



August 12, 2021

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Via Email to rule-comments@sec.gov

Re: File No. SR-FINRA-2021-015 – Response to Comments

Dear Ms. Countryman:

This letter is being submitted by the Financial Industry Regulatory Authority, Inc. (“FINRA”) in response to comments submitted to the Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing.¹ The proposed rule change, among other changes, requires that the Regulatory Element of Continuing Education (“CE”) be completed annually rather than every three years and provides a path through annual CE for individuals to maintain their qualification for up to five years following the termination of a registration.

The proposed rule change was published for comment in the Federal Register on June 24, 2021. The Commission received nine comment letters on the proposed rule change.²

¹ See Securities Exchange Act Release No. 92183 (June 15, 2021), 86 FR 33427 (June 24, 2021) (Notice of Filing of File No. SR-FINRA-2021-015).

² See Letters to Vanessa Countryman, Secretary, Commission, from: Anonymous, dated July 1, 2021 (“Anonymous”); Brian A. Egwele, dated July 2, 2021 (“Egwele”); Frederick T. Greene, Executive Vice President, Portfolio Manager, Woodforest Wealth Strategies, dated July 12, 2021 (“Woodforest”); James Rabenstine, Vice President, NFS Chief Compliance Officer, Nationwide, dated July 13, 2021 (“Nationwide”); Kevin Zambrowicz, Managing Director & Associate General Counsel, Bernard V. Canepa, Vice President & Assistant General Counsel, Securities Industry and Financial Markets Association, dated July 14, 2021 (“SIFMA”); Carrie L. Chelko, Chief Compliance Officer, Fidelity Brokerage Services LLC, Janet Dyer,

Most commenters express support for the proposed rule change, in whole or in part. Some commenters request additional changes. One commenter asserts that the proposed change to an annual Regulatory Element requirement would disparately impact those individuals who may have more limited access to a broadband or high-speed internet connection, and for that reason opposes the proposed change. Many of the comments are similar to those that the commenters had previously raised with FINRA, which FINRA addressed in the proposed rule change.³ The following are FINRA’s responses, by topic, to the commenters’ material concerns.

Transition to Annual Regulatory Element for Each Registration Category

Proposed Rule 1240(a) requires registered persons to complete the Regulatory Element annually for each representative or principal registration category that they hold.

Egwele agrees with FINRA’s rationale for amending the rule to require more frequent Regulatory Element training. However, Egwele notes that the transition from the current three-year cycle to an annual requirement may not be necessary and recommends the transition, if any, be done in two phases: (1) from three years to two years; and then (2) from two years to one year. Nationwide is supportive of making the Regulatory Element available via a mobile-compatible format.⁴ PFS opposes the proposed change to an annual Regulatory Element requirement. PFS believes that the proposed change would have a disparate impact on members of underrepresented populations who may have more limited access to a broadband or high-speed internet connection. PFS previously made a similar comment and suggested that the Regulatory Element be accessible via smartphones and other mobile devices to address this potential burden. After considering the suggestion, and as discussed

Chief Compliance Officer, National Financial Services LLC, John McGinty, Chief Compliance Officer, Fidelity Distributors Company LLC and Digital Brokerage Services LLC, dated July 14, 2021 (“Fidelity”); Lisa Hopkins, President, North American Securities Administrators Association, Inc., dated July 14, 2021 (“NASAA”); Howard Spindel, Senior Managing Director, Peggy E. Chait, Managing Director, Integrated Solutions, dated July 14, 2021 (“Integrated Solutions”); John S. Watts, Senior Vice President & Chief Counsel, PFS Investments Inc., dated July 15, 2021 (“PFS”).

³ Prior to filing the proposed rule change with the Commission, FINRA solicited comments on the proposal in Regulatory Notice 18-26 (September 2018) and Regulatory Notice 20-05 (February 2020).

⁴ Nationwide also requests that FINRA and the Securities Industry/Regulatory Council on Continuing Education (“CE Council”) publish the Regulatory Element learning topics by October 1 of each year. To provide firms with sufficient time to review the Regulatory Element topics for each upcoming year, FINRA and the CE Council will publish the topics by no later than October 1 of each year.

in greater detail below, FINRA communicated its intention in the rule filing to make the Regulatory Element available for users via a mobile-compatible format.

FINRA believes that the completion of annual Regulatory Element training specific to each registration category that a registered person holds helps ensure that the registered person remains current with regulations and related industry developments and thus helps protect investors. Currently, in some cases, existing registered persons may not receive consistent updated training from regulators on regulatory developments for up to three years and four months.⁵ As noted in the proposed rule change, FINRA believes that the transition to an annual Regulatory Element cycle will reduce firms' regulatory risk, as well as enhance compliance and reduce compliance-related costs.

