

NASD Notice to Members 98-68

Update On The Securities Industry Continuing Education Program

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
- ☒ Continuing Education
- ☐ Corporate Finance
- ☐ Executive Representatives
- ☐ Government Securities
- ☐ Institutional
- ☐ Insurance
- ☐ Internal Audit
- ☒ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ☐ Registered Representatives
- ☒ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ☒ Training
- ☐ Variable Contracts

Executive Summary

The Securities Industry/Regulatory Council on Continuing Education (the Council) includes 13 members representing a cross section of securities firms and six members from self-regulatory organizations.¹ Both the Securities and Exchange Commission and the North American Securities Administrators Association have appointed liaisons to the Council.

The Council's purpose is to facilitate cooperative industry/regulatory coordination of the administration and future development of the Continuing Education Program (Program) in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, and developing and updating information about the Program for industry-wide dissemination. The first *Status Report* was issued by the Council in March 1995 (see *NASD Special Notice To Members 95-13*), followed by a second *Status Report* in October 1996 (see *NASD Notice To Members 96-69*). Following this *Status Report* is a section devoted to frequently asked questions and answers about the Program. Members are advised that additional information about Continuing Education and copies of the Council publications *Guidelines For Firm Element Training*, the *Regulatory Element Content Outline*, and *Examples of Firm Element Practices and Council Commentary* are available on the Continuing Education Web Page of the NASD Regulation, Inc. (NASD RegulationSM) Web Site (www.nasdr.com).

Questions about this *Notice* may be directed to John Linnehan, Director, Continuing Education, NASD

Regulation, at (301) 208-2932, or Daniel M. Sibears, Vice President, District Oversight, NASD Regulation, at (202) 728-6911.

Endnote

¹ The American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

© 1998, National Association of Securities Dealers, Inc. (NASD). All rights reserved.



The Securities Industry Continuing Education Program

Status Report On The Securities Industry Continuing Education Program

On behalf of the Securities Industry/Regulatory Council on Continuing Education¹ (Council), I am pleased to provide this *Status Report* on the Securities Industry Continuing Education Program (Program) and on the activities of the Council. The Program began its fourth year of operation on July 1, 1998, with some important changes and developments. First and foremost were the changes brought about by the revisions to the continuing education rules of the industry's self-regulatory organizations (SROs).

Revisions To The Regulatory Element Cycle

The time frames for registered persons to participate in the Regulatory Element have been revised to require ongoing participation in the Regulatory Element computer-based training by registered persons throughout their securities careers. Formerly, registered persons were required to complete the Regulatory Element on three occasions – within 120 days of the second, fifth, and 10th anniversaries of their initial securities registration (and also when they were the subject of a significant disciplinary action), with graduation from the Regulatory Element after completion of the 10th anniversary Regulatory Element session. Under the revised uniform SRO rules, registered persons must participate in the Regulatory Element within 120 days of the second anniversary of their initial securities registration and every three years thereafter (*i.e.*, the fifth, eighth, 11th, 14th, etc., anniversaries), with no graduation from the Regulatory Element. Incurring a significant disciplinary action still results in a requirement to complete the Regulatory Element within 120 days of the effective date of the significant disciplinary action. The cycle for participation in the Regulatory Element will then be adjusted to reflect the effective date of the significant disciplinary action rather than the initial securities registration date.

The revised SRO rules also allowed a one-time exemption from the Regulatory Element by providing for continued graduation of those persons who have been registered for more than 10 years as of July 1, 1998, and who have not been the subject of a significant disciplinary action. However, graduated persons registered in a principal/supervisor capacity for less than 10 years as of July 1, 1998, and those graduates who acquire their first principal/supervisor registration after July 1, 1998, re-enter the Regulatory Element regardless of the number of years they have been registered.

New Computer-Based Training Program For Principals/Supervisors

Another major change deals with the content of the Regulatory Element computer-based training. As originally adopted, the Regulatory Element program did not discern between registration categories. All registered persons took the same Regulatory Element program. The amended SRO rules allow the SROs to design

nate specific Regulatory Element Programs for specific registration categories. The first such specialized training will be the Supervisor Program. It is anticipated that this new Supervisor Program will commence later this year. More information regarding the Supervisor Program will be disseminated prior to introduction. Persons registered as principals/supervisors will continue to take the current Regulatory Element Program until implementation of the new Supervisor Program. In the future, additional specific training programs may be developed for other registration categories.

Changes To The Firm Element

The Firm Element was also revised. As you know, the Firm Element requires that each firm conduct an annual analysis of its business and related training needs. Firms must administer appropriate training to their registered persons who have direct contact with customers, and their immediate supervisors on an ongoing basis. The training must cover topics specifically related to their business, such as new products, sales practices, risk disclosure, and new regulatory requirements and concerns. The amended SRO rules require firms to focus specifically on supervisory training needs when conducting their Needs Analysis, and if it is determined that there is a specific need for such training, to address these needs in their training plans.

Attached to this Status Report are a number of frequently asked questions about both the Regulatory and Firm Elements of the Program.

Other Activities Of The Council

The Council conducted its first open meeting with broker/dealers on March 26, 1998, in New Orleans, Louisiana. The open meeting provided a forum for the Council and the firms to discuss various issues related to the Firm Element.

The open meeting allowed for positive interaction between the Council and firms on the subject of continuing education. Twenty-seven National Association of Securities Dealers, Inc. (NASD®), New York Stock Exchange, and/or Municipal Securities Rulemaking Board members based in and around New Orleans, attended the session. The companies, which employ anywhere between three and 300 registered representatives, represented various types of firms including bank broker/dealers, investment bankers, investment advisers who were also broker/dealers, introducing and carrying broker/dealers, retail-oriented firms, and municipal bond firms.

Topics discussed included:

- How firms measure the effectiveness of their Firm Element training.
- The value of the quarterly Regulatory Element Performance Reports sent by the Continuing Education Program.

- How firms handle registered representatives who refuse to participate in Firm Element training.
- Whether ethics should be included in continuing education.
- How helpful firms find Council publications.²
- Compliance examinations by the SROs.

Firms were offered the opportunity to meet Council members and express their views. Many of the firms also benefited from hearing others' experiences and sharing their own. The Council benefited from discussing with firms ways to make the Continuing Education Program more meaningful. The next open meeting will be held on Thursday, August 20, 1998, in Denver, Colorado.

What Lies Ahead

The Securities Industry Continuing Education Program has made great strides in the past three years, and the Council looks forward to enhancing the Program further. I would encourage all participants in the securities industry to engage in this improvement process by communicating their observations and ideas on continuing education to the Council members listed in this Update.

Robert H. Watts, Council Chairman
Senior Vice President & Chief Compliance Officer
John Hancock Mutual Life Insurance Co.
Boston, MA

Endnotes

¹The Council consists of 19 representatives: six from self-regulatory organizations (The American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.) and 13 from the industry. The industry representatives serve three-year terms and are selected through a nominating committee process designed to maintain representation from a broad cross section of broker/dealers. Liaisons from the Securities and Exchange Commission (SEC) and the North American Securities Administrators Association (NASAA) also participate in Council activities. The Council's purpose is to facilitate cooperative industry/regulatory coordination of the administration and future development of the Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, and developing and updating information about the Program for industry-wide dissemination.

