

## Continuing Education

### SEC Approves Amendments Relating to Web-based Delivery of the Regulatory Element

Effective Date: October 1, 2015

#### Executive Summary

The SEC approved amendments to FINRA rules to provide a Web-based delivery method for completing the Regulatory Element of the Continuing Education (CE) requirements, and to establish the fee for it.<sup>1</sup> The amendments become effective on October 1, 2015.

The amended rule text is attached as Appendix A.

Questions regarding this *Notice* should be directed to:

- ▶ Roni Meikle, Senior Director, Testing and Continuing Education, at (212) 858-4084 or [roni.meikle@finra.org](mailto:roni.meikle@finra.org); or
- ▶ Afshin Atabaki, Associate General Counsel, Office of General Counsel, at (202) 728-8071 or [afshin.atabaki@finra.org](mailto:afshin.atabaki@finra.org).

#### Background and Discussion

The CE requirements under FINRA Rule 1250 (Continuing Education Requirements) include a Regulatory Element<sup>2</sup> and a Firm Element.<sup>3</sup> The Regulatory Element applies to registered persons<sup>4</sup> and consists of periodic computer-based training on regulatory, compliance, ethical and supervisory subjects, and sales practice standards, which must be completed within prescribed time frames.<sup>5</sup> Currently, the Regulatory Element may be administered in a test center or in-firm subject to specified procedures,<sup>6</sup> but most registered persons complete the Regulatory Element in a test center.

#### Web-based Delivery (CE Online)

Because of the costs and other concerns regarding the test center delivery method, FINRA has amended Rule 1250(a)(6) to provide that the Regulatory Element program will be administered through Web-based delivery or such other technological manner and format as specified by FINRA.

### August 2015

#### Notice Type

- ▶ Rule Amendment

#### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registration
- ▶ Senior Management
- ▶ Training

#### Key Topics

- ▶ CE Online
- ▶ Continuing Education
- ▶ Fees
- ▶ FINRA CE Online System™
- ▶ In-firm Delivery
- ▶ Proctors
- ▶ Regulatory Element
- ▶ Rules of Conduct
- ▶ Test-center Delivery
- ▶ Web-based Delivery

#### Referenced Rules and Notices

- ▶ FINRA Rule 1250
- ▶ FINRA Rule 2010
- ▶ FINRA Rule 4530
- ▶ NASD Rule 1043
- ▶ NTM 95-35
- ▶ Section 4(f) of Schedule A to the FINRA By-Laws
- ▶ SEA Section 3(a)(39)

The new Web-based delivery method, which will be called CE Online and administered through the FINRA CE Online System, will provide registered persons with the flexibility to complete the Regulatory Element at a location of their choosing, including their private residence, at any time during their 120-day window for completion of the Regulatory Element.<sup>7</sup>

### **Authentication Process and Rules of Conduct**

CE Online will include safeguards to authenticate the identity of the CE participant. For instance, prior to commencing a CE Online session, the participant will be asked to provide a portion of his or her Social Security number (either first five or last four digits) and date of birth.<sup>8</sup>

In addition, before commencing a CE Online session, FINRA will require that each participant agree to the Rules of Conduct for CE Online. Among other things, the rules of conduct require each participant to attest that he or she is in fact the person who is taking the CE session. The rules of conduct further require that each participant agree that the Regulatory Element content is the intellectual property of FINRA and that the content cannot be copied or redistributed by any means.

If FINRA discovers that a participant has violated the rules of conduct, the participant will forfeit the results of the CE Online session and may be subject to disciplinary action by FINRA.<sup>9</sup> Violation of the rules of conduct will be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade).<sup>10</sup>

### **Phased Implementation**

FINRA is rolling out the CE Online program in two phases. FINRA will launch the first phase of CE Online, which will include the S106, S201 and S901 Regulatory Element programs, on October 1, 2015; FINRA will launch the second phase of CE Online, which will include the S101 Regulatory Element program in a more personalized format, on January 4, 2016.<sup>11</sup>

In addition, FINRA is phasing out test-center delivery by no later than six months after January 4, 2016. Registered persons will continue to have the option of completing the Regulatory Element in a test center until the phase-out of the test center delivery method, but they will be required to use the FINRA CE Online System after that date.

