

Notice to Members

MARCH 2005

SUGGESTED ROUTING

Continuing Education
Legal and Compliance
Registered Representatives
Senior Management
Registration
Training

KEY TOPICS

Continuing Education
Regulatory Element
Rule 1120

GUIDANCE

Regulatory Element Exemptions

NASD Announces **Effective Date: April 4, 2005**, for Amendments to Rule 1120 to Eliminate Exemptions from the Continuing Education Regulatory Element Requirements

Executive Summary

On September 27, 2004, the Securities and Exchange Commission (SEC) approved amendments to NASD Rule 1120 (Continuing Education Requirements) to eliminate all current exemptions from the continuing education Regulatory Element requirements. In October 2004, NASD stated in *Notice to Members 04-78* that the amendments would become effective on the later of: (1) April 4, 2005; or (2) 30 days following the implementation of the necessary related changes to Web CRD®. Pursuant to this *Notice*, NASD is announcing that the amendments' effective date is April 4, 2005.

Questions/Further Information

Questions concerning this *Notice* may be directed to Ann M. Griffith, Associate Vice President and Director, NASD Testing and Continuing Education Department, at (240) 386-5051; or Joe McDonald, Associate Director, NASD Testing and Continuing Education Department, at (240) 386-5065.

Background

NASD Rule 1120 specifies the continuing education (CE) requirements for registered persons subsequent to their initial qualification and registration with NASD. The requirements consist of a Regulatory Element component outlined in Rule 1120(a) and a Firm Element component outlined in Rule 1120(b).¹ The Regulatory

Element is a computer-based education program administered by NASD to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry.² Unless exempt, each registered person is required to complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date.³ There are three Regulatory Element programs: the S201 Supervisor Program for registered principals and supervisors, the S106 Series 6 Program for Series 6 representatives, and the S101 General Program for Series 7 and all other registrations. Registered persons who fail to complete the Regulatory Element are deemed inactive, must cease all activities as a registered person, and are prohibited from performing any duties and functioning in any capacity requiring registration.⁴

Certain registered persons currently are exempt from the Regulatory Element. These include registered persons who, when the CE Program was adopted in 1995, had been registered for at least 10 years and who did not have a significant disciplinary action⁵ in their CRD record for the previous 10 years ("grandfathered" persons). Also included are those persons who "graduated" from the Regulatory Element by satisfying their 10th anniversary requirement before July 1998, when Rule 1120 was amended and the graduation provision eliminated, and who did not have a significant disciplinary action in their CRD record for the previous 10 years.⁶

In December 2003, the Securities Industry/Regulatory Council on Continuing Education ("Council")⁷ agreed unanimously to recommend that the SROs repeal the exemptions and require all registered persons to participate in the Regulatory Element. In response, NASD proposed changes to Rule 1120 to eliminate all currently effective exemptions from the requirement that registered persons complete the Regulatory Element of the CE Program, which the SEC approved on September 27, 2004.⁸ NASD subsequently informed members and other interested parties in *Notice to Member 04-78* that the approved amendments would become effective on the later of: (1) April 4, 2005; or (2) 30 days following the implementation of the necessary related changes to Web CRD. NASD is now announcing that the necessary related changes to Web CRD will be in place shortly, and that the effective date of the amendments will be April 4, 2005.

To help prepare firms for the changes, NASD sent an e-mail (and a follow-up hard copy letter) to each firm's Regulatory Element contact person in November 2004, listing each currently exempted registered person and the date on which such person would be required to complete his or her Regulatory Element requirement. In March 2005, NASD sent an updated listing to each firm's Regulatory Element contact person via e-mail and hard copy letter.

The Regulatory Element programs are administered at conveniently located test centers operated by Pearson VUE and Prometric. Appointments to take the session can be scheduled through either network:

Pearson Professional Centers: Contact Pearson VUE's National Registration Center at (866) 396-6273 (toll-free) or (952) 681-3873 (toll number), or go to www.pearsonvue.com/nasd for Web-based scheduling.

Prometric Testing Centers: Contact Prometric's National Call Center at (800) 578-6273 (toll-free) or go to www.prometric.com/nasd for Web-based scheduling.

For more information about the Council's Continuing Education Program, and to review frequently asked questions regarding the elimination of grandfather exemptions, see the Council's Web site at www.securitiescep.com.

Endnotes

- 1 The Firm Element of the CE Program applies to any person registered with an NASD member firm who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, any person registered as a research analyst pursuant to Rule 1050, and to the immediate supervisors of such persons (collectively called "covered registered persons"). The requirement stipulates that each member firm must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill and professionalism. Each firm has the requirement to annually conduct a training needs analysis, develop a written training plan, and implement the plan.
- 2 Rule 1120(a)(6) permits a member firm to deliver the Regulatory Element to registered persons on firm premises ("In-Firm Delivery") as an option to having persons take the training at a designated center provided that firms comply with specific requirements relating to supervision, delivery site(s), technology, administration, and proctoring. In addition, Rule 1043 requires that persons serving as Proctors for the purposes of In-Firm Delivery must be registered.
- 3 See Rule 1120(a)(1). This is the current Regulatory Element schedule, as amended in 1998.
- 4 See Rule 1120(a)(2).
- 5 For purposes of Rule 1120, a significant disciplinary action generally means a statutory disqualification, a suspension or imposition of a fine of \$5,000 or more, or being subject to an order from a securities regulator to re-enter the Regulatory Element. See Rule 1120(a)(3).
- 6 When Rule 1120 was first adopted in 1995, the Regulatory Element schedule required registered persons to satisfy the Regulatory Element on the second, fifth, and 10th anniversary of their initial securities registration. After satisfying the 10th anniversary requirement, a person was "graduated" from the Regulatory Element. A graduated principal re-entered the Regulatory Element if he or she incurred a significant disciplinary action. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

7 As of the date of this *Notice*, the Council consists of 19 individuals, six representing self-regulatory organizations (“SROs”) (the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, NASD, the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.) and 13 representing the industry. The Council was organized in 1995 to facilitate cooperative industry/regulatory coordination of the CE Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping to develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, developing and updating information about the program for industry-wide dissemination, and maintaining the program on a revenue-neutral basis while assuring adequate financial reserves.

8 See Exchange Act Release No. 50456 (September 27, 2004); 69 F.R. 59285 (October 4, 2004) (SR-NASD-2004-98). The approved rule changes also replaced references in Rule 1120(a)(3) to “re-entry” into the Regulatory Element with a requirement to “retake” the Regulatory Element to clarify that the significant disciplinary action provisions apply to all registered persons and not only to currently exempt persons.

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