²Chief among the Council publications discussed at the meeting were *Guidelines For Firm Element Training* (1996), *Examples of Firm Element Practices and Council Commentary* (1997), and the annual *Firm Element Advisory*.

Members Of The Securities Industry/Regulatory Council On Continuing Education

Chairperson

Robert H. Watts
Senior Vice President & Chief Compliance Officer
John Hancock Mutual Life Insurance Co.
Boston, MA

Leslie C. Quick III
President
U.S. Clearing Corp.
New York, NY

Jerry Roberts
Managing Director
Sterne, Agee & Leach, Inc.
Little Rock, AR

Mary L. Bender
Senior Vice President, Division of Regulatory Services
Chicago Board Options Exchange
Chicago, IL

Frank J. McAuliffe
Vice President, Testing & Continuing Education
NASD Regulation, Inc.
Rockville, MD

Industry Representatives

Richard A. Austin
Branch Manager and Partner
J.C. Bradford Co.
Charlotte, NC

Jim Settel
Senior Vice President & Corporate Ethics Officer (Retired)
Prudential Securities, Inc.
New York, NY

Claire P. McGrath
Vice President and Special Counsel, Derivative Securities Division
American Stock Exchange
New York, NY

Cheryl Cook-Schneider
General Partner, Compliance
Edward Jones
St. Louis, MO

Ruth E. Smith
Senior Vice President
Chase Securities of Texas, Inc.
Houston, TX

Loretta J. Rollins
Director of Professional Qualifications
Municipal Securities Rulemaking Board
Alexandria, VA

John L. Dixon
President & CEO
Mutual Service Corporation
West Palm Beach, FL

John Weingart
Senior Vice President & Branch Manager (Retired)
Smith Barney
Kentfield, CA

Donald van Weezel
Managing Director, Regulatory Affairs
New York Stock Exchange
New York, NY

Dennis C. Hensley
Managing Director, Associate General Counsel & Head of Compliance
J.P. Morgan & Co, Inc.
New York, NY

Gail T. P. Wickes
Senior Vice President & Director
PaineWebber Incorporated
Weehawken, NJ

NASAA Liaisons

Richard L. Hinton
President
Campbell, Waterman Inc.
Seattle, WA

SRO Representatives

Diane Anderson
Vice President of Examination
Philadelphia Stock Exchange
Philadelphia, PA

Ralph A. Lambiase
Director
Connecticut Department of Banking
Division of Securities
Hartford, CT

Sarah McCafferty
Vice President Investment Services & Associate General Counsel
T. Rowe Price Investment Services, Inc.
Baltimore, MD

Don B. Saxon
Director, Division of Securities
Florida Office of Comptroller
Department of Banking & Finance
Tallahassee, FL

SEC Liaisons

Katherine England
Assistant Director, Market Regulation
Securities and Exchange Commission
Washington, DC

Gail Marshall
Special Counsel, Division of Market
Regulation
Securities and Exchange Commission
Washington, DC

SRO Liaisons

Christian Billet
Continuing Education Coordinator
New York Stock Exchange
New York, NY

Mary Alice Brophy
Executive Vice President, Member
Regulation
NASD Regulation, Inc.
Washington, DC

Patricia DeVita
Continuing Education Coordinator
New York Stock Exchange
New York, NY

John Linnehan
Director, Continuing Education
NASD Regulation, Inc.
Rockville, MD

Salvatore Pallante
Senior Vice President
New York Stock Exchange
New York, NY

Daniel M. Sibears
Vice President, District Oversight
NASD Regulation, Inc.
Washington, DC

Questions And Answers Regarding The Securities Industry Continuing Education Program

Background And General Description

1.

Q. *What is the Securities Industry Continuing Education Program?*

A. The Securities Industry Continuing Education Program (Program) is a two-part program. The Regulatory Element consists of periodic computer-based training on regulatory, compliance, ethical, and supervisory subjects. The Firm Element consists of annual, firm-developed and administered training programs designed to keep specified registered employees current regarding job- and product-related subjects.

2.

Q. *What is the Securities Industry/Regulatory Council on Continuing Education (Council) and what role does it play?*

A. The Council consists of 19 representatives, six from self-regulatory organizations (SROs)¹ and 13 from the industry. The industry representatives serve three-year terms and are selected through a nominating committee process designed to maintain representation from a broad cross section of broker/dealers. Liaisons from the Securities and Exchange Commission (SEC) and the North American Securities Administrators Association (NASAA) also participate in Council matters. The Council's purpose is to facilitate cooperative industry/regulatory coordination of the administration and future development of the Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, and developing and updating information about the Program for industry-wide dissemination.

Q. *What are the most recent changes to the Continuing Education Program?*

3.

A. On July 1, 1998, changes to the Continuing Education Rules of the SROs became effective. The changes state that:

- Registered persons are required to participate in an appropriate Regulatory Element on the second anniversary of their *initial securities registration* and every three years thereafter throughout their careers. Registered persons will no longer graduate from the program after their 10th registration anniversary.
- Persons registered for 10 years or more in their respective registrations as of July 1, 1998, will be grandfathered from the Regulatory Element.
- Member firms are required to specifically identify supervisory needs in conducting their annual Firm Element Needs Analysis and to address any identified needs in the annual training plan.

Regulatory Element The Regulatory Element— Who is Required to Participate?

4.

Q. *Who is required to participate in the Regulatory Element?*

A. The following registered persons are required to participate in the Regulatory Element:

1. persons registered 10 years or less as of July 1, 1998, as calculated from their initial securities registration date;
2. persons registered as a principal or supervisor 10 years or less as of July 1, 1998, regardless of the amount of time they have been a registered person; and
3. persons who weren't previously required to participate in the Regulatory Element, but who become the subject of a *significant disciplinary action* (see Question 16).

5.

Q. *What registration categories are covered by the Regulatory Element?*

A. Those who hold the following registrations are subject to the Regulatory Element requirements:

- 4 Registered Options Principal *
- 6 Investment Company Products/Variable Contracts Limited Representative
- 7 General Securities Representative
- 7 Securities Trader (New York Stock Exchange [NYSE])
- 7 Trading Supervisor (NYSE)

* Persons with these Principal/Supervisor registrations will receive the Principal/Supervisor Regulatory Element computer-based training module (the Supervisor Program).