FINRA is also phasing out in-firm delivery of the Regulatory Element now offered through Pearson VUE. FINRA will phase out in-firm delivery on a rolling basis as each Regulatory Element program becomes available for CE Online. Firms will not be able to establish new in-firm delivery programs after October 1, 2015. Moreover, firms that currently offer in-firm delivery programs will not be able to use that delivery method for the S106, S201 and S901 Regulatory Element programs after October 1, 2015. However, such firms may continue to use their in-firm delivery system for the S101 Regulatory Element program until January 4, 2016.

### **Fees**

The current fee for test-center and in-firm deliveries is typically \$100 per session.<sup>12</sup> In conjunction with the amendment to Rule 1250(a)(6), FINRA has amended Section 4(f) of Schedule A to the FINRA By-Laws to establish a fee of \$55 for each participant who completes the Regulatory Element via CE Online.<sup>13</sup>

### **Proctors**

FINRA has eliminated NASD Rule 1043 relating to the registration of proctors for in-firm delivery. FINRA will automatically terminate the proctor registration category in the CRD system on January 4, 2016, which, as noted above, is the launch date of the second phase of CE Online.

### **Additional Resources**

For additional information regarding the transition to CE Online, including the phase-out dates for test-center and in-firm deliveries, please visit the [CE Online Web page](#), which provides details and information that firms and participants need to know. FINRA will regularly update the Web page with any new information.

## Endnotes

1. See Securities Exchange Act Release No. 75581 (July 31, 2015) (Order Approving File No. SR-FINRA-2015-015).
2. See FINRA Rule 1250(a) (Regulatory Element).
3. See FINRA Rule 1250(b) (Firm Element). FINRA is not making any changes to the Firm Element requirements under FINRA Rule 1250(b).
4. For purposes of the Regulatory Element, a “registered person” is defined as any person registered with FINRA as a representative, principal, assistant representative or research analyst. See FINRA Rule 1250(a)(5) (Definition of Registered Person).
5. Pursuant to FINRA Rule 1250(a), 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. Any registered person who has not completed the Regulatory Element program within the prescribed time frames will have his or her FINRA registrations deemed inactive and designated as “CE inactive” on the Central Registration Depository (CRD®) system until such time as the requirements of the program have been satisfied. A CE inactive person is prohibited from performing, or being compensated for, any activities requiring registration, including supervision. See also *Notice to Members 95-35* (Continuing Education Program Update: Regulatory Element Questions and Answers) (May 1995). Moreover, if a registered person is CE inactive for a two-year period, FINRA will administratively terminate the person’s registration status with FINRA. The two-year period would be calculated from the date the person becomes CE inactive. If a registered person becomes CE inactive but is not registered with a member when the two-year period ends, FINRA will nevertheless update the CRD system to reflect that the person did not satisfy the Regulatory Element program. In either case, such person must reapply for registration and requalify (or obtain a waiver of the applicable qualification examination(s)) to be eligible to register again.  
  
In addition, a registered person is required to retake the Regulatory Element in the event such person is: (1) subject to a statutory disqualification as defined by Section 3(a)(39) of the Securities Exchange Act of 1934; (2) subject to a suspension or imposition of a fine of \$5,000 or more by a self-regulatory organization (SRO) or securities governmental agency; or (3) ordered to do so as a sanction in a disciplinary action by an SRO or a securities governmental agency.
6. The in-firm delivery procedures require, among other things, that the in-firm sessions be administered by a proctor who will be responsible for ensuring compliance with the required procedures and for monitoring the participants. See FINRA Rule 1250(a)(6) (In-Firm Delivery of the Regulatory Element). NASD Rule 1043 (Proctors of In-Firm Delivery of Regulatory Element) addresses the registration requirements for proctors. The rule requires that an associated person designated as a proctor by a firm for the purposes of the in-firm delivery of the Regulatory Element be registered as a proctor with FINRA through the filing of a Form U4 (Uniform Application for Securities Industry Registration or Transfer); provided that an associated person who is already registered with FINRA in another registration category, such as a General Securities Representative, may be designated as a proctor by a firm without having to register as a proctor with FINRA.