In addition, the proposed rule change includes several interrelated annual Regulatory Element components: (1) annual Regulatory Element content for registered persons; (2) annual Regulatory Element content for non-registered individuals who are participating in the waiver program under FINRA Rule 1210.09 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member); and (3) annual Regulatory Element content for individuals who elect to maintain their qualification status for a terminated registration category. FINRA believes that a phased implementation with different timing requirements for any of the proposed components would be overly complex and cause confusion. It would also require more resources and could result in greater costs to keep multiple varying Regulatory Element systems and programs running, including potential additional costs to firms to track and manage differing requirements.

FINRA shares the commitment to promote diversity and inclusion in the securities industry, as expressed by PFS and other commenters, and recognizes that the securities industry population has diverse needs. As discussed in Regulatory Notice 21-17 (April 29, 2021), FINRA has undertaken a number of initiatives to support and foster greater diversity, inclusion and equal opportunity in the industry, as well as expand opportunities for historically underserved groups. One of our primary objectives in proposing these rule changes, including the provision that would allow for individuals to maintain their qualifications through CE, is to attract and retain a broader, more diverse population of individuals to the securities industry. Further, a key focus for FINRA in transitioning to an annual Regulatory Element requirement is to provide a program that is sufficiently flexible to meet the individual needs of registered persons and firms and to deliver content in a manner that is broadly accessible and compatible with the diverse needs of individuals and is consistent with their learning needs.

With this in mind, we specifically tailored the proposed annual Regulatory Element requirement to provide more flexibility with respect to timing for delivery and completion. Currently, each registered person must complete the Regulatory Element during a four-month window based on the individual's registration anniversary date, which varies from individual

⁵ Currently, existing registered persons must complete their Regulatory Element training within 120 days after every third registration anniversary date.

to individual. Under the proposed rule change, all registered persons will have the same 12-month window to complete the Regulatory Element, regardless of their registration anniversary dates. This change will provide firms greater flexibility to coordinate the timing of the Regulatory Element with the timing for other required annual training, such as the annual compliance meeting or the annual Firm Element training. Firms might, for example, choose to plan the required Regulatory Element training around the same time and using the same facilities, locations and resources as other required annual training.

We also shared our intention in the proposed rule change to make the Regulatory Element available for users via a mobile-compatible format as had been previously recommended by PFS. In its most recent comment letter, PFS questions whether the availability of the Regulatory Element on mobile devices will sufficiently address the learning needs and potential access challenges of individuals who may not have ready access to a broadband or high-speed internet connection. We recognize the importance of a training model that is accessible to, and compatible with the learning needs of, individuals, including those who use smartphones and other mobile devices to access training. As such, in developing the mobile-compatible format, which includes a mobile responsive design, our aim is to ensure that mobile device users can easily, quickly and intuitively navigate the Regulatory Element content. Further, we are specifically structuring and formatting the content with mobile compatibility in mind to ensure that mobile device users have a positive and engaging learning experience even in low bandwidth conditions. These enhancements would significantly improve the accessibility and learning experience of mobile device users and ensure that they have a similar learning experience to desktop users. FINRA believes that the availability of mobile compatibility with these features would address the potential diversity implications of annual CE that were raised, while maintaining the diversity benefits of allowing a five-year interval of time away from a registered role without requalifying through an examination.

FINRA recognizes that there may be some individuals who may need or prefer other solutions. In addition to online and mobile delivery of the Regulatory Element, FINRA has provided, and will continue to provide, individuals the option of completing their Regulatory Element session at test centers, which can be found in various locations in every state as well as internationally. Further, individuals could complete the Regulatory Element on a computer or another device at a firm location, such as the home office or a branch office, or at a convenient public or community location with broadband internet access. To the extent that these options do not sufficiently address firm or individual needs, FINRA has in the past and remains committed to working with firms in other ways to understand their specific technology or access needs and provide potential solutions. For instance, as an accommodation to individuals who may have difficulty maintaining a stable internet connection, FINRA on occasion has provided firms mobile hotspots for use by individuals who present at FINRA conferences and educational events.

Recognition of Other Training Requirements for Firm Element and Extension of Firm Element to All Registered Persons

Proposed Rule 1240(b) expressly allows firms to consider training relating to the anti-money laundering (“AML”) compliance program and the annual compliance meeting toward satisfying an individual’s annual Firm Element requirement. The proposed rule also extends the Firm Element requirement to all registered persons.

Anonymous states that FINRA should consider making the Regulatory Element the primary, if not the sole means by which securities industry personnel are made aware of important rules and issues. Anonymous also notes that a firm that conducts one type of business that has not changed in years should not have to repeat the same Firm Element needs analysis and training plan and training seminars over and over.

