



## **STATE LAW CONFLICTS WITH FINRA INVESTMENT BANKING REGISTRATION**

### **Impact on FINRA Member Firms**

While new NASD Rule 1032(i) (the “Rule”) is currently recognized by FINRA, a number of states have not yet amended statutes and rules which incorporate the new Series 79 limited registration into their regulatory framework. As a result, the impact for FINRA member firms engaged in investment banking activities is that new registrants and employees relying solely on the Series 79 qualifying exam for registration may face a delay in their actual registration effective date in some states.

### **Background on the Series 79**

FINRA has finally recognized the fundamental differences in job functions and services provided by retail securities firms and firms engaged exclusively in investment banking. Through this process, it became clear that much of the Series 7 exam content was not applicable to the investment banking business. As a result, FINRA adopted the Rule, which implemented the new Series 79 limited registration, and structured the exam to focus exclusively on investment banking activities.

The Series 79 registration allows registered persons engaged investment-banking activities on November 2, 2009, to opt in by May 3, 2010, without having to take the new qualifying exam. In the event a registered representative holding a Series 7 opted in, they would be both Series 7 and Series 79 qualified. Anyone who was not engaged in investment banking activities, or did not maintain a Series 7, 17, 37/38 and or a 62 registration would be required to take the Series 79 exam in order to qualify to engage in investment banking activities on behalf of a FINRA member firm.

### **State Law Conflicts**

However, recent actions by the Texas State Securities Board have made it clear that firms may need to be patient, as there could be delays with the registration process for persons that are not currently Series 7, 17, 37/38 and or 62 registration qualified. The conflict occurs because state securities statutes or

laws set forth the qualifying examinations that each such state recognizes in order to be registered, and not enough time has passed since the Rule was enacted for the new Series 79 registration requirements to be integrated into these state statutes and rules.

To address this conflict, The Texas State Securities Board (Board) proposed amendments to §115.1 to create a restricted registration category to correspond to the new Series 79 examination for investment banking registration. Like the Rule, a person seeking this type of restricted registration could pass the Series 79 registration, in lieu of the examination on general securities principles. The earliest the Texas rule could be adopted is April 25, 2010, but it is likely that it won't be approved prior May 3, 2010, the effective date of the Rule by FINRA.

### **Texas Notice**

In addition to the proposed rule changes, the Board issued the following notice on their website on March 15, 2010:

#### **Important Notice Regarding Series 79 Exam Candidates**

“According to FINRA Regulatory Notice 09-41, effective November 2, 2009, FINRA members whose activities are limited to investment banking must pass the new Limited Representative - Investment Banking Qualification Examination (Series 79 Exam).

Currently, the Texas State Securities Board does not recognize the Series 79 exam as a qualifying exam pursuant to Section 13.D of the Texas Securities Act. Be advised that qualifying exams for agent registration are outlined in §115.3(b) of the Rules and Regulations of the Texas State Securities Board (“Board Rules”).

FINRA members who schedule to take the Series 79 exam and apply for registration in Texas as an agent will be placed into a “pending” status. Such status will remain pending until compliance with §115.3(b) of the Board Rules is met. For your information, the Agency is currently seeking public comment on the Board’s recent proposal to adopt the Series 79.”

### **Action Items for Investment Banking Firms**

Because of the impact on the registration process for FINRA member investment banking firms, the following suggestions may be beneficial:

- If you have new registrants with Series 79 qualifying exams pending, consider confirming with your state(s) as to whether it currently recognizes the Series 79 limited registration.
- If the states do not recognize the limited registration at this time, assess the timeline for such states amending their statutes and or rules, and then deciding how to best handle the pending registration status for such persons. Keep in mind that until the applicant is both state and FINRA

approved, that applicant cannot participate in investment banking or securities activities.

- If you have not done so already, investment-banking firms should take immediate steps to make sure all of their registered investment banking staff have “opted in” with FINRA on or before May 3, 2010, so they do not have to take the new exam.

We hope you have found this information helpful. Should you have any additional questions or concerns, please feel free to contact Daniel E. LeGaye or Michael Schaps by e-mail or phone, at 281-367-2454, or consult with your legal counsel or third party consultant.

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