



November 5, 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: SIFMA Comments on Enhancements under Consideration by the Securities Industry/Regulatory Council on Continuing Education

Dear Ms. Mitchell:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on Financial Industry Regulatory Authority, Inc. (“FINRA”) Regulatory Notice 18-26 (“RN 18-26”),² discussing enhancements under consideration by the Securities Industry/Regulatory Council on Continuing Education (the “CE Council”) to the Securities Industry Continuing Education Program (the “CE Program”).

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org/>.

² See FINRA RN 18-26 (Sept. 6, 2018), available at <http://www.finra.org/sites/default/files/Regulatory-Notice-18-26.pdf>.

I. EXECUTIVE SUMMARY

SIFMA supports the efforts of the CE Council to enhance the CE Program and is submitting this comment letter to inform the CE Council's ongoing work. As set forth below, SIFMA believes that the CE Council can best further its efforts with respect to enhancing the CE Program by:

- enabling previously registered individuals to maintain their qualification status through participation in an annual continuing education program while outside the securities industry, subject to reasonable eligibility standards;
- allowing training for other programs – such as the annual compliance meeting, anti-money laundering (“AML”), privacy and ethics training, and other credentialing programs – to count toward satisfying the Firm Element requirement of the CE Program;
- restructuring the Regulatory Element requirement of the CE Program to provide registered persons with greater flexibility in selecting content most relevant to their job functions and registration types;
- making topics of the Regulatory Element for the coming year available to firms in advance to support the development of firm training programs to meet the Firm Element requirement;
- creating a centralized content catalog to serve as an additional source of Firm Element content;
- improving the visibility of the CE Council's guidance and resources;
- combining Firm Element and Regulatory Element training into a single annual learning plan requirement; and
- creating enhanced reporting and automated notification functions within the CRD system and/or the Financial Professional Gateway to notify registered persons of their continuing education obligations and to mitigate the additional efforts required by firms to monitor registered persons' compliance with annual Regulatory Element requirements.

II. SUMMARY OF RN 18-26

On September 6, 2018, FINRA published RN 18-26 to request comment from member firms and other interested parties on enhancements to the CE Program under consideration by the CE Council. The program enhancements under consideration were published on the CE Council's website³ and included as an attachment to RN 18-26.⁴

As discussed in RN 18-26, since 1995, the CE Program has consisted of two parts – a Regulatory Element and a Firm Element – designed to provide targeted educational material that facilitates registered persons maintaining adequate knowledge and understanding of the rules and practices necessary to perform their registered activities.⁵ The Regulatory Element was intended to focus on regulatory requirements and industry standards and the Firm Element was intended to focus on securities products, services and strategies offered by firms, among other topics such as firm policies and industry trends. The CE Program provides a baseline continuing education requirement; firms often provide additional training. Registered persons also obtain additional training on their own by attending conferences and other events.

In general, the enhancements under consideration by the CE Council include: (1) transitioning the Regulatory Element program to a more focused and shorter learning requirement administered annually; (2) gathering feedback on the current Firm Element program and supporting resources; and (3) gathering feedback on the overlap of the Firm Element Program with other firm training requirements. The overall goal of the program review is to reflect advances in technology and learning theory while continuing to ensure that registered persons receive timely education on the securities business and the regulatory requirements applicable to their respective functions.

The CE Council also is exploring program changes that would allow individuals to maintain their qualification status following the termination of their registrations by completing continuing education to address the challenges that industry professionals face when attempting to re-enter the industry after an absence.

³ See <http://cecouncil.com/council/activities-new-initiatives/>. A summary of the program enhancements can be found at: <http://cecouncil.com/media/266544/quick-ref-guide-ce-program-enhance-suggestions-council-sept-2018.pdf>.

⁴ See *supra* note 2.

⁵ See *Enhancements Under Consideration for the Securities Industry Continuing Education Program Securities Industry/Regulatory Council on Continuing Education* (Sept. 6, 2018) at 1, available at <http://cecouncil.com/media/266531/ce-program-enhancements-final-.pdf>.

