



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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November 8, 2018

By electronic mail to pubcom@finra.org.

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

Re: FINRA Regulatory Notice 18-26 – Continuing Education Program

Dear Ms. Piorko Mitchell:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),¹ I hereby submit the following comments in response to FINRA Regulatory Notice 18-26 (the “Proposal”) related to FINRA’s Continuing Education Program (“CE Program”). In the Proposal, the Securities Industry/Regulatory Council on Continuing Education (the “Council”), on which NASAA participates as a liaison, seeks comments on several CE Program enhancements currently under consideration by the Council. Many of the enhancements under consideration—and the specific questions asked by the Council—are aimed very specifically toward FINRA-member firms and the operations of the CE Program. Generally, NASAA supports the proposed enhancements, including the proposed shift to an annual regulatory element requirement, enhancing available guidance and tools available to firms to assist in developing and administering the Firm Element, and the creation of a centralized content library. The remainder of our comments are focused on two issues raised by the Council’s Proposal: (1) establishing baseline levels of training that firms must offer to satisfy the Firm Element; and (2) allowing an individual to remain qualified following the termination of their registration by continuing to complete continuing education courses.

Firm Element Baselines

According to the Council, “[s]ome firms provide very limited amounts of Firm Element,” and the “Council is concerned that registered representatives at those firms may not be receiving adequate training.”² NASAA shares this concern. As the Council notes, current Firm Element

¹ NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as a forum for these regulators to work with each other to protect investors at the grassroots level and promote fair and open capital markets.

² FINRA Regulatory Notice 18-26, Continuing Education Program: *FINRA Requests Comment on Enhancements Under Consideration by the Securities Industry/Regulatory Council on Continuing Education*, September 6, 2018, at Attachment 1 pg. 6.

training must, at a minimum, address certain standards, such as suitability, but there are no hard and fast standards governing what level and/or types of training can satisfy the Firm Element requirement.³ Instead firms must consider their size, structure, and business model when designing and implementing their respective Firm Element programs.⁴ The current Firm Element structure provides significant—and beneficial—flexibility for firms in developing, maintaining, and administering training programs, but NASAA supports the Council’s proposal to consider establishing certain baseline levels and/or amounts of training.

Establishing certain baseline levels and/or amounts of Firm Element training would likely result in an overall increase in the quality and effectiveness of the training offered by firms. Better trained registered representatives are good for a firm’s business because they are likely more knowledgeable about the products and services the firm offers. Better trained individuals are also more likely to understand their regulatory obligations and their duties to customers thus resulting in increased investor protection. NASAA considers establishing baseline levels and/or amounts of Firm Element training as a win-win, and fully supports the Council’s proposal. However, there is no one-size-fits-all training program because there are innumerable combinations of broker size, complexity, and business model. The Council—and FINRA—should therefore be mindful to preserve much of the flexibility found in the current Firm Element framework when considering any Firm Element baseline requirements.

Maintaining Qualification Status Post Termination

The most significant change proposed by the Council would allow individuals, by continuing to complete CE requirements, to maintain their qualifications following the termination of their registration beyond the two-year period provided in the rules. Currently, following termination of registration, an individual’s qualifications (e.g. licensing examinations) remain valid for a period of two-years, allowing an individual to reenter the industry without having to retake any previously passed licensing examinations. NASAA’s members apply the same two-year qualification rule for state licensing of broker-dealer agents and investment adviser representatives.

NASAA appreciates the Council’s consideration of better aligning the qualification requirements for financial industry professionals with the qualification requirements for other licensed industries that do not require individuals to re-take initial qualification examinations if certain conditions are satisfied. The Council specifically referenced the legal profession as one such industry.⁵ However, any changes to the two-year post termination qualification framework would be a significant departure from current practice. There are many considerations and questions that must be answered before considering changes to the well-established requalification requirements. The Council recognizes the significance of this proposed departure by seeking input on several specific questions related to this proposal. Of particular interest to

³ *Id.* at 2. *See also* FINRA Rule 1240(b) (describing the minimum requirements of the Firm Element).

⁴ *Id.* at 2-3.

⁵ *Id.* at 8.

NASAA are the Council's questions about potential eligibility limitations on which individuals would be able to remain qualified for more than two years post termination. For example:

- Should there be an experience level at which time this “program” becomes available?
- Should certain conduct disqualify an otherwise eligible individual from participating in the “program?”⁶

NASAA is also interested in knowing more about how exactly such a “program” would work. More specifically:

- How many CE “credits” would be needed and in what period?
- Where and how would individuals complete the Firm Element substitute?
- Who would design and/or approve content for the Firm Element substitute?
- How would an individual report completion of the required CE and/or compliance with any other “program” requirements?
- How long could an individual remain qualified under this “program?”
- How would such information be tracked and verified?

In NASAA's view, it is too early for the Council to move forward with implementing any changes to the post-termination qualification framework because there are so many unanswered questions. That is not to say that—at this time—NASAA is opposed to such changes, only that without a detailed proposal on this topic, including the benefits for investors, it is difficult for NASAA to fully consider this idea.⁷ NASAA instead suggests that the Council first consider the feedback received in response to the Proposal and then, if it desires to move forward with changes to the post-termination qualification framework, develop a more detailed proposal laying out specifically how such changes would be implemented and monitored for compliance. Interested stakeholders would then be in a position to fully evaluate the proposal and offer constructive feedback.

⁶ NASAA initial response to these questions is yes, there should be certain limitations on an individual's ability to remain qualified outside of the current two-year period. However, without a detailed proposal on how such a program would be implemented, NASAA is unable to offer any more substantive feedback.

⁷ Nor does this mean NASAA would support such a change to the two-year termination framework. In the past, NASAA has advocated that continuing education is not a substitute for qualification examinations. *See* Letter from Melanie Senter Lubin, Maryland Securities Commissioner and Chair, NASAA CRD Steering Committee, to Marcia Asquith, FINRA Office of the Corporate Secretary, Re FINRA Regulatory Notice 09-70 Registration and Qualification Requirements, (March 1, 2010) available at <http://www.nasaa.org/wp-content/uploads/2011/07/20-NASAA-Comment-Letter-Regulatory-Notice09-70.pdf>.

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NASAA appreciates the opportunity to offer public comments on the Council's proposed enhancements and looks forward to continuing to participate in the Council's efforts to enhance the CE Program. If you have any questions about this letter please contact NASAA General Counsel A. Valerie Mirko, at vm@nasaa.org or (202) 737-0900.

Sincerely,



Michael Pieciak
NASAA President and Commissioner
Vermont Department of Financial Regulation