- 7A Floor Members Engaged in Public Business with Professional Customers (NYSE)
- 7B Floor Clerks of Members Engaged in Public Business with Professional Customers (NYSE)
- 8 General Securities Sales Supervisor *
- 8 Branch Office Manager (NYSE) *
- 11 Assistant Representative—Order Processing
- 12 General Securities Sales Supervisor (NYSE) *
- 13 Allied Member (NYSE)
- 14 Compliance Official (NYSE) *
- 15 Foreign Currency Options
- 16 Supervisory Analyst (NYSE) *
- 17 Limited Registered Representative (United Kingdom)
- 22 Direct Participation Programs Limited Representative
- 24 General Securities Principal *
- 26 Investment Company Products/Variable Contracts Limited Principal *
- 27 Financial and Operations Principal *
- 28 Introducing Broker/Dealer Financial and Operations Principal *
- 37 Canada Module of the General Securities Representative Examination (Options included)
- 38 Canada Module of the General Securities Representative Examination (Options not included)
- 39 Direct Participation Programs Limited Principal *
- 47 Japan Module of the General Securities Representative Examination
- 52 Municipal Securities Representative
- 53 Municipal Securities Principal *
- 55 Equity Trader
- 62 Corporate Securities Limited Representative
- 72 • Government Securities Representative
- Government Securities Principal *
- Securities Lending Representative (NYSE)
- Securities Lending Supervisor (NYSE)

6.

Q. Is anyone exempt from the Regulatory Element of the Program?

A. Exempt from the Regulatory Element are:

1. those registered persons whose activities are limited solely to the transaction of business with members or registered broker/dealers on an exchange trading floor;
2. persons approved by the NYSE with the *sole* status of officer of a member or member organization, pursuant to the requirements of Exchange Rule 345(b);
3. persons approved by the NYSE with the *sole* status of approved person;
4. persons holding only a commodities registration with the National Futures Association or state investment adviser registrations;
5. persons registered with the NASD solely as Foreign Associates; and
6. persons who have been grandfathered from the Regulatory Element of the Program (see Question 7).

7.

Q. Who has been grandfathered from the Regulatory Element?

A. On July 1, 1998, all persons currently graduated from the Regulatory Element were reviewed by the Central Registration Depository (CRDSM). All “graduates” who had been registered as principal/supervisors for less than 10 years as of July 1, 1998, were required to re-enter the Regulatory Element. All other “graduates” were grandfathered. They will re-enter the Regulatory Element only if they:

- become the subject of a significant disciplinary action (see Question 16), or

- are originally registered as a representative, then subsequently register as a principal/supervisor.

8.

Q. Is it possible for a person to be covered under the Regulatory Element as a principal/supervisor yet be exempted at a later date?

A. Yes; in certain circumstances a person covered under the Regulatory Element as a principal/supervisor could be graduated should such a person revert to non-principal/supervisor-only registration category. For example, a person who had been registered for 15 years as of July 1, 1998, would be grandfathered from the Regulatory Element if registered only as a registered representative, but would be covered in a principal/supervisor capacity if such principal/supervisor registration occurred during the past 10 years. By surrendering the principal/supervisor registration, the person would revert to grandfathered status in a registered representative capacity.

Note that if the person in this example decides to reactivate his or her principal/supervisor registration within two years of surrendering it, he or she would be covered by the Regulatory Element and would have to satisfy any outstanding Regulatory Element requirement that occurred during the period when the principal/supervisor registration had been surrendered. To reactivate a principal/supervisor registration that had been surrendered for over two years, a person must requalify for that registration by examination.

9.

Q. What is the initial securities registration date?

* Persons with these Principal/Supervisor registrations will receive the Principal/Supervisor Regulatory Element computer-based training module (the Supervisor Program).

A. The initial securities registration date is the first date a person became registered (*i.e.*, approved) with an SRO. The initial registration date is not the date the person completed and passed the registration qualification examination. The CRD uses the initial securities registration date as a *base date* from which to determine a person's Regulatory Element anniversaries (2nd, 5th, 8th, 11th, etc.).

10.

Q. *What if an individual has multiple registrations obtained in different years, such as a Series 6 in 1990 and a Series 7 in 1991? Which date determines when that person must participate in the Regulatory Element?*

A. The date of the initial registration (in this case 1990) applies, provided that the person has remained continuously registered since that time and has had no significant disciplinary action (see Question 16).

11.

Q. *What if an individual had a Series 65 (State Investment Adviser) registration in 1992 and a Series 6 (Investment Representative) in 1993? Which date determines when that person must participate in the Regulatory Element?*

A. The date of the Series 6 registration (1993) is the determining date, provided that the person has remained continuously registered since that time and has had no significant disciplinary action (see Question 16). The Series 65 State Investment Adviser registration would not cause a person to be covered by the Program because it is a state, not an SRO registration category.

12.

Q. *Certain municipal securities representatives and principals were registered with one or more bank regulators pursuant to Municipal Securities Rulemaking Board (MSRB) rules before becoming associated with an NASD member. What is their initial registration date and how do you measure the period of their continuous registration?*

A. The initial registration date is the date the person was first registered with the bank regulator. The period of continuous registration begins with this date and includes the period of bank registration. Because CRD does not contain the bank registration information, the CRD may reflect such persons as being registered less than 10 years. However, if in combination with the bank registration, the person has been continuously registered for more than 10 years, he or she is not required to participate in the Regulatory Element. If a firm receives a Continuing Education Advisory Message for such a person, it should advise the NASD Regulation Continuing Education Department in writing that the person has a registration history with a bank regulator. The letter must include the amount of time registered with a bank regulator before becoming associated with an NASD firm and the bank regulatory organization(s) with which the person was registered so that this information can be verified.

13.

Q. *What if a person's registration temporarily lapses?*

A. If a person ceases to be registered for less than two years, he or she will maintain the original registration date as the initial securities registration date, but will have to

participate in any Regulatory Element program that he or she may have missed during the lapsed period. For example, if a person's registration lapses at seven and a half years, and that person wishes to reactivate registration at what would be his or her nine-year anniversary, he or she must complete the eight-year Regulatory Element requirement before the registration can be reactivated.

14.

Q. *What if the person ceases to be registered for two or more years?*

A. A person who is not registered for two or more years begins the entire registration and qualification process anew. He or she must take the appropriate qualification examination(s) and begins the Regulatory Element as if entering the Program for the first time.

15.

Q. *What is the initial registration date of the person whose registration lapsed and who re-enters the securities business by waiver rather than by examination?*

A. For the purposes of the Continuing Education Rule, the initial registration date of that person is the waiver approval date.

Significant Disciplinary Actions

16.

Q. *What is a significant disciplinary action and what is its impact?*

A. A significant disciplinary action is defined in the SRO rules as:

- any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934;
- a suspension, or the imposition of a

fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

- an order imposed as a sanction in a disciplinary action to re-enter the Continuing Education Program by any securities governmental agency or securities self-regulatory organization.

A significant disciplinary action causes those who are grandfathered from the Program to re-enter the Regulatory Element with an immediate session due within 120 days of the effective date of the significant disciplinary action, then on the second anniversary of this base date and every third year thereafter. The effective date is the 45th day after the *Date of Action* specified in the official disciplinary decision document.

A person who incurs a significant disciplinary action and is currently subject to the Regulatory Element will have the base date changed to the effective date of the significant disciplinary action. That person must participate in an immediate session within 120 days of this new base date, then on the second anniversary of the base date and every third year thereafter.

17.