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7. While the amendment provides such flexibility, firms may choose to impose their own conditions based on their supervisory and compliance needs. For instance, a firm that wishes to have registered persons complete CE on the firm's premises can do so by having the registered person access CE Online from a firm device and location. Moreover, firms would have to update their written policies and procedures regarding the Regulatory Element to reflect the transition to CE Online and communicate the update to registered persons.
8. Individuals who do not have a Social Security number will be required to provide their date of birth and another unique identifier, such as their CRD number or Form U10 (the Uniform Examination Request for Non-FINRA Candidates) identification number, to validate their identity.
9. For instance, for cheating on the Regulatory Element, FINRA's Sanction Guidelines recommend a bar. See [FINRA Sanction Guidelines](#) at 40 (2013).
10. Further, an associated person who assists another associated person in violating the rules of conduct will also be considered to have violated FINRA Rule 2010. Firms must also consider whether they have an obligation to report violations of the rules of conduct to FINRA. For instance, FINRA Rule 4530.01 (Reporting of Firms' Conclusions of Violations) requires a firm to report, among other things, if it concludes that an associated person has engaged in multiple instances of any violative conduct.
11. The S106 is for Investment Company and Variable Contracts Representatives, the S201 is for registered principals and supervisors, the S901 is for Operations Professionals and the S101 is for all other registration categories.
12. In-firm deliveries receive a three dollar rebate per session. There are also additional fees for taking the session outside the United States, failing to appear on time for an appointment or cancelling or rescheduling an appointment. See Section 4 of Schedule A to the FINRA By-Laws.
13. The total reduction in fees is estimated to be approximately \$1 million in 2015, \$9 million in 2016, and \$11 million in 2017 compared to the fee structure of the test-center delivery.

## APPENDIX A

### Amended Rule Text

New language is underlined; deletions are in brackets.

\* \* \* \* \*

### By-Laws of the Corporation

\* \* \* \* \*

#### Schedule A to the By-Laws of the Corporation

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation shall be determined on the following basis.

**Section 1** through **Section 3** No Change.

#### **Section 4 — Fees**

(a) through (e) No Change.

(f) There shall be a session fee of \$100 assessed as to each individual [who is required] for each scheduled session to complete the Regulatory Element of the Continuing Education [R]requirements pursuant to FINRA rules via a test center or in-firm method. There shall be a session fee of \$55 assessed as to each individual who completes the Regulatory Element of the Continuing Education requirements pursuant to FINRA rules via a Web-based method prescribed by FINRA.

(g) through (i) No Change.

#### **IM-Section 4(b)(1) and (e) Exemption from Certain Registration and Membership Application Fees for Certain NYSE and NYSE Alternext US LLC Member Organizations**

No Change.

**Section 5** through **Section 14** No Change.

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## FINRA Rule

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### 1200. REGISTRATION AND QUALIFICATION

\* \* \* \* \*

#### 1250. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with FINRA. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

##### (a) Regulatory Element

(1) through (5) No Change.

##### (6) [In-Firm] Delivery of the Regulatory Element

[Members]The continuing education Regulatory Element program will be [permitted to] administered [the continuing education Regulatory Element program to their registered persons by instituting an in-firm program acceptable to] through Web-based delivery or such other technological manner and format as specified by FINRA.