FINRA agrees that the Regulatory Element, which is developed by FINRA, is a necessary component of CE. The delivery of the Regulatory Element ensures that registered persons receive uniform and comprehensive training from regulators on regulatory developments. However, the Firm Element, which is firm-specific and may vary from firm-to-firm is also a necessary component of CE. The Regulatory Element and Firm Element are complementary programs.

With respect to the Firm Element, if a firm’s business has not changed year-to-year, the firm must still conduct an annual needs analysis to determine whether any regulatory or industry developments, which may change year-to-year, impact any products, services or strategies offered by the firm. In addition, even in the absence of any new regulatory or industry developments year-to-year, Firm Element training does not need to be repetitive. Firms can modify their Firm Element training year-to-year to reinforce specific areas and ensure that registered persons effectively remember and apply what was learned.

Maintenance of Qualification After Termination of Registration

Proposed Rule 1240(c) and proposed Supplementary Material .01 and .02 to Rule 1240 provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing annual CE. The proposed rule change provides individuals who elect this option a maximum of five years in which to reregister without having to requalify by examination or having to obtain an examination waiver.

NASAA supports the proposed five-year participation period.⁶ Woodforest states that while providing individuals up to five years in which to reregister is better than the

⁶ NASAA requests that, if the Commission approves the proposed rule change, FINRA enhance the Central Registration Depository (CRD[®]) system to allow states that have not revised existing regulations to efficiently handle registration applications of persons who maintain their qualifications beyond two years. As stated in the proposed rule change, FINRA will work with NASAA and state regulators to provide for an appropriate process and system support to allow states to track and process

current baseline period of up to two years, regulators should consider extending this period to seven years. Nationwide and Fidelity also request that regulators reconsider extending the participation period to seven years. Integrated Solutions suggests that the proposed five-year participation period should not apply to unregistered individuals who continue to be actively involved in the industry or individuals who have proven their worth and knowledge through decades of licensing or involvement within or outside of the industry.

As explained in the proposed rule change, FINRA recognizes the benefits to the industry of having further alignment between FINRA qualification requirements and state licensing requirements. Therefore, based on NASAA's support for the proposed five-year participation period and in the interest of consistency and promoting registration efficiency, the proposed rule change provides individuals who complete annual CE a maximum of five years in which to reregister without having to requalify by examination or having to obtain an examination waiver. FINRA believes that the proposed participation period of up to five years will continue to serve the diversity and inclusion goals of the proposed rule change. As noted in the proposed rule change, we intend to monitor the efficacy of the proposed CE program, which will include a review of the participation period.

Under the current baseline, registered persons who terminate a registration are given up to two years in which they can reregister without being required to pass a new qualification examination, obtain an examination waiver or complete CE during that period. The proposed rule change in effect provides individuals the option to extend this period up to five years through the completion of annual CE. The proposed option is not intended to address every situation in which an individual terminates a registration and subsequently decides to reregister. With respect to an individual who continues to work in the securities industry or a field ancillary to the securities industry, FINRA has always provided the ability for such individuals to request an examination waiver following a significant period of absence from a registered role or function.⁷ Moreover, in determining whether to grant a waiver in such cases, FINRA expressly considers whether the individual was previously registered, and for how long relative to the duration of time that the individual has been unregistered. FINRA also considers whether the individual worked in a field ancillary to the securities industry, and for how long, while unregistered. FINRA believes this path is sufficient for such individuals.

Finally, Woodforest requests that individuals who participate in the proposed CE program to maintain their qualification be required to complete at least the minimum Firm Element requirement, including training on ethics, AML, regulations and products and, if applicable, additional CE relating to supervisory functions. As noted in the proposed rule

registration requests for individuals operating under the two- or five-year examination provisions.

⁷ See FINRA Rule 1210.03 (Qualification Examinations and Waivers of Examinations) and FINRA's Qualification Exam Waivers and Exemptions webpage, available at <https://www.finra.org/registration-exams-ce/qualification-exams/exam-waivers-and-exemptions>.

Ms. Vanessa Countryman

August 12, 2021

Page 7 of 7

change, the CE content for individuals who elect the proposed option would consist of a combination of Regulatory Element content and content selected by FINRA and the CE Council from the Firm Element content catalog. The content would also correspond to the registration category, including any supervisory or principal registration category, for which individuals wish to maintain their qualifications. In addition, the content selected from the Firm Element content catalog would be based on the minimum standards for Firm Element training, including training in professional responsibility.

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FINRA believes that the foregoing responds to the material issues raised by the commenters to the rule filing. If you have any questions, please contact me at (202) 728-8902, email: afshin.atabaki@finra.org. The fax number of the Office of General Counsel is (202) 728-8264.

Best regards,

/s/ Afshin Atabaki

Afshin Atabaki
Special Advisor and Associate General Counsel