

VIA ELECTRONIC MAIL

November 5, 2018

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K St. NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 18-26, Continuing Education Program

Dear Ms. Mitchell:

On September 6, 2018, the Financial Industry Regulatory Authority (FINRA) published the Continuing Education Council (CE Council) request for public comment on proposed enhancements to the Securities Industry Continuing Education Program (CE Program).¹ The overall goal of the proposed changes are to address “advances in technology and learning theory” and to ensure that the content of the CE Program is both relevant and timely for those professionals who are required to take CE Program courses. An additional goal of the proposed changes is to “address the challenges that industry professionals face when attempting to re-enter the industry after an absence.”

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. FSI applauds the CE Council for taking this careful and thoughtful approach to reviewing the CE Program and for seeking stakeholder input prior to finalizing the changes. FSI believes the goals of the proposed changes to the CE Program serve additional benefits of being responsive to changing demographics and needs of those entering the industry as well as evolving investor demands and goals. For these reasons we are largely supportive of the proposed changes and we provide some additional suggestions to the CE Council in more detailed comments below.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives.³ These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

¹ Available at: <http://www.finra.org/sites/default/files/Regulatory-Notice-18-26.pdf>

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

³ The use of the term “financial advisor” or “advisor” in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

Discussion

FSI appreciates the opportunity to comment on the proposed changes developed by the CE Council. FSI finds the proposed changes and enhancements to be a common-sense approach to the goals of the CE Council. The Regulatory Notice address specific questions on the “areas of greatest interest” to the CE Council and FINRA. To the extent possible, we provide answers and input on specific questions but defer to FINRA member firms to answer various questions they are in a better position to address. To the extent FSI can provide useful input on the various questions, our input and suggestions are discussed in greater detail below.

I. Regulatory Element

A. Introduction

The Regulatory Element of the CE Program is intended to ensure registered persons understand their current regulatory obligations with specific emphasis on recent rule changes and significant industry issues. FSI members recognize the importance of the Regulatory Element portion of the CE Program

B. Frequency (Question 1)

Much of FSI members’ input on the proposed change to an annual requirement is positive. However, many firm members are interested in whether the annual frequency will eliminate the need for the Annual Compliance Meeting (ACM). FSI recently commented on FINRA’s Retrospective Rule Review of the Annual Compliance Meeting requirement and found that the majority of our individual financial advisor members find the Annual Compliance Meeting very useful to understand their compliance obligations and requirements.⁴ As such, we encourage the CE Council to give further thought as to whether or how an annual Regulatory Element requirement could be combined with the Annual Compliance meeting in order to streamline the process while still providing value to individual financial advisors.

Additionally, member firms expressed concern about how the annual requirement will be executed. For example, will the required completion date continue to be based on the

dual registrant. The use of the term “investment adviser” or “adviser” in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

⁴ FINRA Regulatory Notice 18-4 available at: <http://www.finra.org/industry/notices/18-14> and FSI’s Comment Letter available at: http://www.finra.org/sites/default/files/notice_comment_file_ref/18-14_FSI_Comment.pdf.

anniversary of the registered person's date of hire/registration with the firm? FSI member firms note that if the required completion date is similar or the same for each person required to complete the training, this could overtax systems that may not be able to support the volume of training all at once. As such, it would be helpful for the CE Council to provide clear guidance to firms on the Regulatory Element requirement to be completed by a registered person who joins the firm mid-year. Similarly, if a person sits for an examination and passes and subsequently becomes registered, firms will need to understand when the annual requirement will become applicable. Lastly, firms will necessitate reporting of completion of the annual requirement so the firm can effectively track who has or has not taken the training and properly supervise their compliance with the requirement.

C. Narrowed Focus (Question 3)

FSI members are very supportive of narrowing the focus of the Regulatory Element to focus on topics relevant to the specific registrations held by the registered person taking the CE. FSI member firms suggest that there should also be an "Ethics" component to the Regulatory Element training. Furthermore, FSI member firms suggest that specific training on issues of global application should also be part of the Regulatory Element with customized related training the responsibility of the firms. For example, Regulatory Element training could train attendees on typical cybersecurity scams while the Firm Element will train attendees on how the firm requires they handle cybersecurity incidents and the relevant policies and procedures. FSI member firms also suggest that real-life scenarios and examples are particularly helpful with Regulatory Element training.

D. Other (Questions 2, 4, and 5)

As mentioned above, there is some concern among FSI members as to how an annual requirement will be tracked and that the annual nature of the requirement will increase the effort necessary to effectively track compliance. However, the consensus among FSI member firms is that the benefits of having an annual Regulatory Element requirement outweigh the concerns regarding potential demands on firm resources. FSI members also suggest that to the extent FINRA is not already coordinating with other stakeholders, FINRA should collaborate with other regulatory bodies including the MSRB, SEC, CBOE, and NYSE in developing timely content.

II. **Firm Element**

A. Introduction

The Firm Element portion of the CE Program service to address specific firm policies and procedures, and issues directly related to the products and services offered by the firm. While the content is specific to the firm, the CE Council provides guidance and resources to firms to assist them in creating Firm Element content.

B. Usefulness of Firm Element (Question 6)

With regard to Firm Element Advisory (FEA), FSI members find the material mostly useful, but too voluminous to be as useful as it could be. One member noted that the FEA is currently almost 50 pages, which can be overwhelming to firms. Additionally, Anti-Money Laundering and Cybersecurity elements in the FEA tend to "water it down." FSI members suggest the AML and

Cybersecurity topics be addressed separately from the FEA so as to cut down on the volume of information contained in the FEA and increase its focus and effectiveness.