III. SIFMA COMMENTS ON RN 18-26

A. USE OF CE PROGRAM TO MAINTAIN LICENSE AFTER TERMINATION

Currently, individuals whose registrations have been terminated for two (2) or more years are required to requalify by examination, or obtain a waiver of the examination requirement, to re-register. SIFMA is encouraged by and supports the CE Council's exploration of changes that would allow individuals to maintain their qualification status beyond two (2) years following the termination of their registrations. SIFMA believes that this consideration should be actively pursued by the CE Council, as it would help broker-dealers attract and foster retention of talented individuals with securities industry experience.

There are several generations of individuals in the securities industry, and life events – *e.g.*, establishing a family and managing health issues for oneself and others – can interrupt and interfere with an individual's career pursuit, often for extended periods of time (*i.e.*, beyond two (2) years). Allowing individuals to maintain their registration qualifications through participation in an annual continuing education program while outside the securities industry would be an effective approach to keep individuals informed and trained on important industry developments. Further, it would be consistent with the approach taken by individuals providing professional services in other industries, such as the legal profession, where individuals are permitted to maintain their professional licenses by participating in continuing education programs despite periods of time when they are not acting in a professional capacity.⁶

SIFMA believes that implementing a continuing education program for terminated individuals, subject to reasonable minimum eligibility requirements and readily available programs designed to keep individuals informed on current compliance, regulatory, ethical, and sales practice standards, would render the two-year (2) termination rule unnecessary for individuals satisfying the program's eligibility requirements. SIFMA agrees with the CE Council's program considerations that would allow individuals seeking to maintain their qualification status while no longer associated with a firm to complete the required annual Regulatory Element and additional assigned learning units through a FINRA continuing education delivery platform.

The CE Council cited to FINRA's Financial Services Affiliate Waiver Program ("FSAWP") as an example of possible eligibility requirements to apply to individuals who rely on continuing education to maintain their licenses. FSAWP is a waiver program for

⁶ Professional licensing requirements are regulated at the state level. The requirements, including continuing education, for maintaining a professional license, such as for CPAs, real estate agents, professional engineers and land surveyors, licensed marriage and family therapists, licensed mental health counselors, and licensed social workers, will vary by state.

individuals who leave a FINRA member firm to work for a foreign or domestic services affiliate of a FINRA member. To be eligible for the program, an individual must meet the following conditions: (1) the individual must have been registered as a representative or principal for a total of five (5) years within the most recent ten-year (10) period prior to his or her initial designation under the program, and (2) the individual must have been registered as a representative or principal for at least one year prior to his or her initial designation under the program with the member firm that is requesting the designation.⁷ An eligible registered person can then keep his or her qualifications and not lapse for up to seven (7) years as long as the registered person keeps his or her continuing education current.

While SIFMA supports the eligibility requirements for the FSAWP, SIFMA also believes that these requirements create hardships for younger registered persons who are coming into the industry, starting families, and electing to stay at home to raise their children. Accordingly, SIFMA recommends that the CE Council consider lessening or removing altogether the minimum eligibility standards for individuals who are permitted to use continuing education to maintain their license qualifications in order to help firms attract and retain talented young professionals to the securities industry. Further, SIFMA supports allowing eligible persons to keep their registration qualifications active and not lapse as long as registered persons keep their continuing education current.

In response to the CE Council's request for comment on whether the CE Program should allow previously registered individuals to maintain their qualification status while associated with a firm but working in a capacity that does not require registration (*i.e.*, individuals who are permissively registered with a firm), SIFMA believes the answer to this question is yes. SIFMA's answer to this question is not impacted by FINRA's recent expansion of the categories of permissive registrations. However, SIFMA supports any efforts by FINRA and the CE Council to facilitate firms' abilities to satisfy their supervisory obligations with respect to permissively registered individuals, for example, through enhancements to the CRD system and BrokerCheck that enable firms to easily identify and communicate with registered persons maintaining permissive registrations about their continuing education obligations.