[The following procedures are required:]

[(A) Principal/Officer In-Charge. The firm has designated a principal to be responsible for the in-firm delivery of the Regulatory Element.]

[(B) Site Requirements.]

[(i) The location of all delivery sites will be under the control of the firm.]

[(ii) Delivery of Regulatory Element continuing education will take place in an environment conducive to training. (Examples: a training facility, conference room or other area dedicated to this purpose would be appropriate. Inappropriate locations would include a personal office or any location that is not or cannot be secured from traffic and interruptions.)]

[(iii) Where multiple delivery terminals are placed in a room, adequate separation between terminals will be maintained.]

[(C) Technology Requirements. The communication links and firm delivery computer hardware must comply with standards defined by FINRA or its designated vendor.]

[(D) Supervision.]

[(i) The firm's Written Supervisory Procedures must contain the procedures implemented to comply with the requirements of in-firm delivery of the Regulatory Element continuing education.]

[(ii) The firm's Written Supervisory Procedures must identify the principal designated pursuant to Rule 1250(a)(6)(A) and contain a list of individuals authorized by the firm to serve as proctors.]

[(iii) Firm locations for delivery of the Regulatory Element continuing education will be specifically listed in the firm's Written Supervisory Procedures.]

[(E) Proctors.]

[(i) All sessions will be proctored by an authorized person during the entire Regulatory Element session. Proctors must be present in the session room or must be able to view the person(s) sitting for Regulatory Element continuing education through a window or by video monitor.]

[(ii) The individual responsible for proctoring at each administration will sign a certification that required procedures have been followed, that no material from Regulatory Element continuing education has been reproduced, and that no candidate received any assistance to complete the session. Such certification may be part of the sign-in log required under Rule 1250(a)(6)(F).]

[(iii) Individuals serving as proctors must be persons registered with an SRO and supervised by the designated principal for purposes of in-firm delivery of the Regulatory Element continuing education.]

[(iv) Proctors will check and verify the identification of all individuals taking Regulatory Element continuing education.]



[(F) Administration.]

[(i) All appointments will be scheduled in advance using the procedures and software specified by FINRA to communicate with FINRA's system and designated vendor.]

[(ii) The firm/proctor will conduct each session in accordance with the administrative appointment scheduling procedures established by FINRA or its designated vendor.]

[(iii) A sign-in log will be maintained at the delivery facility. Logs will contain the date of each session, the name and social security number of the individual taking the session, that required identification was checked, the sign-in time, the sign-out time, and the name of the individual proctoring the session. Such logs are required to be retained pursuant to SEA Rules 17a-3 and 17a-4.]

[(iv) No material will be permitted to be used for the session nor may any session-related material be removed.]

[(v) Delivery sites will be made available for inspection by FINRA.]

[(vi) Before commencing in-firm delivery of the Regulatory Element continuing education, members are required to file with their Designated Examining Authority ("DEA"), a letter of attestation (as specified below) signed by a principal executive officer or executive representative, attesting to the establishment of required procedures addressing principal in-charge, supervision, site, technology, proctors, and administrative requirements. Letters filed with FINRA should be sent to Registration and Disclosure, Continuing Education Department, 9509 Key West Avenue, Rockville, MD 20850.]

**[Letter of Attestation for In-Firm Delivery of Regulatory Element Continuing Education]**

[[Name of member] has established procedures for delivering Regulatory Element continuing education on its premises. I have determined that these procedures are reasonably designed to comply with SRO requirements pertaining to in-firm delivery of Regulatory Element continuing education, including that such procedures have been implemented to comply with principal/officer in-charge, supervision, site, technology, proctors, and administrative requirements.]

[Signature]

[\_\_\_\_\_]

[Printed name]

[\_\_\_\_\_]

[Title [Must be signed by a Principal Executive Officer (or Executive Representative) of the firm]]

[\_\_\_\_\_]

[Date]

**(7)** No Change.

**(b)** No Change.

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