FSI member firms believe it is necessary for the material to continue to be firm-generated but suggest that FINRA can create and offer content that firms can utilize. Firms would not, however, want the materials to be mandatory but instead act as a valuable resource to them as they develop their Regulatory Element training. Most of FSI member firms operate under a hybrid model, with the broker-dealer also having an associated Registered Investment Advisor firm and their associated financial advisors are dually registered, able to offer products and services through either model. Due to the hybrid nature of FSI member firms and their financial advisors' dually registered status, FSI members would benefit greatly from material that contains hybrid-specific content or at the very least, the ability to customize modules to reflect the dual nature of the firm.

B. Amount of Firm Element Training and Mode of Delivery (Question 7)

The majority of FSI member firms provide the Firm Element CE Program content electronically. This allows efficient tracking and also provides the necessary flexibility to their advisors to take the course and fulfill their requirements. As mentioned above, one of the reasons FSI's financial advisor members support the Annual Compliance Meeting requirement and find it helpful, is their ability to ask questions in real-time and related to the content at hand. FSI member firms who provide online flexibility to their advisors by holding their Annual Compliance Meeting via a web-based application maintain this ability to ask questions via the web portal while the advisor virtually attends the meeting. This is an additional reason FSI member firms believe online delivery is practical and effective.

C. Other (Questions 8 through 12)

FSI member firms largely do not allow conference and seminars held by third parties to be counted towards Firm Element requirement and are unlikely to utilize these third party means to satisfy their advisors' requirements. The reasons are twofold: Firms find third party content too difficult to track to ensure the content does, indeed, meet their requirements and there is no efficient way to ensure the advisor actually attended the conference or seminar even if the content did qualify for Firm Element Training.

III. Maintaining Qualification Status Post Termination

A. Introduction

As outlined in the regulatory notice, registered persons who have terminated their registration with a FINRA member firm must re-register with a firm within two years or forfeit their license. Formerly registered persons who have forfeited their license because of non-registration are then precluded from taking CE Content and remaining qualified. The CE Council is proposing changes to allow "previously registered individuals to complete an annual Regulatory Element as well as additional content equivalent to the Firm Element while out of the securities industry." FSI member firms are very supportive of and enthusiastic about these proposed changes.

B. Appropriateness (Question 13)

As a practical matter, allowing registered persons to maintain their industry knowledge and qualifications in order to re-enter the industry at a later time is a no-brainer. Not only does this provide necessary flexibility to those who have worked hard to qualify to work in the industry, but it also ensures they maintain the requisite level of knowledge and expertise about issues and regulations to support the important goal of investor protection. FSI members strongly support this change and urge the CE Council to adopt it.

C. Amount/Frequency (Question 14)

While FSI members are very supportive of the proposed changes to allow industry professionals to remain qualified, they note that the proposed criteria for maintaining CE requirements are potentially more than those of other professions, such as attorneys and doctors who can forfeit their license but take CE in order to maintain their licenses and become active again at a later date.

D. Duration of Ability to Maintain Qualification (Questions 16 and 18)

The CE Council proposes allowing formerly registered persons a period of seven years in which to maintain their qualifications through continuing education, at which time they would no longer be eligible to maintain their qualifications or license. FSI members feel that this is an unnecessary limitation and, like other professions, the formerly registered person should be allowed to maintain their qualifications indefinitely so long as they continue to fulfill their CE requirements each year. Furthermore, FSI members feel that the requirement that a person who maintains their qualifications while no longer registered have been active five out of the past ten years is too onerous. Instead, we suggest the CE Council consider lessening the requirement from five to three of the past ten years.

E. Other (Questions 15 and 17)

FSI defers to other commenters on specific answers to questions 15 and 17. However, we encourage the CE Council to consider developing and making available material specific to persons who were previously registered and working to maintain their qualifications. The material could focus on recent developments and issues while also providing remedial training on basic issues and obligations so that these individuals are receiving training that reminds them of their obligations and keeps the information at the front of their mind and also provides timely and relevant information that will allow them to keep abreast of industry-specific issues of which they should be aware. One FSI member suggested that because FINRA has a robust library of self-paced training available 'off-the-shelf' covering a number of topics, FINRA could package a set of these training courses to correspond to a particular year's exam findings. Another approach would be to design required curriculum that all outside industry registrants must complete in combination with some elective choices taken from the broader catalogue.

IV. General Questions

A. Introduction

The CE Council requests additional general input on which issues should be prioritized and whether there are alternative approaches they should also consider.

B. Priority Issues (Question 19) and Alternative Approaches (Question 20)

FSI defers to other commenters on specific answers to questions 19 and 20. However, we strongly encourage the CE Council to obtain the input of individual financial advisors who are required to complete CE requirements right now. As the targeted audience of the Regulatory Element and Firm Element, they are the best source to determine the potential effectiveness of the proposed changes. As one of the only trade associations with individual financial advisor members, FSI stands ready to assist the CE Council in tapping the collective thinking of financial advisors. Also, should FINRA form a committee comprised of financial advisors, that committee could serve as a valuable resource in developing effective CE content.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA and the CE Council on this and other important regulatory efforts

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 393-0022.

Respectfully submitted,



Robin Traxler, Esq.
Vice President, Advocacy Policy & Associate General Counsel