



April 22, 2020

By Electronic Mail to pubcom@finra.org

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

Re: FINRA Regulatory Notice 20-05: SIFMA Comments on Proposal to Implement the Recommendations of the CE Council Regarding Enhancements to the Continuing Education Program for Securities Industry Professionals

Dear Ms. Mitchell:

The Securities Industry and Financial Markets Association (SIFMA)¹ appreciates the opportunity to comment on FINRA Regulatory Notice 20-05 (RN 20-05),² discussing recommendations of the Securities Industry/Regulatory Council on Continuing Education (CE Council)³ to enhance the program for continuing education requirements for securities industry professionals (CE Program). Overall, SIFMA strongly supports FINRA's proposal to implement the CE Council's recommendations and suggests various minor adjustments as discussed below.

I. EXECUTIVE SUMMARY

SIFMA supports the efforts of the CE Council to enhance the CE Program and is submitting this comment letter to inform the CE Council's ongoing work. As set forth below, SIFMA believes that the CE Council can best further its efforts with respect to enhancing the CE Program by:

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry, nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry-coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² See FINRA RN 20-05 (Feb. 18, 2020), available at <https://www.finra.org/sites/default/files/2020-02/Regulatory-Notice-20-05.pdf>.

³ <http://www.cecouncil.com/>.

- SIFMA fully supports the proposal to create tailored content for each registration category.
- SIFMA supports the idea of publishing Regulatory Element topics in the prior year. However, FINRA should consider providing more advanced notice and specifying which topics are important each year so that members could prioritize the learning topics.
- SIFMA supports the proposed crediting of Anti-Money Laundering (AML) and Annual Compliance Meeting (ACM) Training towards satisfying an individual’s annual Firm Element requirement, but firms should be provided the flexibility to go beyond just AML and ACM Training and be permitted to align their training to their specific needs.
- The proposal to extend Firm Element training to persons with Permissive Registration may be overly burdensome.
- While SIFMA fully supports the proposed improvements to guidance and resources, SIFMA requests clarity on whether the resources would conform to a broker’s specific product line.
- Any catalog of continuing education content should not be a one-size fits all but should enable firms to customize the modules for different registration types and the nature of their securities business.
- SIFMA supports the proposed amendment to Rule 1240 that would allow individuals who were previously registered in a representative or principal registration category for at least one year to maintain their qualification for a terminated registration category through CE training.
- The proposal does not address the ability to maintain state registrations, which often are required with FINRA registrations to perform registered activity in the industry.
- The proposal is unclear regarding what information will be available to a hiring firm regarding CE completion and outstanding CE requirements.

II. SUMMARY OF RN 20-05

On February 18, 2020, FINRA published RN 20-05 to request comment on a proposal to implement the recommendations of the CE Council enhancing the continuing education requirements for securities industry professionals. The program enhancements recommended by the CE Council were published on the CE Council’s website.⁴

⁴ See *Recommended Enhancements for the Securities Industry Continuing Education Program Securities Industry/Regulatory Council on Continuing Education* (Sept. 12, 2019), available at <http://cecouncil.org/media/266634/council-recommendations-final-.pdf>.

As discussed in RN 20-05, the CE Program was established by the CE Council nearly 25 years ago. Registered persons of broker-dealers are required to participate in continuing education consisting of a Regulatory Element and a Firm Element. The Regulatory Element is generally delivered every three years and focuses on regulatory requirements and industry standards, while the Firm Element is an annual requirement and focuses on securities products, services and strategies firms offer, firm policies and industry trends. The 2015 transition of the delivery of the Regulatory Element to an online platform (CE Online) allowed for increased efficiency, eliminating geographic constraints and presenting material in an optimal learning format. Similarly, the Firm Element exists in an evolving environment where there are multiple other training programs that could serve as a valuable component of the Firm Element and ensure delivery of an appropriate level of training for registered persons participating in such other training programs.