Q. *If a significant disciplinary action is appealed, what will be that person's Regulatory Element requirement status?*

A. If an appeal is filed, the Regulatory Element requirement associated with that disciplinary action will be deferred, and the individual will retain the Regulatory Element status he or she had before the disciplinary action was taken. If the significant disci-

plinary action is sustained on appeal, the effective date would become the 45th day after the action was sustained. The person must participate in an immediate session within 120 days of this new base date, then on the second anniversary of the base date and every third year thereafter.

Notifications And Reports Issued By CRD To Firms

18.

Q. *What types of notifications and reports does CRD provide firms to help them track the status of their registered employees who are subject to the Regulatory Element?*

A. CRD issues Continuing Education Advisory Messages in the form of individual notifications and summary reports to firms whose registration records are maintained in the CRD. Firms whose registration records are not maintained on the CRD (e.g., NYSE-only members) and persons registered in registration categories not recorded in CRD (e.g., certain categories only recognized by the NYSE such as Series 7a or 7b) maintain responsibility for tracking their Regulatory Element Program requirements and completions. This may be supplemented by notices from the SROs with which such firms maintain membership and where such registration categories are carried.

Individual Notifications

- An *Initial Notice* is sent to the firm 30 days before a registered person's anniversary date to advise the firm of the registered person's approaching registration or disciplinary anniversary, and to inform the firm of the associated Program requirement (i.e., the General Program for registered persons who are not principals or supervisors, and the Supervisor Program for registered principals and supervisors). The notification

includes the beginning and ending dates of the 120-day window, as well as notice of authorization to schedule a training session for any available date in that window. The registered person must then make an appointment and take the computer-based training at any Sylvan Technology Center before the end of the 120-day period (see Scheduling And Administration Of Computer-Based Training Sessions At Sylvan Technology Centers).

- A *Second Notice* is sent when 30 days remain in the 120-day window. This *Notice* advises the firm of the registered person's status and includes a reminder of the consequences of not complying with the Regulatory Element requirements.
- A *Notice of Session Completion* is sent when the registered person satisfies the Regulatory Element requirement by completing a computer-based training session.
- A *Notice of Inactive Status* is sent to inform the firm of any registered person who fails to complete the Regulatory Element computer-based training within the required period. The notification states that the person's registration is no longer active and he or she may not perform, or be paid for, any activity that requires a securities registration. Such person remains inactive until the required Regulatory Element session is completed.
- A *Directed Sequence/Session Disciplinary Notice* is sent to inform the firm of a registered person who has become the subject of a significant disciplinary action. The *Directed Sequence Disciplinary Notice* is issued when a significant disciplinary action causes the person to either re-enter the Regulatory Element or begin participation utilizing a new base date (see Question 16). The *Directed Session Disciplinary Notice* is also issued if the person has been ordered by a regulator to take a single Regulatory Element session.

- A *CE Two Year Termination Warning Notice* is sent to the firm of any registered person who is approaching two years of inactive status for not completing the Regulatory Element computer-based training within the required period. The *Warning Notice* advises that the person's registration will be administratively terminated in 60 days unless the required Regulatory Element session is satisfied.
- A *CE Two Year Termination Notice* is sent to the firm of any registered person who has been inactive for two years. It advises that the person's registration has been administratively terminated and that the person must reapply for registration and requalify for registration by examination.

Summary Reports

In the middle of each month, CRD sends firms summary status reports. The *Requirement Summary* report shows registered persons who are in open 120-day windows, grouped as follows:

- persons who have begun their 120-day window;
- persons who have 90 days remaining in their 120-day window;
- persons who have 60 days remaining in their 120-day window; and/or
- persons who have 30 days remaining in their 120-day window.

Firms must carefully review the names on the *Requirement Summary* to identify any individual for whom the firm did not record or receive an *Initial Notification*. This will most often happen with individuals who have been hired by a firm when they are in an open window, or for individuals who have incurred a significant disciplinary action and must re-enter the Regulatory Element. Significant disciplinary actions are often reported to the CRD after the effective date of the action and an *Initial Notification* would not be sent to the firm.

Other summary reports show registered persons who have:

- completed their requirement within the past 40 days (*Completion Summary*);
- had their registration changed to inactive within the past 40 days (*Inactive Summary*);
- remained inactive for more than 30 days (*Previously Inactive Summary*); and/or
- had their registration status changed from inactive to another status within the past 40 days (*Previously Inactive/Satisfied Summary*).

Scheduling And Administration Of CBT Sessions At Sylvan Technology Centers

19.

Q. *Where can a person take the Regulatory Element computer-based training?*

A. The Regulatory Element must be taken at any of the approximately 250 Sylvan Technology Centers located throughout the United States and Canada. Outside of North America, NASD RegulationSM operates a Certification and Training Center in London, for the benefit of registered persons located in England, Scotland, or Wales.

20.

Q. *How does a person make an appointment to take the Regulatory Element computer-based training?*

A. For appointments at a Sylvan Technology Center in the United States or Canada, call Sylvan's National Registration Center at (800) 578-6273. For appointments in London, please phone the NASD at (0171) 374 2666 in the U.K., or 44 171 374 2666 outside the U.K.

When calling to make an appointment at either location, be prepared to provide:

- the candidate's name and Social Security number;
- the firm's name; and
- a telephone number where Sylvan can reach the candidate or the candidate's firm.

Individuals are strongly encouraged to schedule their appointments as soon as possible within their 120-day window.

21.

Q. *How long does the training session last?*

A. A participant will have up to three and a half hours to complete the training session. Persons with disabilities may be given additional time to complete the training if a request is made when scheduling the appointment. If a Regulatory Element session is not completed within the appointment time, the participant must retake the entire session at another appointment.

22.

Q. *What does it cost to take the computer-based training and how will firms be charged?*

A. The cost is \$75 for each computer-based training session taken at a Sylvan Technology Center which is charged to the firm's CRD account after the session is taken. "No-shows" and those who cancel within 48 hours of a scheduled appointment will be charged \$75. If a firm requests a session for an employee who has not received a notification from CRD that he or she is required to satisfy the Regulatory Element, the \$75 will be deducted from the firm's CRD account at the time the request is made, not after the session is completed.

23.

Q. *May a firm request a Regulatory Element computer-based training session for a registered person who is not otherwise required to complete a Regulatory Element session?*

A. Yes, to request a computer-based training session for a registered person not otherwise required to participate in the Regulatory Element, a firm 1) submits a request through the Firm Access Query System (FAQS) using the EXAMREQ command, or 2) sends page one of Form U-4 using the "Other" line to request a session. The firm's CRD account will be charged for the training session when the appointment is requested, rather than after the session is taken.

24.

Q. *If a person does not complete the Regulatory Element computer-based training within the three and a half hours allotted time, how long must he or she wait before rescheduling another appointment?*

A. The person must wait 48 hours to reschedule another appointment. To avoid becoming inactive for failing to satisfy the Regulatory Element training on the last day of the 120-day window, it is important that registered persons do not wait until the last minute to schedule an appointment. There will be another \$75 charge for the rescheduled session.

25.

