



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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June 30, 2020

By email to: pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 20-05: Continuing Education Program Transformation

Dear Ms. Mitchell:

I am writing on behalf of the North American Securities Administrators Association, Inc. (“NASAA”)¹ in response to the request for comment by the Financial Industry Regulatory Authority (“FINRA”) on *Regulatory Notice 20-05: Continuing Education Program Transformation* (the “Request for Comment”).² The Request for Comment seeks input regarding whether to implement several recommendations of the Securities Industry/Regulatory Council on Continuing Education (the “Council”)³ to the program of continuing education for registered persons of broker-dealers (the “CE program”). NASAA has previously commented on changes to FINRA’s continuing education program,⁴ and we welcome the opportunity to do so again. Generally, NASAA supports the portions of the

¹ Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA’s membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² See *Regulatory Notice 20-05: Continuing Education Program Transformation* (Feb. 18, 2020), available at <https://www.finra.org/rules-guidance/notices/20-05>.

³ A NASAA liaison serves on the Council in a non-voting capacity.

⁴ See Letter from Michael Pieciak, NASAA President, to Jennifer Piorko Mitchell, FINRA Office of the Corporate Secretary, *Re: Regulatory Notice 18-26, Continuing Education Program* (Nov. 8, 2018), available at <https://www.nasaa.org/wp-content/uploads/2011/07/CE-Council-Enhancements-Comment-Letter-11-8-18.pdf>; Letter from Mike Rothman, NASAA President, to Brent J. Fields, Securities and Exchange Commission, *Re: Proposed Rule Change to Adopt Consolidated FINRA Registration Rules, Restructure the Representative-Level Qualification Examination Program and Amend the Continuing Education Requirements*, Release No. 34-80371, File Number SR-FINRA-2017-007 (May 1, 2017), available at <https://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Comment-Letter-17-07.pdf>; and Letter from Melanie Senter Lubin, NASAA President, to Marcia Asquith, FINRA Corporate Secretary, *Re: Regulatory Notice 09-70 – Registration and Qualification Requirements* (Mar. 1, 2010), available at <https://www.nasaa.org/wp-content/uploads/2011/07/20-NASAA-Comment-Letter-Regulatory-Notice09-70.pdf>.

Request for Comment that propose enhancements to the Regulatory and Firm Elements of the CE program. As discussed in further detail below, we believe the annual regulatory training element, improved Firm Element guidance and resources, and the establishment of a content catalogue, if implemented correctly, are positive steps in advancing the operations of the CE program. However, NASAA has significant concerns regarding the proposal that would allow individuals with terminated registrations to maintain their qualifications by meeting continuing education requirements. As drafted, the proposed changes do not consider state licensing and registration requirements adequately, and they would disrupt the efficient licensing and registration procedures that exist currently for state regulators and member firms.

Regulatory Element Recommendations

NASAA supports the proposed transition to an annual Regulatory Element requirement. This change capitalizes on technological advancements since the CE program's inception in 1995, and aligns with NASAA's proposed Investment Adviser Representative Continuing Education Model Rule and related proposed annual Ethics and Products & Practices requirements.⁵ Likewise, NASAA continues to support the accelerated CE requirement for registrants subject to a significant disciplinary action, including actions by state and federal securities regulators, currently required under FINRA rules.⁶ We are generally supportive of the proposed change to require assigned continuing education to be completed in a manner specified by FINRA,⁷ as long as that requirement adequately addresses investor protection concerns. Regulatory Element ethics requirements for these individuals should be provided in a live, in-person setting to ensure the representative's participation and engagement with the material.

NASAA also supports updating the content and delivery formats for the Regulatory Element.⁸ Appropriately designed CE tailored to specific registration categories would help alleviate inapplicable trainings and provide relevant, targeted information to participants. We look forward to collaborating with FINRA and the CE Council on new instruction formats and continuing education modules. Finally, NASAA supports the advance publication of specific Regulatory Element learning topics. While we appreciate these training elements and courses take time to develop, the CE program should possess adequate flexibility to respond to sudden and/or sweeping changes in the securities industry.

⁵ NASAA proposed implementing continuing education requirements for investment advisers ("IAR-CE") in early 2020. The anticipated launch date for IAR-CE is the fourth quarter of 2021, with continuing education requirements becoming effective for 2022. *See Notice of Request for Public Comments Regarding a Proposed Investment Adviser Representative Continuing Education Program and an Implementing Model Rule Under the Uniform Securities Acts of 1956 and 2002* ("IAR-CE Model Rule") (Feb. 1, 2020), available at <https://www.nasaa.org/wp-content/uploads/2020/02/IAR-CE-Public-Notice-and-Request-for-Comment-02-13-20.pdf>.

⁶ FINRA Rule 1240(a)(3)(B)-(C).

⁷ Request for Comment at 8.

⁸ *Id.*

Firm Element Recommendations

NASAA generally supports the expansion of the Firm Element to include other training requirements. Expanding the training requirements to registered persons ensures continuing education and training for individuals not currently covered by FINRA Rule 1240(b). Additionally, the decision to recognize training elements from anti-money laundering (“AML”) compliance programs and annual compliance meetings (“ACM”) provides flexibility and does not make this new requirement overly burdensome. However, NASAA disagrees with that AML and ACM should be allowed to satisfy a registered person’s Firm Element requirement. While AML and ACM may address issues faced by both covered and registered persons, training should not be limited to these two programs especially when the content catalog is developed.