In September 2018, the CE Council published a document outlining several potential enhancements to the CE program. These enhancements were designed to: (1) ensure that registered persons receive relevant and sufficient Regulatory Element training on an annual basis; (2) provide firms with the guidance and resources necessary to design effective and efficient Firm Element training programs; and (3) provide a path for previously registered individuals to maintain their qualification through continuing education. In support of the CE Council, FINRA published Regulatory Notice 18-26 requesting feedback on the CE Council's suggested enhancements. After reviewing the public comments and further discussions, on September 12, 2019, the CE Council published the following recommendations regarding the CE program:

- Transition to an annual Regulatory Element;
- Design Regulatory Element content that is more tailored and relevant to each registration category with diverse instructional formats;
- Publish the Regulatory Element learning topics for each coming year in advance;
- Enhance the functionality of the FINRA systems to facilitate compliance with the Regulatory Element;
- Recognize other training requirements for purposes of satisfying the Firm Element;
- Improve the guidance and resources provided to firms for conducting the Firm Element annual needs analysis and for planning their respective training;
- Develop a content catalog that firms may optionally use for selecting or supplementing; and
- Firm Element content; and consider rule changes that would enable individuals who were previously registered to maintain their qualification by participating in an annual continuing education program.

FINRA published RN 20-05 to solicit comment on proposal to implement the CE Council's recommendations.

III. SIFMA COMMENTS ON RN 20-05

A. Regulatory Element

1. Recommendation: Design More Relevant Content with Diverse Instructional Formats

FINRA proposed to redesign the Regulatory Element to become more tailored and relevant to an individual's registration categories. FINRA also proposed to incorporate a variety of instructional formats and not just rely on the current case format. However, regardless of the format, registered persons would continue to be subject to some form of educational assessment to evaluate their understanding of the materials presented.

SIFMA fully supports the proposal to create tailored content for each registration category. However, FINRA should also consider designing CE modules that take into account the business of the registrant.⁵ In addition, a diverse instructional format would be a welcome addition if FINRA is able to effectively design formats that provide straightforward learning and that offer guidance.

In supporting the proposal for tailored content modules for each registration category, SIFMA respectfully requests that FINRA consider the time a registered individual who holds multiple licenses may need to complete their requirements. We suggest creating a "cap" on the number of modules taken per year, and a rotation of modules taken on a year-by-year basis, when a registered individual reaches that cap.

2. Recommendation: Publish Learning Topics

FINRA proposed to identify and publish the Regulatory Element learning topics for each coming year in advance. Specifically, by October 1 of each year, FINRA and the CE Council would publish the learning topics for the next year. The learning topics will consist of significant rule changes and other regulatory developments relevant to each registration category. Firms and individuals will be able to access the learning topics through the CE Council website or FINRA.org. In addition, if there are any other critical rule changes or other regulatory developments that arise during the course of a given year, FINRA and the CE Council would work to provide registered persons timely and sufficient training on such rule changes and developments.

⁵ For example, the limited securities business of mutual fund underwriters does not warrant a focus on margin, trading, or operations.

SIFMA again fully supports the idea of publishing Regulatory Element topics in advance as this will help avoid duplication in the Firm Element program.⁶ However, it would be even more helpful if FINRA could specify which topics are important each year so that members could prioritize the learning topics. In addition, announcement of the learning topics in October of the prior year may not give firms enough time to make changes in the Firm Element CE. Time is needed in developing the needs analysis and to review Firm Element Advisory, the firm's Regulatory Element performance, training resources available as well as various internal data reports. SIFMA suggests announcing the learning topics in June of the prior year.

B. Firm Element

1. Recommendation: Recognize Other Training Requirements

FINRA proposed to amend Rule 1240(b) to provide that member firms may consider training relating to the AML compliance program and annual compliance meeting (“AML and ACM Training”) towards satisfying an individual's annual Firm Element requirement. FINRA also proposed to amend Rule 1240(b) to extend Firm Element training to all registered persons, including individuals who maintain solely a permissive registration consistent with FINRA Rule 1210.02 (Permissive Registrations), which is intended to align the Firm Element requirement with other broadly-based training requirements, such as the annual compliance meeting requirement. However, given the proposed recognition of other training requirements towards satisfying the Firm Element requirement, FINRA believes that registered persons may find that they do not have to complete any additional training beyond what they are required to complete today.