B. ELIMINATE DUPLICATIVE TRAINING REQUIREMENTS

The CE Council sought suggestions for allowing training for other programs – such as the annual compliance meeting, AML training, and other credentialing programs – to count toward satisfying the Firm Element requirement. SIFMA encourages FINRA to permit firms to include the additional, required training registered persons undergo to satisfy a portion of the Firm Element requirements. SIFMA believes that firms should

⁷ See generally FINRA Rule 1210.09 and <http://www.finra.org/industry/financial-services-affiliate-waiver-program-fsawp>.

have flexibility in determining how to fulfill the requirements. As SIFMA stated in a comment letter to FINRA earlier this year, the annual compliance meeting requirement has largely become duplicative, in both form and content, of certain FINRA mandated continuing education requirements (the Firm Element).⁸ The AML training required by FINRA Rule 3310(e) is another example of training that is often duplicative. Additional examples include training required by other financial regulators, such as state insurance regulators for registered persons licensed to sell annuity products. Because many of the same concerns (*e.g.*, AML, sales practices, ethics, privacy, financial products, and cybersecurity) exist across the financial services sectors, the training already required by other financial regulators is often duplicative of the Firm Element training.

SIFMA also notes that many registered persons have earned and maintain professional designations that require regular continuing education that may overlap with the Firm Element. SIFMA recommends that firms be given flexibility based on firm size and needs to consider continuing education undergone by registered persons to maintain such designations to be considered for formal reciprocity.⁹

By granting formal reciprocity, where appropriate, the CE Council and FINRA would allow firms to avoid the unnecessary, duplicative, and inefficient requirements that result in registered persons receiving training multiple times on the same topic. We also recommend that FINRA reach out to these standard-setting organizations to urge them to consider recognizing the completion of Firm Element to promote reciprocity and minimize inefficiency and duplication. Eliminating duplicative continuing education requirements would result in significant savings across firms, be operationally more efficient, result in better training, and provide for a more holistic approach to training.

C. REGULATORY ELEMENT - CONTENT RELEVANCE TO LICENSE HELD

The CE Council has requested advice on whether it should restructure the Regulatory Element program to allow registered persons greater flexibility in selecting content most relevant to their industry functions and registration types. Specifically, the CE Council is considering “creat[ing] targeted learning units” to replace otherwise

⁸ See Letter from Kevin Zambrowicz, Managing Director & Associate General Counsel, SIFMA, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, re: FINRA Regulatory Notice 18-14: SIFMA Comment on the Effectiveness and Efficiency of FINRA’s Rule on the Annual Compliance Meeting (June 25, 2018), available at http://www.finra.org/sites/default/files/18-14_SIFMA_Comment.pdf.

⁹ SIFMA recommends that FINRA consider the continuing education undergone by registered persons to maintain the following designations for formal reciprocity with the Firm Element: Accredited Asset Management Specialist (AAMS), Certified Financial Planner (CFP), Chartered Financial Consultant (CHFC), Chartered Financial Analyst (CFA), Chartered Life Underwriter (CLU), Chartered Retirement Planning Counselor (CRPC), Chartered Retirement Planning Specialist (CRPS), Accredited Domestic Partnership Advisor (ADPA), and Certified Investment Management Analyst (CIMA).

standard modules so that “[i]ndividuals would only receive those portions of the Regulatory Element that are pertinent to the registrations that they hold.” The CE Council believes that such changes would reduce the amount of content that an individual is presented while ensuring that the individual is receiving relevant material.

SIFMA supports the CE Council’s proposed modular structure, which SIFMA believes would significantly advance continuing education’s primary goal of encouraging registrants to expand their knowledge base and remain current on developments that impact their job performance. Contouring content to fit different registrations will increase subject matter proficiency, and naturally, continuing education will have the largest practical effect if it topically relates to a person’s work. SIFMA also expects that a modular structure would support firms’ compliance efforts by increasing interest while reducing burdens associated with participation. Moreover, the CE Council’s structure under consideration would place registrants in line with other professionals subject to continuing education requirements, such as lawyers, architects, engineers, and realtors, all of whom have at least some discretion in choosing topics for their sessions.