Q. *Can a person schedule or reschedule the Regulatory Element computer-based training after his or her 120-day window closes?*

A. Yes. A person who is required to satisfy the Regulatory Element computer-based training can schedule an appointment in the normal manner at

a Sylvan Technology Center for up to two years after the close of the 120-day window. Remember, however, that the person whose 120-day window closes without satisfying the Regulatory Element requirement is deemed inactive. This means that the person may not conduct, or be paid for, any activities that require a securities registration. Furthermore, a person whose registration remains inactive for more than two years must requalify for his or her registration by examination and begin a new Regulatory Element cycle.

26.

Q. *Are there any provisions to accommodate people with disabilities at the Sylvan Technology Centers?*

A. Yes. Persons with disabilities or their firms should contact NASD Regulation's Field Support Services at (800) 999-6647 to make special arrangements for their Regulatory Element appointment at the Sylvan Technology Center.

27.

Q. *Are there any plans to enable delivery of the Regulatory Element computer-based training at sites provided by member firms?*

A. The subject of "in-house delivery," or delivery of the Regulatory Element on-site by industry firms, remains under review by the Council. The Council's concerns include the security of the content material, the integrity of the process (*i.e.*, positively identifying the person taking the training and verifying independent performance), and public perception as to the effectiveness of the program. The ultimate determination as to whether internal delivery will be possible depends to a large extent on the development of technology to satisfy these concerns at a reasonable cost.

28.

Q. *How can a registered person who resides outside North America satisfy his or her Regulatory Element requirement?*

A. Registered persons outside North America are still subject to the requirements of the Regulatory Element. With the exception of persons residing in England, Scotland, or Wales, who must use the NASD Regulation Certification and Training Center in London, persons outside the United States and Canada cannot currently participate in the computer-based training. These individuals may have their Regulatory Element requirement deferred until facilities are available. To obtain a deferral, a registered principal or supervisor of the firm must make the request in writing to the Continuing Education Department of NASD Regulation. The letter should contain the person's name, Social Security or CRD number, and the city and country in which the person resides. The CRD will defer that person's Regulatory Element requirement and notify the firm when delivery of the computer-based training is available. Of course, any registered person with a Regulatory Element deferral may satisfy his or her requirement at any Sylvan Technology Center in the United States and Canada, or the NASD Regulation Certification and Training Center in London, and is encouraged to do so.

Types Of Regulatory Element Training Programs

29.

Q. *How many different Regulatory Element computer-based training programs are there?*

A. There are currently two different Regulatory Element computer-based

training programs. The General Program is for persons who are not registered as principals or supervisors. The other is specifically for registered principals or supervisors. CRD tracks registered persons' registrations and anniversary dates and determines when and which training program the registered person must take (see Question 5).

Note: Until the Supervisor Program is available later this year, registered principals and supervisors will continue to satisfy their requirement by taking the General Program.

30.

Q. Does a registered principal or supervisor take one or two Regulatory Element training sessions?

A. Registered principals and supervisors take only one Regulatory Element computer-based training session — the Supervisor Program.

The following examples clarify the Regulatory Element training a registered person is required to take and when the training will occur. An "as of date" of July 1, 1998, is assumed in each example.

Example 1

Registered Person
Christian

Registration History
Series 6 Rep 8/18/88
Series 7 Rep 9/1/90

Required to Participate in the Regulatory Element?

Yes, because she has been registered less than 10 years as of 7/1/98.

Base Date
8/18/88

Next Anniversary/Required Regulatory Element Program
8/18/99. The General Program.

Example 2

Registered Person
Pat

Registration History

Series 7 Rep 9/1/86

Series 8 Sales Supervisor 4/1/90

Required to Participate in the Regulatory Element?

Yes, because she is a registered supervisor less than 10 years as of 7/1/98.

Base Date
9/1/86

Next Anniversary/Required Regulatory Element Program
9/1/2000. The Supervisor Program.

Example 3

Registered Person
Heather

Registration History

Series 6 Rep 10/1/85

Series 26 Principal 8/3/87

Required to Participate in the Regulatory Element? No. She has been registered as a principal for more than 10 years as of 7/1/98 and is grandfathered from the Regulatory Element.

Base Date
10/1/85

Next Anniversary/Required Regulatory Element Program
Not applicable.

Example 4

Registered Person
Lee

Registration History

Series 7 Rep 8/1/84

Financial/Ops Principal 11/1/99

Required to Participate in the Regulatory Element?

Not covered on 7/1/98 because he was registered over 10 years. Will be subsequently covered as of 11/1/99 upon registration as a principal.

Base Date
8/1/84

Next Anniversary/Required Regulatory Element Program
8/1/2001. The Supervisor Program.

Example 5

Registered Person
John

Registration History

Series 6 Rep 7/20/84

Incurs a significant disciplinary action effective 12/1/99

Required to Participate in the Regulatory Element?

Not covered on 7/1/98 because he was registered over 10 years. Will be subsequently covered as of 12/1/99 due to significant disciplinary action.

Base Date
12/1/99

Next Anniversary/Required Regulatory Element Program
12/1/99. The General Program.

Reentry of a grandfathered or graduated person into the Regulatory Element immediately creates a Regulatory Element requirement.

The Training Content And Method Of The Regulatory Element For Non-Principal/Supervisor Registrations - The General Program

31.

Q. What topics does the General Program cover?

A. The General Program comprises seven modules. The subject areas covered in each module are:

1. registration and reporting;
2. communications with the public;
3. suitability;
4. handling customer accounts;
5. business conduct;
6. customer accounts, trade and settlement practices; and
7. new and secondary offerings.

The General Program focuses on compliance, regulatory, ethical, and sales-practice standards as they apply in the context of the dealings registered persons have with investors. The content of the program has been recommended by participants in the industry, reviewed

by the Council, and approved by the SROs.

32.

Q. How is the training presented in each module?

A. Participants are led by an interactive computer program through “real-life” scenarios depicting situations faced by registered persons in the course of business. After reading the scenario, the participant must demonstrate his or her understanding of the issues by choosing the most appropriate response(s) to questions concerning the facts in the scenario. The participant must also answer general questions about the module topic by choosing the answer(s) from a list following the questions. The computer software then assesses the individual’s understanding of the topic. If the participant does not answer a sufficient number of questions correctly, the program delivers tutorials about the topics in the module, and the participant must try again with another scenario on the same general topic. Before the participant is permitted to move to the next module, one scenario with its associated “List Questions” must be successfully completed. As the person works through each subject, the computer program provides immediate feedback about each response made.

33.

Q. How should an individual prepare for the General Program?

A. The General Program does not necessarily require advance preparation. However, because the General Program is designed to evaluate the registered person’s overall understanding, it is beneficial for the registered person to be familiar with the *Regulatory Element Content Outline*, available from the NYSE or NASD

Regulation. This may be obtained by phoning Christian Billet (212) 656-2156, or Patricia DeVita (212) 656-2746 at the NYSE, or John Linnehan (301) 208-2932 at NASD Regulation.

Individual Feedback on the General Program Regulatory Element Computer-Based Training

34.

