

NEW RULE FOR INVESTMENT BANKERS: THE SERIES 79 BANKING EXAM

By James G. Smith



Commencing November 2, 2010, persons engaging in investment banking, including supervisory persons, will need to register with FINRA as a Limited Representative—Investment Banker and pass the Series 79 Investment Banking Exam.

The new rule defines “investment banking” activities as:

- Advising on or facilitating 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
- 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 rule, however, specifically excludes from the definition of “investment banking” advising on or facilitating the placement of direct participation program securities, effecting private securities offerings (essentially primary offerings of securities pursuant to sections 3(b), 4(2) or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder), and retail or institutional sales and trading activities.

Persons registered as Series 7 general representatives engaging in investment banking who “opted in” to the registration system on or before May 3, 2010 need not pass the Series 79 exam.

About James G. Smith, Partner

Jim is a Partner in the Corporate and Securities Practice Group, where he focuses on complex securities and corporate transactions, investment management and corporate law. His broad range of corporate and securities experience includes representing issuers, underwriters and investors in public and private offerings, PIPES, structured and asset-based financings, SEC reporting and compliance and corporate governance matters. Jim's investment management experience includes formation and representation of hedge funds, private equity funds and venture capital funds. His corporate practice includes mergers and acquisitions and formation of partnerships and joint ventures. Jim can be reached at 212.216.8060; jsmith@tarterkrinsky.com.