can opt in to the new registration by simply amending their Form U-4, as long as they are engaged in investment banking activities and their firm's Form BD indicates that the firm engages in these activities. Principals supervising investment banking activity can opt in to the new registration on the same basis. After May 3, 2010, representatives who propose to engage in investment banking, and principals supervising investment bankers, will need to pass the new Series 79 exam or obtain a waiver.

During the transition period, new hires can choose to take either the Series 7 or the Series 79 exam. If a new hire passes the Series 7 exam, the opt-in procedure for the new investment banking registration will be available. After May 3, 2010, new investment bankers will need to pass the Series 79 exam or obtain a waiver.

Special rules apply to employees participating in a formal training program. During the first two years of an employee's participation in the program, the employee need not register as an investment banker during the first six months of investment banking activity.

The new rules will not have any effect on firms whose business is limited to private placements, as both the Series 7 and 82 (limited representative—private securities offerings) registrations continue to be sufficient for representatives engaged in this activity. We have also confirmed with FINRA that limited representatives—investment banking will be able to engage in the full range of private placement activity.

If you have any questions about Regulatory Notice 09-41, please contact your usual Ropes & Gray attorney.

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