Q. Does the participant receive a grade or any other kind of feedback from the General Program?

A. There is no grade provided for the General Program. However, the training program provides immediate feedback as the participant works through the scenario questions. Also, as discussed above, the General Program administers remedial subject matter tutorials as the need arises.

35.

Q. What type of feedback do firms receive about their registered employees?

A. Firms receive performance reports for the General Program quarterly and annually. The reports show the firm:

1. the number of Regulatory Element sessions taken by the firm’s employees during the period;
2. the number of complete and incomplete sessions;
3. aggregate percentage performance and standard deviations by registration type (Series 6, Series 7, Principals [if any], and a grouping of all other registrations combined) for each of the seven subject modules; and
4. comparative industry information.

Firms must use this feedback to satisfy the Firm Element requirements of the Securities Industry Continuing Education Program, in conducting the annual Needs Analysis which is the basis for the firm’s written Firm

Element training plan. Material differences from industry performance in those areas that are pertinent to the firm’s business, and incomplete sessions which exceed industry averages should be addressed in Firm Element training (see the Firm Element).

The Training Content And Method Of The Regulatory Element For Principal And Supervisor Registrations - The Supervisor Program

36.

Q. What topics does the Regulatory Element Supervisor Program training cover?

A. The Regulatory Element Supervisor Program addresses issues such as suitability, hiring and interviewing, insider trading, market manipulation, money laundering, and other general supervisory topics. The Supervisor Program incorporates multimedia features which enable the participants to observe live situations, and view various documents such as account statements, portfolios, and industry forms, in order to solve the problems presented in the exercise.

37.

Q. How should an individual prepare for the Supervisor Program?

A. Because of the high degree of interactivity and subjectivity involved, specific preparation is not necessary.

Individual And Firm Feedback On The Supervisor Program Regulatory Element Computer-Based Training

38.

Q. Will the participant receive a grade or any other kind of feedback from the Supervisor Program?

A. The Supervisor Program is not graded. However, the interactive training provides immediate feedback as the participant works through the scenario questions. In addition, summaries of pertinent information from each subject area are presented at the conclusion of each scenario.

39.

Q. *Will firms receive feedback about their employees who take the Supervisor Program training?*

A. The Supervisor Program is not designed to provide quantifiable information from participants, therefore no quarterly or annual performance reports will be available.

Failure To Comply With Regulatory Element Requirements

40.

Q. *Is each session of the computer-based training of the Regulatory Element recorded in CRD?*

A. Yes.

41.

Q. *What are the consequences of not complying with the Regulatory Element?*

A. The registration of any person who does not satisfy the Regulatory Element requirements will be deemed inactive. This means that he or she may not engage in, or be paid for activities that require a securities registration. For example, a General Securities Registered Representative (Series 7) may not engage in any activities involving the solicitation and handling of securities transactions. Likewise, if a person is registered as a Financial and Operations Principal, the person may neither act in the capacity of a Financial and Opera-

tions Principal or in any other capacity that requires registration, nor receive compensation for activities requiring any registration.

Thus, it is important to schedule all Regulatory Element computer-based training appointments early in the 120-day window in the event that the person does not complete the required training on the first attempt and has to reschedule.

42.

Q. *For how long may a registered person remain inactive before he or she must requalify for registration by examination?*

A. A registered person can remain inactive for up to two years. A registration that is inactive for a period of two years will be administratively terminated, and the person must requalify for registration by examination.

43.

Q. *Must the firm submit a Termination Notice (Form U-5) to report that a person's registration is inactive for failure to meet the Regulatory Element requirements?*

A. No. However, if the person is subsequently terminated by the firm for any reason, including refusal to comply with the Continuing Education requirements, a Form U-5 must be filed.

44.

Q. *When a person who is inactive for failing to satisfy the Regulatory Element requirements is later terminated by his or her firm, how long does the person have to become re-registered with another firm without having to requalify by examination?*

A. It depends. Ordinarily, a person has a period of two years to re-regis-

ter without taking a registration examination. However, if the person is inactive for two years for failing to satisfy a Regulatory Element requirement, his or her registration will be administratively terminated regardless of the time elapsed since the person was terminated by his or her previous firm.

Example

Joan is registered with Firm A. She does not satisfy the Regulatory Element requirement due for her fifth anniversary and she becomes inactive on September 1, 1999. On November 1, 1999, Joan's firm files a Form U-5 to terminate her registration. Joan reapplies for registration with Firm B on October 1, 2001, but her registration had been administratively terminated on September 1, 2001, because she had been inactive in the Continuing Education Program for two years. Joan must requalify by examination even though it has been less than two years between the time when her Form U-5 was filed by Firm A and her Form U-4 was filed by Firm B.

45.

Q. *If a registered person has both a principal/supervisor and non-principal/supervisor registration and becomes inactive for failing to satisfy the Regulatory Element requirements, does only one or all of his or her registrations become inactive?*

A. All registrations are deemed inactive when that person does not satisfy the Regulatory Element requirements.

46.

Q. *May a registered salesperson who is deemed inactive continue to receive trail or residual commissions?*

A. Yes. Trail or residual commissions that are permitted under applicable

SRO rules for business completed before the inactive period commenced may be paid, if that is the policy of the person's firm.

Firm Element

47.

Q. *Who is required to participate in the Firm Element?*

A. The Firm Element requirements apply to all *covered persons* (*covered persons* include all registered persons that deal with customers including, but not limited to, registered salespersons, traders, sales assistants, investment company shareholder servicing agents, investment bankers, and others who have direct contact with customers in the conduct of a securities sales, trading, or investment banking business), and their immediate supervisors.

The term "customer" applies to retail, institutional, and investment banking customers, but does not apply to other broker/dealers.

48.

Q. *Can anyone be grandfathered or exempt?*

A. No *covered person* is grandfathered or exempt from the Firm Element.

49.

Q. *Are branch managers and supervisors/principals covered persons within the Firm Element?*

A. Yes, if they directly supervise registered *covered persons*. If a branch manager or supervisor/principal also has customer accounts, then his or her immediate supervisor is a *covered person* as well.

50.

Q. *Does the Program require specific review of Firm Element training needs for managers or supervisors?*

A. Yes. Effective July 1, 1998, firms are required to specifically address supervisory training needs in the annual analysis. Training for supervisors must be provided as determined by the firm to be necessary. In analyzing their Firm Element training needs for supervisors, firms should pay particular attention to the importance of supervisory responsibilities imposed by industry laws and regulations. Firms should include a review of the firm's internal supervisory policies, the effective use of internal monitoring or supervisory systems, and the sources of information or assistance available within the firm.

51.

Q. *Are registered research analysts covered persons within the Firm Element?*

A. Yes, if they participate in sales-oriented presentations to customers.

52.

Q. *Are registered sales assistants or registered investment company shareholder servicing agents, who handle service calls from customers, covered persons within the Firm Element?*

A. Yes, if their activities involve the conduct of a securities business in a sales context. The fact that the firm has decided to register such persons often suggests that there is likely to be customer contact of the type that requires registration.