In addition, the CE Council’s suggestions to require more frequent continuing education and to make topics of the Regulatory Element available to firms in advance support a move toward tailoring materials’ relevance to the varying audiences’ registrations. Because Regulatory Element coursework may become an annual requirement, it makes sense to mold that coursework to timely, emerging topics and issues that affect registered persons, and for those topics and issues to be made known to firms well in advance so that they can appropriately complement the Regulatory Element with the content of the Firm Element. Moreover, before considering implementing annual Regulatory Element requirements, the CE Council will need to build a library of institutional courses. Given the implementation of the new registration rules on October 1, 2018, if FINRA were to adopt this new structure of regulatory continuing education, firms would request considerable lead time before implementation.

D. FIRM ELEMENT – CENTRALIZED CONTENT CATALOG

The CE Council stated that it is considering creating a centralized content catalog to serve as an additional source of Firm Element content. The CE Council also stated that it would work together with FINRA and third-party training providers to offer a large catalog of readily available materials that are centrally located for convenience and that firms would have easy access to necessary courses and could select from multiple providers to satisfy a portion of or their entire Firm Element requirements. Courses offered by third-party vendors, FINRA, and others would be included and available in the course catalog and FINRA and other self-regulatory organizations (“SROs”) could include existing educational courses and develop additional courses as needed.

SIFMA supports the CE Council's ideas to create a centralized content catalog that would serve as a helpful and valuable resource to the industry. SIFMA would be willing to consult with the CE Council, SROs, and third-party training providers as they work together to determine the types of resources to include in the catalog. Additional considerations would have to be explored for example, regarding costs, technology requirements and reporting capabilities of the centralized content source. SIFMA notes, however, that firms often create and develop content to satisfy their Firm Element requirements, and SIFMA believes that FINRA and the CE Council should preserve firms' flexibility to develop in-house content as necessary to meet the unique needs of the firm.

The CE Council also sought feedback on the value of guidance and resources it provides firms, such as the Firm Element Advisory on the cecouncil.com website. SIFMA believes that this information is useful but is not well known to firms and is generally out of sight except when firms are considering their annual continuing education requirements. SIFMA recommends that the CE Council consider enhancing the frequency of guidance and types of resources provided to users addressing current training requirements of various regulators (*e.g.*, FINRA, the Municipal Securities Rulemaking Board, and the National Futures Association). To improve the visibility of the CE Council's guidance and resources, SIFMA recommends that the CE Council enhance its marketing efforts, for example, by publishing the Firm Element Advisory in a regulatory notice, providing periodic email or other communications to interested persons and including links to the content in additional website locations frequented by compliance and other appropriate personnel. SIFMA also recommends that the CE Council consider enhancements to improve users' direct access to top trending themes and regulatory filing information, as users are often required to filter through other information before accessing the desired content. SIFMA also supports increased transparency about who serves on the CE Council and how members are selected.

E. REGULATORY ELEMENT AND FIRM ELEMENT

The CE Council solicited comment on the most important issues that it should consider when developing changes to industry continuing education requirements, including alternative approaches, other than the ideas discussed in RN 18-26.

SIFMA encourages the CE Council to view securities industry training holistically and not solely through the lens of "Regulatory Element" and "Firm Element" continuing education programs. As previously noted, various SRO and federal regulator rules require or encourage firms to deliver various training such as an annual compliance meeting, AML/BSA training, code of conduct training, and risk management training. Such training shares the intent of the Regulatory Element and Firm Element training requirements, "...to provide targeted educational material that facilitates registered persons maintaining adequate knowledge and understanding of the rules and practices necessary to perform

their registered activities.”¹⁰ An unintended consequence of the various training requirements and expectations may be that training content overlaps or appears repetitive creating the perception that the training efforts are redundant and unproductive. By looking holistically across training requirements and expectations the CE Council may identify opportunities to streamline training requirements and improve registrant engagement in training efforts.

