

VIA ELECTRONIC MAIL

May 21, 2020

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

Re: **FINRA Regulatory Notice 20-05 Continuing Education Program Transformation**

Dear Ms. Mitchell:

On February 18, 2020, the Financial Industry Regulatory Authority, Inc. (FINRA) published Regulatory Notice 20-05 *Continuing Education Program Transformation* (the “Notice”).¹ The Notice requests comment on proposed amendments to FINRA Rules 1210 and 1240 in response to recommendations from the Securities Industry/Regulatory Council on Continuing Education (CE Council), which would change the: (1) “regulatory element” to provide annual training, make the content more relevant, incorporate diverse instructional formats, publicize the learning topics in advance and enhance the related management systems; (2) “firm element” to expressly recognize other training requirements, improve the guidance and resources available to firms and establish a content catalog; and (3) continuing education program to enable individuals who terminate their registrations the option of maintaining their qualification by completing continuing education (the “Proposed Rules”).

The Financial Services Institute (FSI) appreciates the opportunity to comment on this important proposal as well as FINRA’s flexibility in the timing of submitting comments. FSI applauds FINRA and the CE Council for taking this careful and thoughtful approach to reviewing the CE Program prior to adopting the CE Council’s recommendations. FSI believes the goals of the Proposed Rules 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, FSI is largely supportive of the Proposed Rules and takes this opportunity to provide additional suggestions in 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 US, there are more than 160,000 independent financial advisors, which account for approximately 52.7 percent of all producing

¹ FINRA, Regulatory Notice 20-05 (Feb. 18, 2020), <https://www.finra.org/sites/default/files/2020-02/Regulatory-Notice-20-05.pdf>.

registered representatives.² These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).³

FSI's IBD member firms provide business support to independent 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 and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include 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 Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate \$48.3 billion of economic activity. This activity, in turn, supports 482,100 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly \$6.8 billion annually to federal, state, and local government taxes. FSI members account for approximately 8.4% of the total financial services industry contribution to U.S. economic activity.⁴

Discussion

FSI appreciates the opportunity to comment on the Proposed Rules. FSI finds the Proposed Rules to be a common-sense approach to the recommendations provided by the CE Council. Below, we provide general comments on all aspects of the Proposed Rules, and also respond to the requests for comment included in the Notice.

I. Regulatory Element

1. *CE Council Recommendation: FINRA should require the Regulatory Element to be administered annually.*

FINRA is proposing to amend Rule 1240 to require registered persons to complete the Regulatory Element annually by the end of each calendar year. FINRA is proposing that firms have the flexibility to require their registered persons to complete the Regulatory Element at any time during the calendar year. Individuals who fail to complete their Regulatory Element by the end of each calendar year would be automatically designated as CE inactive in the CRD system on January 15 of the next calendar year. If an individual fails to complete the Regulatory Element by the end of the calendar year but subsequently completes it prior to January 15 of the next calendar year, the firm with which the individual is associated must document the basis for the

² Cerulli Associates, Advisor Headcount 2016, on file with author.

³ The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a dually registered representative of a broker-dealer and an investment adviser representative of a registered investment adviser firm. 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 Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2016).

individual's failure to complete the Regulatory Element by the end of the calendar year and retain such documentation.

Under the Proposed Rule, registered persons would be required on an annual basis to complete approximately one-third of the content that they currently complete. However, individuals with multiple registrations may be subject to more content than individuals with a single registration because they would be required to complete content specific to each registration category that they hold. The Notice notes that the session fee for the annual Regulatory Element will be addressed as part of a separate proposal.

FINRA requests comment on whether the transition to an annual Regulatory Element requirement or the focus on rule changes and significant regulatory issues relevant to each registration category disparately impact specific populations, and whether the introduction of greater diversity in instructional formats and delivery modes alleviate any such potential impacts. FSI believes that transitioning from a three-year cycle to an annual cycle for completion of the Regulatory Element will add to member firms' workloads, including administrative processes, and follow-up notifications to ensure that each registered person's Regulatory Element is completed each year. An increase in workload would require firms to increase available resources, and possibly necessitate additional hiring. This is especially problematic for smaller firms with licensing and registration teams that efficiently manage their current workloads but do not have the capacity to assume additional responsibilities or the budget to hire additional employees. At the same time, FSI acknowledges that greater diversity in instructional formats and delivery modes may alleviate some potential costs related to creating and delivering content, but we are concerned that it will do little to minimize workloads.