Finally, NASAA supports the development of a content catalog for firms, self-regulatory organizations, and third-party vendors participating in the CE program. We believe that a customizable program with vetted courses could increase the quality and effectiveness of the CE program. Furthermore, as the modules would be selected by the firms, flexibility and individual determinations based on broker size, complexity, and business model would be preserved with this new system.

Maintaining Qualifications Recommendation

The most significant change proposed by FINRA would provide certain individuals, by continuing to complete CE requirements, the ability to maintain their qualifications following the termination of their registrations for up to seven years.⁹ Currently, following termination of registration, an individual’s qualifications remain valid for two years, which allows that individual to reenter the industry without having to retake any previously passed licensing examinations. NASAA’s members commonly apply the same two-year qualification rule for state licensing of broker-dealer agents and investment adviser representatives.¹⁰

Any changes to the two-year post termination qualification framework, especially more than tripling the existing timeframe, would therefore be a significant departure from current practice. Even assuming that some increase to the time frame is beneficial, many considerations should be addressed before making changes to well-established requalification requirements. Currently, industry professionals have the ability to rely on the same validity period for both FINRA and state examinations. The efficiency of registration created by this uniformity is extremely beneficial for the industry. Should FINRA move forward with this proposal as it stands, the obstacles it would create through conflicts with current state rules and regulations would outweigh any benefits gained. Without a uniform approach between FINRA and state requirements, registration and licensing application processing times could increase

⁹ Request for Comment at 14.

¹⁰ See, e.g., Ark. R and Regs. § 302-302.01(c), § 302-302.02(f); Cal. Code Regs. tit. 10, § 260.217, § 260.236; Fla. Admin. Code R. 69W-600.002, 69W-600.024; Ga. Comp. R. & Regs. r. 590-4-5-.02, 590-4-4-.09.

greatly. Currently, under the uniform two-year approach, most states allow broker-dealer agent applicants to be approved automatically if no new or updated disclosure information is contained on an applicant's Form U4s. Since the majority of NASAA's members specifically address a two-year exam validity period in their rules and regulations, this proposal would force applicants to undergo manual state reviews to determine if they meet the states' qualification rules. This would create confusion and delay for registrants who would be in compliance with FINRA rules but out of compliance with state rules.

Similar concerns were raised in both SIFMA's and FSI's comment letters submitted in response to the Request for Comment. SIFMA points out in its comment letter that the proposed CE program does not address state registrations, which are often required.¹¹ FSI similarly requested "*insight into whether, if at all, FINRA has coordinated with state securities regulators that would also allow individuals who were previously registered in a state to maintain their qualification for a terminated registration,*" and it noted that "[w]ithout maintaining registration at the state-level, permitting a previously-registered representative or principal registration category to maintain their qualification for a terminated registration category may be ineffectual."¹² It is clear that without states being in agreement, this portion of the proposal would not be of benefit to industry professionals.

NASAA recognizes that this portion of the recommendation stems from a desire to alleviate burdens on individuals having to requalify after leaving the industry as a result of life events, career changes or business reorganizations.¹³ NASAA believes that the desire to structure a CE program that can help accommodate life's challenges is a laudable goal worthy of serious consideration. But, the proposal should be revised in a way that preserves the efficiency and coordination that already exists in licensing and registration.

NASAA is therefore committed to working with our membership to determine whether a consensus exists or can be reached among the states for an appropriate timeframe for requalification without examination for applicants who meet certain CE requirements. NASAA has concerns that – given the pace of financial product innovations, technology, regulatory changes, and adapting industry practices – anyone who reenters the industry after a long absence is at risk of making unsuitable recommendations and otherwise harming investors. We would accordingly want any agreed upon timeframe to give adequate weight to investor protection concerns.

¹¹ See Letter from Kevin Zambrowicz, SIFMA Managing Director and Associate General Counsel, to Jennifer Piorko Mitchell, FINRA Office of the Corporate Secretary, *RE: Regulatory Notice 20-05, Continuing Education Program Transformation* (Apr. 22, 2020), available at https://www.finra.org/sites/default/files/2020-04/20-05_SIFMA_Comment.pdf.

¹² See Letter from Robin M. Traxler, FSI Senior Vice President, Policy and Deputy General Counsel, to Jennifer Piorko Mitchell, FINRA Office of the Corporate Secretary, *RE: Regulatory Notice 20-05, Continuing Education Program Transformation* (May 21, 2020), available at https://www.finra.org/sites/default/files/2020-05/20-05_FSI_comment.pdf.

¹³ See Request for Comment at 21-22.

Jennifer Piorko Mitchell

June 30, 2020

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Until those determinations are reached, however, NASAA strongly suggests that FINRA not move forward with implementation of this portion of their proposal until a uniform approach is reached for both FINRA and state regulators.

Sincerely,

A handwritten signature in black ink, appearing to read "CH Gerold". The signature is stylized with a large, looped "G" and a horizontal line extending to the right.

Christopher Gerold
NASAA President
Chief, New Jersey Bureau of Securities