SIFMA fully supports the proposed crediting of AML and ACM Training towards satisfying an individual's annual Firm Element requirement. However, firms would like the flexibility to go beyond just AML and ACM Training to leverage training provided across the firm on topics that align to its specific needs. FINRA should also recognize the unique CE needs of limited purpose broker-dealers, whose specific institutional interactions are different from traditional retail brokerage, consequently many CE topics may not be applicable to their business.

The proposal to extend Firm Element training to all registered persons, including those with Permissive Registration may be overly burdensome. Specifically, for firms with large numbers of registered support staff (e.g., Legal, Compliance, Human Resources, etc.) and others holding permissive registrations held across the world for those working for subsidiaries who currently are not “covered” persons under the Firm Element, an expansion of the Firm Element requirement to such individuals could significantly increase the audience size. Although the proposal would provide credit for AML training and the annual compliance meeting under the Firm Element, these are required by separate rules anyway. Broadening the populations from

⁶ Firms should continue to be afforded the flexibility to train on the same or similar topics in both the Regulatory Element and the Firm Element, in a given year regardless the Regulatory Element topics published in the prior year. Firms may deem it necessary to cover in Firm Element training their policies and procedures related to a specific regulation, for example, whereas the Regulatory Element would only cover the specific regulation without touching on a firm's policies and procedures.

“covered persons” to “registered persons” requires additional resources to deliver content to include permissive licenses. Permissive license, by definition, allows registered representatives to maintain their registration though they do not use it for their day-to-day. Additional resources will be needed to track and document that permissive employees have adequate content to satisfy the Firm Element. SIFMA suggests that FINRA continue to allow firms the flexibility in training permissive license and not have them subject to the Firm Element requirement.

In addition, for many designations, such as the Insurance license (vary state-by-state), CME, and CFP, may require firms to register as an approved vendor which means that the training would have to be applicable industry-wide and not proprietary to a firm. Alternatively, a firm would have to purchase the training through an approved vendor to satisfy the requirement. Members firms should continue to have the flexibility to determine if training reciprocity makes sense given their business model.

2. Recommendation: Improve Guidance and Resources

FINRA proposed to work with the CE Council towards improving the guidance and resources available to firms to develop effective Firm Element training programs, such as updated templates for documenting training plans and specific principles for conducting the required annual needs analysis.

While SIFMA fully supports the proposed improvements to guidance and resources, SIFMA requests clarity on whether the resources would conform to a broker’s specific product line.

3. Recommendation: Develop Content Catalog

FINRA proposed to work with the CE Council to develop a catalog of continuing education content that would serve as an optional resource for firms to select relevant Firm Element content and create learning plans for their registered persons. The catalog would include content developed by third-party training providers, FINRA and the other SROs participating in the CE program. Firms would have the option of using the content in the catalog for purposes of their Firm Element training—they would not be obligated to select content from the catalog. Therefore, firms would continue to have the option of developing their own content for use in their Firm Element training or working directly with third-party training providers to develop content. The catalog would also serve other purposes. Individuals who opt into the proposed program to maintain their qualification following the termination of a registration category would be subject to annual continuing education, a portion of which would include content selected by FINRA and the CE Council from the content catalog.

The proposed development of a catalog of continuing education content as an optional resource would be very helpful for firms. However, any such catalog of content should not be a one-size fits all but should enable firms to customize the modules for different registration types and based on the nature of their securities business. In addition, SIFMA believes FINRA’s content catalogue should be provided to firms as an optional resource not as mandatory

guidance. For example, there will be instances where a topic covered in the Regulatory Element, may need to be covered in the ACM in order to address the member firm's training needs.