FSI believes that transitioning from a three-year cycle to an annual cycle for completion of the Regulatory Element will result in an increase in costs to firms or their associated persons. Currently, the Regulatory Element costs \$55 every three years for registered persons. The transition to an annual Regulatory Element will likely increase these fees. For FSI's members, these costs are typically borne by their financial professionals who are self-employed independent contractors. FSI urges FINRA to consider these costs when determining whether to transition to an annual Regulatory Element requirement.

The Proposed Rules would require individuals with multiple registrations to complete more content than individuals with a single registration because they would be required to complete content specific to each registration category that they hold. While FSI acknowledges that persons holding representative and principal registrations should complete Regulatory Element content for their representative and principal registration categories, a registered person holding more than one representative registration (e.g., an individual holding both a Series 6 and Series 7 registration) would be required to complete Regulatory Element content that is unnecessarily duplicative. FSI requests that FINRA remove Regulatory Element content to the extent that the content would be duplicative for a particular registered person.

Under the Proposed Rules, individuals who fail to complete their Regulatory Element by the end of each calendar year would be automatically designated as CE inactive in the CRD system on January 15 of the next calendar year. The Notice does not provide any insight into the impact that the CE inactive status will have on an individual's state registration. FSI requests clarification on how states will view a CE inactive status, including but not limited to the impact to any investment adviser representative registrations held by the individual. For example, if the CE inactive status results in a state canceling an individual's registration, or alternatively designating

the registration as inactive, member firms may be required to request reinstatement of the individual's registration. This would result in additional costs and an increase in workloads, as firms could be required to provide new registration forms and supporting documentation. The same would result for state securities regulators, which would be on the receiving end of new registration forms and supporting documentation. FSI requests that FINRA consider the impact of the proposed changes.

If FINRA decides to move forward with this proposed change, FSI requests that FINRA ensure adequate time for member firms to implement these changes. In particular, firms and their vendors will need to make enhancements to key systems to support the proposed change of transitioning from a three-year cycle to an annual cycle for the Regulatory Element.

- 2. CE Council Recommendation: FINRA should redesign the Regulatory Element content to become more tailored and relevant to the registration categories an individual holds and to incorporate diverse instructional formats.*

FINRA will work with the CE Council to: (1) replace the S101 and S201 subprograms with a consolidated Regulatory Element program; (2) identify significant rule changes and other regulatory developments relevant to each registration category; and (3) determine the overall amount of learning content needed. FINRA would then work with the CE Council and the CE Content Committee, composed of industry experts, to create tailored content for each registration category.

FINRA is also proposing to amend Rule 1240(a) to require registered persons to complete Regulatory Element content relevant to each registration category that they hold.

FINRA will also work with the CE Council to incorporate a variety of instructional formats. Registered persons would continue to be subject to some form of educational assessment to evaluate their understanding of the materials presented.

FSI supports this aspect of the proposal. However, while FSI acknowledges that persons holding representative and principal registrations should complete Regulatory Element content for their representative and principal registration categories, FSI does not believe that a registered person holding more than one representative registration should not be required to complete Regulatory Element content that is unnecessarily duplicative.

- 3. CE Council Recommendation: FINRA should publish, in advance of each coming year, specific learning topics for the annual Regulatory Element.*

FINRA will work with the CE Council to identify and publish the Regulatory Element learning topics by October 1 of each year. Firms and individuals will be able to access the learning topics through the CE Council website or FINRA.org, and the learning topics will be listed with the registration category to which they relate.

FSI supports FINRA's proposal to identify and publish the Regulatory Element learning topics by October 1 of each year. In addition, FSI believes that FINRA should provide firms with access to view and assess the training and learning objectives for each topic. This would permit firms to determine if a particular topic meets the needs of the firm, or whether the firm would require additional training on a topic. For example, if FINRA decides that a Regulatory Element learning topic for the next year will be social media, it would be helpful for firms to know the depth of

content that will be covered. In particular, the ability to view and assess learning objectives for a particular learning topic would allow firms to (1) further develop content, as appropriate, to provide additional content that is tailored to the firm, and (2) tailor content to remove duplicative content covered by the Regulatory Element.

FSI also believes that firms would benefit from additional time to develop and tailor content following FINRA's publication of the Regulatory Element learning topics. In particular, firms will need additional time to identify gaps based on FINRA's learning topics and existing training programs and coordinate training resources. FSI respectfully requests that FINRA publish its Regulatory Element learning topics in advance of October 1 of each year to permit firms the time to develop adequate training programs.

4. *CE Council Recommendation: FINRA should enhance the functionality of the CRD system and other systems to facilitate compliance with the proposed changes to the Regulatory Element, including the proposed transition to an annual requirement.*

FINRA plans to enhance the CRD system to provide firms with additional management and tracking functionality. FINRA also plans to enhance the FINRA Financial Professional Gateway (FinPro) system to enable registered persons to launch and track completion of the program through that system, rather than through CE Online. The FinPro system would send automated email notifications regarding the Regulatory Element requirement directly to registered persons, and firms could elect to be copied on all notifications sent to a registered person.