53.

Q. *What should be the content of the Firm Element?*

A. It will vary. Each firm is required to analyze and evaluate its training needs at least annually. The firm's size, organizational structure, scope of business, types of products and services it offers, as well as regulatory developments and the Regulatory Element performance of its registered persons, will all need to be considered in determining training needs. Particular emphasis should be placed on changes to firm or industry demographics from the prior year. New products, new rules related to firm business, and problems the firm has experienced (such as complaints, regulatory or legal actions) are particularly important considerations. Once its needs are identified, the firm must devise a written training plan to address those needs and create training programs appropriate to its business.

Each firm must then administer its Continuing Education Program in accordance with its annual Needs Analysis and written plan, and must maintain records documenting the content of the Continuing Education Program and completion of it by *covered persons*.

54.

Q. *What is the required schedule for the Needs Analysis and written training plan?*

A. For most firms, the Firm Element will be a multi-tiered process. Each year, firms must complete/update an analysis of their training needs and revise or modify their annual written training plan accordingly. Because the plan must cover training to be conducted during the following calendar or fiscal year and must take into account matters such as budgeting, scheduling, and developing or securing the necessary educational materials, the Needs Analysis and the plan must be completed (and available for regulatory inspection) by the

end of each calendar or fiscal year. This does not suggest that work on either should be done only at year-end; in fact, a firm should remain flexible enough to modify its Needs Analysis and training plan throughout the year as circumstances dictate.

55.

Q. *If a firm utilizes a survey in its Needs Analysis, must the survey be retaken in its entirety every year?*

A. Although surveys are one way in which a Needs Analysis can be conducted, there are a variety of other techniques that can also be used either in place of, or in conjunction with surveys. The Council expected that a survey connected with a firm's initial Needs Analysis may by necessity be wide-ranging and therefore relatively more time consuming than surveys connected in conjunction with subsequent Needs Analysis. Subsequent surveys could be tailored and conducted with audiences within those areas of the firm where there had been changes. For example, a retail firm doing its first Needs Analysis survey might consider surveying each, or a representative sample of its retail representatives in addition to the compliance, marketing, and the other groups suggested in the *Guidelines for Firm Element Training* (see Question 64). In subsequent years, this firm might only survey new representatives or those retail representatives who had compliance problems, whose product lines changed, or who were involved in areas where there were changes to industry rules or company policies. A sample of the remaining retail population would generally suffice to validate what had been determined the year before.

56.

Q. *When must training begin each year?*

A. There is no single date on which training must begin. Firms must conduct training in keeping with their written training plans at various times throughout the calendar or fiscal year, depending on their own determination of needs and scheduling. For firms with limited products or small numbers of *covered persons*, it might be appropriate and sufficient to conduct training on only one or two occasions during the year. The primary responsibility that firms have is to ensure that coverage be adequate, and that information is transmitted in a timely manner.

57.

Q. *If new training is added after completion of a specific year's training plan, must training originally specified be completed?*

A. No, not if the change is appropriate and in keeping with the firm's changing needs and circumstances. A change would be logical if the new training improved on or replaced that originally planned, or if it were deemed necessary because changed circumstances suggested new training priorities. The annual training plan should be viewed as an evolving document that can be modified if circumstances warrant, and allow for deviation if experience or unanticipated developments suggest that changes are appropriate.

58.

Q. *May insurance industry continuing education or training taken in conjunction with professional designation programs such as the Certified Financial Planner Program satisfy Firm Element requirements?*

A. A firm may determine that participation in a program designed to meet the requirements of an educational or Continuing Education Program of another related industry,

such as that required for insurance-licensed personnel, or of a professional designation program in a field related to the securities industry meets all or part of an individual's or group of individuals' Firm Element requirements. Whether additional training is necessary for a specific individual or group will depend on whether the coverage of the training received through the other program is consistent with the firm's Needs Analysis and the scope of the individual's sales-related activities.

For example, if a *covered person's* sales-related activities are limited to insurance and insurance-related securities, training received through insurance industry continuing education might be sufficient. On the other hand, if the individual sells a wider range of securities products, participation in additional training would probably be necessary. For individuals participating in the initial or ongoing training related to a professional designation program, a firm might determine that the material adequately covered subjects planned for its own Firm Element. If not, the firm may require the individual to participate in segments of its own program.

If an external educational or Continuing Education Program is used to meet an individual's Firm Element training requirement, the firm must demonstrate the applicability of that program to the training plan.

59.

Q. *How should firms use the quarterly report on Regulatory Element performance in planning the content of their Firm Element training programs?*

A. The quarterly reports provided to firms reflect the aggregate performance of the firm's registered employees who participated in the

general Regulatory Element program training during the most recent quarter, rather than the performance of specific individuals. Accordingly, the data may be of greater benefit to firms having a significant number of employees participating in the Regulatory Element training than to firms with only a few. The purpose of the data is simply to highlight areas of emphasis to firms whose personnel show performance that is below the industry norm in a specific module. For example, if a firm's aggregate performance is below average in the "New and Secondary Offerings" module, and the firm participates in this type of business, it should evaluate the adequacy of coverage in this area in its Firm Element training.

60.

Q. Must a firm's Needs Analysis be documented in writing as a part of its written training plan?

A. Yes. A firm should describe the methodology it uses in conducting its Needs Analysis. It should identify the factors considered by the firm, the kinds of information reviewed, and the conclusions reached from the analysis.

The firm's documentation, however, does not necessarily have to include duplications of records or source documents otherwise reasonably available. It would be appropriate and helpful to include items such as samples of any formats used in conducting surveys or past training evaluations, disclosures of areas or business units surveyed for input, consideration of planned introductions of new products or services, assessments of the effectiveness of past training efforts, and other documentation of specific consideration.

61.

Q. Does a firm that is a sole proprietorship have to prepare a Needs Analysis and written training plan, and how detailed does it have to be?

A. Every firm must conduct a Needs Analysis and prepare a written training plan that is reasonable for its size and type of business it conducts or plans to conduct. The Needs Analysis of a sole proprietorship should contain a brief description of the firm's products and services and the sole proprietor's background and industry experience. The Needs Analysis and written training plan should address any pertinent recommendations from the *Firm Element Advisory* which is published annually by the Council, and should briefly describe the sole proprietor's training plans for the upcoming year.

62.

Q. Is there a minimum or maximum number of hours of continuing education that each covered person must take in the Firm Element?

A. There are no set schedules or required number of hours prescribed for the Firm Element, but coverage must be sufficient to meet the "reasonableness" criteria established by SRO rules. For example, it may or may not be necessary to include every *covered person* within each calendar year if the firm can demonstrate a reasonable allocation of resources in a well-conceived and executed plan. Firms may need to give priority for specific time periods to those areas of their business in which the identified needs are greatest.

63.

Q. Must a firm make special provisions for employees newly hired from other firms in its Firm Element

training? For example, does a covered person hired in September need to receive training already delivered earlier in the year?