C. Maintaining Qualification

1. Recommendation: Consider Rule Changes Enabling Previously Registered Individuals to Maintain Qualification Through Continuing Education

FINRA proposed to amend Rule 1240 to establish a continuing education program that would allow individuals who were previously registered in a representative or principal registration category for at least one year to maintain their qualification for a terminated registration category. As discussed more fully below, subject to specified eligibility criteria, the proposal would provide such individuals the option of maintaining their qualification beyond the current two-year limitation by satisfying an annual continuing education requirement. The proposed program would be available to eligible individuals who terminate any of their representative or principal registration categories and wish to maintain their qualification for any of the terminated categories. FINRA is proposing to make conforming changes to Rule 1210.08 to reflect the proposed program.

New Participants and Transition Participants would be eligible to participate in the program for a terminated registration category for up to seven years following the termination of that category, which is generally consistent with the current participation time period under the Financial Services Affiliate Waiver Program (FSAWP). The proposed program is intended to complement an individual's experience in a particular registration category and to address life events and economic downturns that may necessitate a period of absence from registered functions. The participation time period for FSAWP Participants who decide to join the proposed program would be up to seven years following the termination of their registrations as part of FSAWP. The two-year qualification period is still applicable such that individuals who have been CE inactive for two or more years, could still re-register following the termination of any of their registration categories without having to requalify by examination or having to obtain an unconditional examination waiver if they re-register within two years of the termination of the registration category.

SIFMA strongly supports this proposal.

D. Other Considerations

1. Communications of CE Deadlines

FINRA should consider clarifying whether a firm-imposed deadline (prior to year-end) will be communicated directly to registered individuals via FinPro/Email or through the firm. In addition, FINRA should consider permitting firms to set when and how often notifications would go to registered individuals in their firms.⁷ However, in order to reduce the administrative

⁷ Currently, many large firms have implemented procedures to send notifications at various intervals as the CE due date approaches. Firms should be able to choose how when such notices are sent.

burden of receiving, tracking and retaining CE reminder emails, FINRA should consider providing firms the means to “audit” CE reminders sent to a registered individual via FinPro.

2. Availability of CE Completion Information

The proposed CE Program is unclear regarding the information that will be available to a hiring firm regarding a registered individual’s CE completion and outstanding CE requirements. Such information, obtained with the applicant’s consent, would enhance a hiring firm’s ability to assess the applicant’s compliance with CE requirements. FINRA should consider displaying CE completion information in BrokerCheck.

3. Technological Challenges of Learning Formats

As FINRA and the CE Council contemplate offering diverse instructional formats, consideration should be given to the potential technological challenges for individuals who use FINPro and have aged technology or limited technologies (e.g., older browser versions or necessary “plug ins”).

4. State Registration

The proposed CE Program does not address the ability to maintain state registrations, which often are required with FINRA registrations to perform registered activity in the industry. The current presumption is that state qualifications will lapse after two years, regardless of FINRA extensions.

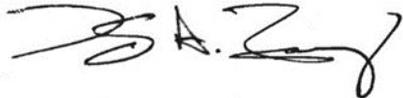
IV. CONCLUSION

SIFMA appreciates the opportunity to comment on RN 20-05 and FINRA's consideration of our views. We reiterate our strong support for modernizing the CE requirement.

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SIFMA looks forward to a continuing dialogue with FINRA on RN 20-05. If you have any questions or would like additional information, please contact Kevin Zambrowicz, Managing Director & Associate General Counsel, SIFMA, at (202) 962-7386 (kzambrowicz@sifma.org), or our counsel, Lawrence Stadulis and Peter Hong from Stradley Ronon.

Very truly yours,



Kevin Zambrowicz
*Managing Director &
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cc: Mary Beth Findlay, Co-Chair, SIFMA Compliance & Regulatory Policy Committee
Ann McCague, Co-Chair, SIFMA Compliance & Regulatory Policy Committee

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