FSI supports this proposed change.

II. Firm Element

1. *CE Council Recommendation: FINRA should expressly recognize other training requirements, including those relating to the anti-money laundering (AML) compliance program and annual compliance meeting, in determining whether individuals have satisfied the Firm Element requirement.*

The Proposed Rules would amend Rule 1240(b) to provide that member firms may consider training relating to the AML compliance program and annual compliance meeting towards satisfying an individual's annual Firm Element requirement.

FINRA is also proposing 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).

FSI supports FINRA's proposal to expressly recognize other training requirements, including those relating to the anti-money laundering (AML) compliance program and annual compliance meeting, in determining whether individuals have satisfied the Firm Element requirement. FSI agrees that the express recognition of other training requirements, including the annual compliance meeting, towards satisfying the Firm Element training mitigate the potential burdens associated with extending the Firm Element to all registered persons.

FSI does not oppose extending the Firm Element training to all registered persons, but urges that FINRA make this proposed change optional instead of mandatory. FSI believes that this extension

will improve training development efforts, because training can be designed to be applicable to all registered persons. This extension will also require firms to expand tracking and reporting for the Firm Element. Firms would likely need to create additional learning paths to assess training needs and create training programs for each group. As an example, an individual who has responsibilities for a firm's AML compliance program could possibly satisfy the Firm Element by completing AML training and attending the annual compliance meeting. This particular learning track would be very different from the learning track for an individual who has customer-facing responsibilities. Based on the number of registered persons at larger firms that Firm Element training would apply to under the Proposed Rules, FSI requests that FINRA make this proposed change optional instead of mandatory.

2. *CE Council Recommendation: FINRA should improve the Firm Element guidance and resources provided to firms, including the material provided through the Firm Element Advisory, to better assist firms in planning their respective programs.*

FINRA and the CE Council plan to work 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. In addition, as discussed below, FINRA and the CE Council will work on developing a content catalog to provide firms additional optional sources from which to select or supplement their Firm Element content. FSI agrees with this proposed change.

3. *CE Council Recommendation: FINRA should develop a content catalog that would serve as an optional resource from which firms could select or supplement their Firm Element content.*

FINRA and the CE Council plan to work 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. Firms would have the option of using the content in the catalog for purposes of their Firm Element training, and 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. FSI agrees with this proposed change.

III. Maintaining Qualification

1. *CE Council Recommendation: FINRA and the other SROs participating in the CE program should consider rule changes that would enable previously registered individuals to maintain their qualification for their terminated registration categories by participating in an annual continuing education program.*

The Proposed Rules would amend Rule 1240 to establish a continuing education program that would allow individuals who were previously registered in a representative or principal registration category to maintain their qualification for a terminated registration category. 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.

Time Limit. 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 FSAWP. FSAWP Participants

would be eligible to participate in the program for up to seven years following the termination of their registrations as part of FSAWP.

Resuming Registration. Participants would be able to re-register in the applicable representative or principal registration category at any point during their participation time period without having to retake a qualification examination or obtain an examination waiver, provided that they complete the required annual content while in the program.

Timing and Frequency. Participants who decide to join the program would be required to complete their annual content for a terminated registration category by the end of the calendar year in which they terminate that category, unless they already completed their annual Regulatory Element content for that year. Participants who decide to join the program on a later date following their Form U5 submission would be required to complete any annual content that they missed in the interim period between the date of their Form U5 submission and the later date on which they joined the program. Such individuals would have to complete any missed annual content within two years of the termination of their registration categories.

FSI supports these proposed changes. FSI requests that FINRA ensure that Regulatory Element content is current and not outdated when New Participants who decide to join the program on a later date following their Form U5 submission are required to complete any annual content that they missed. Because the Proposed Rules would provide a two-year window for such individuals to complete any missed annual content, the missed content could be outdated by the time it is completed. FSI recommends FINRA create a process for monitoring missed content that is outdated, and developing new materials to replace the outdated content for New Participants.

FSI requests insight into whether, if at all, FINRA has coordinated with state securities regulators that would also allow individuals who were previously registered in a state to maintain their qualification for a terminated registration. Without maintaining registration at the state-level, permitting a previously-registered representative or principal registration category to maintain their qualification for a terminated registration category may be ineffectual.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA 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,

A handwritten signature in blue ink that reads "Robin M. Traxler". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robin M. Traxler
Senior Vice President, Policy & Deputy General Counsel