To this end and in view of the proposals under consideration to improve the relevancy of the Regulatory Element training, notably:

- An annual cycle;
- Targeted learning units; and
- Publishing learning topics in advance.

SIFMA recommends that the CE Council consider combining Firm Element and Regulatory Element training and only have one annual learning plan requirement. SIFMA also recommends that the annual learning plan requirement permit consideration of other SRO and federal regulator required or encouraged training in the development of the annual learning plan. As stated earlier, firms would need to know well in advance what content was being covered in the Regulatory Element to avoid duplication; perhaps certain topics could be provided in cycles.

SIFMA believes that combining the two components of the CE Program into a single annual learning requirement is a logical consideration based on the enhancements under review by the CE Council. SIFMA also believes that implementing a single annual learning plan requirement would further reduce inefficiencies, avoid duplication, and enable a firm to better allocate its resources, and offer some course flexibility based on a firm's needs analysis (*e.g.*, some of the elective courses as part of the single learning plan might be unique to a specific firm) when designing an effective continuing education plan.

Given the suggested annual frequency, registered representatives should be allowed 60 to 90 days to complete their continuing education requirement with window openings in alignment with annual anniversaries. SIFMA also believes that a centralized catalog could be helpful. Pursuant to this approach, member firms would have the flexibility to continue to develop business/company specific ACM modules and other in-person or online training content to the extent deemed appropriate and necessary by the firm to meet its needs. It should be up to firms to develop and maintain sufficient supporting documentation.

¹⁰ See <http://www.finra.org/newsroom/2018/ce-council-and-finra-request-comment-potential-enhancements-securities-industry>.

F. AUTO NOTIFICATION TO REGISTERED PERSONS FROM FINRA

The CE Council has discussed with FINRA possible enhancements to the CRD system and the Financial Professional Gateway, a FINRA system intended to improve access to data and delivery of services to registered representatives, to mitigate the additional efforts that would be required by firms to monitor participation of annual Regulatory Element requirements. Possible enhancements include the opportunity and flexibility for firms to opt into system-generated email notifications. For example, the system could send notifications directly to registered persons at the start of the Regulatory Element window and periodically thereafter until they have met the requirement.

SIFMA supports these enhanced reporting and automated notification functions, including processes that would provide automated notifications to registered persons that their continuing education window is about to open or has opened. SIFMA also encourages FINRA to design the system to give firms the ability to receive automated notifications sent to registered persons and to control when notifications are sent. The system enhancements should consider common factors across the various operating systems amongst member firms and consider requirements needed to enable an Alert Function, Single Sign-on feature, as well as a robust marketing/communication plan. As part of the communication plan, FINRA should include instructions on navigating the selected site since many users do not utilize CRD or the Financial Professional Gateway on a regular basis. Including member firms on the notifications will assist firms in meeting their compliance obligations. The creation of standard reporting as well as customized reporting will also help firms quickly monitor and reconcile issues and promote compliance. Firms also may prefer to notify registered persons of their continuing obligations in advance of when the system would otherwise provide the notification.

Jennifer Piorko Mitchell

November 5, 2018

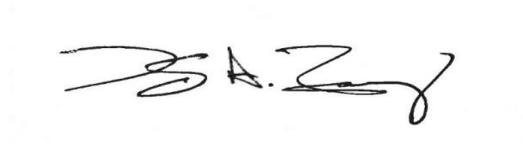
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IV. CONCLUSION

SIFMA appreciates the opportunity to comment on RN 18-26. SIFMA commends FINRA and the CE Council on their continued efforts to enhance the CE Program and ensure that registered persons receive timely education on the securities business and the regulatory requirements applicable to their respective functions. SIFMA looks forward to a continuing dialogue with FINRA and the CE Council on these topics.

If you have any questions or require further information, please contact me at (202) 962-7386, my colleague, Bernard Canepa, at (202) 962-7300, or our counsel, Mark Attar of Schiff Hardin LLP, at (202) 778-6434.

Very truly yours,



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