A. The answer depends on an evaluation of the individual's experience, training, and areas of business relative to what the individual will do at the new firm. Firms should consider having an "orientation" period or program for registered persons hired from other firms to familiarize them with their own policies, products, and expectations—and to determine whether the new employees would benefit from additional training, including material previously covered in the new firm's Firm Element training.

In general, firms will probably be better served by addressing their training needs in terms of products or services offered by groups or categories of employees. In fact, appropriate training may vary widely between individuals or groups. Exceptions or unique circumstances may apply to small or specialized firms or to individuals with business limited to narrowly defined areas.

64.

Q. How can firms obtain guidance on designing and implementing internal training plans and programs to meet Firm Element requirements?

A. The Council has publications available to provide guidance on complying with the Firm Element. *Guidelines for Firm Element Training* offers direction to help firms devise appropriate programs consistent with their own unique needs, characteristics, and businesses. The *Guidelines* also addresses comments and questions brought to the attention of the Council from sources throughout the industry, including the observations of the SROs on their examination findings of firms.

The annual *Firm Element Advisory* lists pertinent topics that the Council identifies from a review of industry performance on the Regulatory Element and regulatory advisories issued by industry regulators. Firms should review the *Advisory* to determine whether the topics are relevant to their training needs.

Examples of Firm Element Practices and Council Commentary provides observations from the Council through its comments on the Needs Analysis and training plans of seven securities firms of various sizes and client orientations.

65.

Q. *May firms use training materials or presentations provided by outside entities? What sources are available?*

A. Training materials and presentations available through outside vendors may be used if they meet the standards of the Firm Element and are appropriate for a firm's needs as determined in the Needs Analysis process. Materials may also be available through regulators and industry trade and professional associations. In any event, firms that elect to use materials or presentations developed or provided by others maintain the ultimate responsibility for the content and the adequacy of their overall programs.

66.

Q. *Will SROs or the Council pre-approve training materials and/or programs developed by members or providers?*

A. Neither the SROs nor the Council will pre-approve training materials or training programs.

67.

Q. *Is the annual compliance meeting required under Rule 3010(a)(7) of the NASD Conduct Rules (previously Article III, Section 27(a)(7) of the NASD Rules of Fair Practice) adequate to demonstrate compliance with the requirements of the Firm Element?*

A. Probably not. Although it can certainly be used as an occasion to transmit information or conduct training, firms must address their own needs for sales practice and product training and carry out effective programs. In most instances, a significant expansion of material otherwise covered at the annual compliance meeting probably will be necessary. Also, it may be appropriate to conduct some training before the scheduled annual compliance meetings.

68.

Q. *Must each covered person meet personally with his or her supervisor to determine annual training requirements for that person?*

A. No. However, some firms may decide to meet to determine an individual's needs, or to discuss training needs during regular performance reviews.

Internal Policies And Documentation

69.

Q. *Must a firm develop supervisory procedures that address compliance with the Regulatory and Firm Elements of the Program?*

A. Yes. Firms must develop written supervisory procedures designed to reasonably ensure compliance with the SRO rules governing the Program. Firms should, among other

things:

- designate an appropriate officer or principal to oversee compliance with the Program;
- ensure no improper activities are undertaken by persons with inactive registrations; and
- develop processes for creating and implementing Firm Element programs.

70.

Q. *If a firm prescribes that a particular covered person take part in the Firm Element training, must the covered person do so?*

A. Yes. The SRO rules require firms to implement a training program and to maintain records that clearly demonstrate its content and its completion by each person or groups of persons identified in the firm's training plan. The rules also require *covered persons* to participate in training as prescribed by their firms. Failure to do so could result in disciplinary action against the registered person by his or her firm or by a regulatory authority.

71.

Q. *Can a firm arrange for a person to take the Regulatory Element computer-based training on a voluntary basis or as part of an internal disciplinary action?*

A. Yes. In addition to meeting the rule requirements, a firm may elect to use the Regulatory and/or Firm Element on a voluntary basis, or as a sanction in its own internal disciplinary actions. To request a special administration of the Regulatory Element, whether for internal disciplinary or training purposes, the firm should submit a request through FAQs using the EXAMREQ command or send page one of Form U-4 to the CRD/PD Department using the "Other" line to request a session. The

firm's CRD account will be charged for the training session when the appointment is requested.

SROs may also prescribe the Regulatory Element or special training under the Firm Element for individuals or firms as part of the sanctions or settlement terms in a formal disciplinary action.

Overall, the Program provides new flexibility to firms and regulatory organizations in taking both corrective and preventive compliance actions.

72.

***Q.** What records will be needed to document Needs Analysis, training plans, program content, and registered person participation for regulatory examinations?*

A. See Question 60 for the documentation required for the Needs Analysis. The written training plan must be maintained, and it must accurately and adequately present the subject matter of the training, who will be trained, and where and how the training will take place. Written training plans and other applicable documentation (e.g., training results, feedback, and attendance records) must be retained for regulatory examination during routine SRO examinations or upon request. The subject matter covered in training presentations can be documented by retaining copies of any written materials used (i.e., texts, handouts, case studies, discussion points, outlines, notes, or check-off sheets for items covered) as well as any non-written material such as audio-visual tapes. It may not be possible to maintain

verbatim transcripts of all classroom sessions, conference calls, or presentations. In such cases, an outline or summary may be sufficient to satisfy document retention requirements. Documenting participation in such activities as conference calls and "squawk box" meetings may not be readily accomplished other than by participant sign-off or attestation. In addition, often written materials are disseminated such as internal memoranda, compliance alerts, regulatory bulletins, etc., which must be read as part of Firm Element training. Participant sign-off or attestation may be an acceptable method for demonstrating completion. Such items may be retained with respect to a specific presentation or retained centrally and identified as material used in multiple presentations. Unique materials or presentation methods can be documented in descriptive memoranda. Various methods are acceptable so long as they provide readily accessible and reasonable evidence as to the material covered, with whom, by whom, and when. The records are required to be maintained under SEC Rule 17a-4, which requires every broker or dealer to preserve records related to the conduct of their business for at least three years, with the first two years in an easily accessible place.

73.

***Q.** Are firms required to measure and document the effectiveness of their training programs? Will this be expected in regulatory examinations?*

A. While evaluation of the effectiveness of training is recognized as an

inexact process, firms are required to document the particulars of who participated in what training, and when. To the extent that it can be done, an evaluation of prior training programs and materials can be beneficial to firms in identifying appropriate modifications to improve current programs and plan future programs. Methods used can range from administering post-training tests to obtaining suggestions and feedback on programs, presentations, and materials from participants and presenters as well as from comments or findings in periodic regulatory examinations. Any good program can benefit from a feedback mechanism to evaluate its effectiveness and from efforts to learn from past experiences in order to identify needed modifications and enhancements.

74.

***Q.** Are firms that are members of two or more SROs subject to redundant inspections for compliance with the continuing education requirements?*

A. No. The SROs coordinate their field inspection efforts to avoid any unnecessary regulatory overlap for joint members. The SROs have developed a consistent approach to examining and enforcing both the Regulatory Element and the Firm Element requirements.

Endnote

¹The American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.