

Broker-Dealer Beat: Supervising Registered Employees of Foreign Affiliates

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NASD Rules 1021(a) and 1031(a) permit a FINRA member to register or maintain the registration as principal or representative of an individual who is engaged in the investment banking or securities business of a foreign securities affiliate. There is no separate category of registration for such foreign affiliate employees who, by registering with FINRA, become subject to FINRA rules and the member's supervision.*

In many instances, the registered employee of the foreign affiliate does not perform any securities or investment banking services for the U.S. broker-dealer. Instead, the U.S. firm may carry the foreign employee's licenses as an accommodation or to maintain a deeper bench of potentially available registered representatives. Even under these circumstances, however, the FINRA member has supervisory responsibilities. A 2009 FINRA proposal on registration and qualification requirements would have specified which FINRA and NASD rules were applicable, but the proposal hasn't been adopted.

At a minimum, the foreign employee should be assigned to a qualified supervisor in the U.S. and there should be written procedures in place for monitoring the foreign employee's activities. The foreign employee should participate in an annual compliance meeting and meet applicable continuing education requirements. The FINRA member should comply with any applicable reporting requirements under FINRA Rule 4530. Finally, if the U.S. broker-dealer has a Rule 15a-6 chaperoning arrangement with its foreign affiliate and the foreign employee solicits U.S. investors under that arrangement, the foreign employee should make clear that such activities are being conducted on behalf of the foreign affiliate, not the U.S. broker-dealer.

* Such persons are distinct from "foreign associates," who fall under a separate category of registration under NASD Rule 1100.