

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75154; File No. SR-FINRA-2015-015)

June 11, 2015

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 4, 2015, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 1250 (Continuing Education Requirements) to provide a Web-based delivery method for completing the Regulatory Element of the Continuing Education (“CE”) requirements and to amend Section 4(f) of Schedule A to the FINRA By-Laws to establish the fee for the Web-based delivery of the Regulatory Element. The proposed rule change would phase out the current option of completing the Regulatory Element in a test center as well as the current option for in-firm delivery of the Regulatory Element.

In addition, FINRA is proposing to delete NASD Rule 1043 (Proctors of In-Firm Delivery of Regulatory Element), Incorporated NYSE Rule 345A (Continuing Education for

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Registered Persons)<sup>3</sup> and NYSE Rule Interpretation 345A (Continuing Education for Registered Persons).

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The CE requirements under FINRA Rule 1250 consist of a Regulatory Element<sup>4</sup> and a Firm Element.<sup>5</sup>

The Regulatory Element applies to registered persons<sup>6</sup> and consists of periodic computer-based training on regulatory, compliance, ethical, and supervisory subjects and sales practice

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<sup>3</sup> For convenience, the proposed rule change refers to Incorporated NYSE Rules as NYSE Rules.

<sup>4</sup> See FINRA Rule 1250(a) (Regulatory Element).

<sup>5</sup> See FINRA Rule 1250(b) (Firm Element).

<sup>6</sup> 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).

standards, which must be completed within prescribed time frames.<sup>7</sup> 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 Act; (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. There are four Regulatory Element programs: (1) the S106 for Investment Company and Variable Contracts Representatives; (2) the S201 for registered principals and supervisors; (3) the S901 for Operations Professionals; and (4) the S101 for all other registration categories. Currently, the Regulatory Element may be administered in a test center or in-firm subject to specified procedures.<sup>8</sup>

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<sup>7</sup> 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.

<sup>8</sup> The in-firm delivery procedures require, among other things, that (1) the firm designate a principal to be responsible for the in-firm delivery; (2) the delivery site be under the control of the firm and in an appropriate location and layout; (3) the firm satisfy the technology standards defined by FINRA or its designated vendor; (4) the firm's written supervisory procedures specify the in-firm delivery procedures; (5) the in-firm sessions be administered by a proctor who will be responsible for ensuring compliance with the required procedures and for monitoring the candidates; (6) appointments be scheduled in

In addition, NASD Rule 1043 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);<sup>9</sup> 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.

The Firm Element consists of annual, member-developed and administered training programs designed to keep covered registered persons<sup>10</sup> current regarding securities products, services and strategies offered by the member.

NYSE Rule 345A and NYSE Rule Interpretation 345A include corresponding requirements.<sup>11</sup>

Today, most registered persons complete the Regulatory Element in a test center rather than in-firm. Given advances in Web-based technology, FINRA believes that there is diminishing utility in the test center and in-firm delivery methods. Moreover, members and registered persons have raised concerns with the test center delivery method because of the travel

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advance using the procedures and software specified by FINRA to communicate with FINRA's system and designated vendor; (7) the firm maintain and preserve a sign-in log; and (8) firms file a signed letter or attestation with FINRA prior to commencing in-firm delivery. See FINRA Rule 1250(a)(6) (In-Firm Delivery of the Regulatory Element).

<sup>9</sup> Proctors are not subject to a qualification examination. Further, an associated person who is registered solely as a Proctor is not qualified to function in any registered capacity other than a proctor for in-firm delivery.

<sup>10</sup> For purposes of the Firm Element, the term "covered registered persons" is defined as any registered persons who have direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, any person registered as an Operations Professional pursuant to FINRA Rule 1230(b)(6) (Operations Professional) or a Research Analyst pursuant to NASD Rule 1050 (Registration of Research Analysts), and the immediate supervisors of such persons. See FINRA Rule 1250(b)(1) (Persons Subject to the Firm Element).

<sup>11</sup> See also NYSE Information Memorandum 02-49 (November 2002).

involved, the limited time currently available to complete a Regulatory Element session<sup>12</sup> and the use of rigorous security measures at test centers, which are appropriate for taking qualification examinations but onerous for a CE program. Also, the test center delivery method is expensive to operate.

In response to the issues noted above, FINRA engaged in extensive outreach with the industry and completed a pilot of a Web delivery system for administering the Regulatory Element. The proposed Web-based system performed well during the pilot in terms of both performance and accessibility. FINRA also received positive feedback from firms and the individual pilot participants. Among other things, pilot participants appreciated the expanded time to focus on the provided learning materials without the pressure of a timed session and the ability to resume or complete their session from where they left off.

#### Proposal

Based on FINRA's evaluation of different delivery methods and consultation with the Securities Industry Regulatory Council on Continuing Education ("CE Council"),<sup>13</sup> FINRA is proposing to provide a Web-based delivery method for completing the Regulatory Element. Specifically, FINRA is proposing to amend FINRA 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. In addition to allowing the use of Web-based delivery, the proposed rule change would allow FINRA to adopt different delivery methods in the future based on technology changes without having to amend the rule each time.

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<sup>12</sup> The current session time is 3½ hours.

<sup>13</sup> The CE Council is composed of up to 20 industry members from broker-dealers, representing a broad cross section of industry firms, and representatives from FINRA and other SROs as well as liaisons from the SEC and the North American Securities Administrators Association.

However, FINRA will notify members through a Regulatory Notice of any future changes to the delivery method.

FINRA would like to launch the first phase of Web-based delivery, which will include the S106, S201 and S901 Regulatory Element programs, on October 1, 2015. FINRA would like to launch the second phase of Web-based delivery, which will include the S101 Regulatory Element program, on January 4, 2016.

FINRA is proposing to phase 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 Web-based system after that date.

Further, FINRA is proposing to phase out the current option for in-firm delivery on a rolling basis as each Regulatory Element program becomes available for Web-based delivery. Firms will not be able to establish new in-firm delivery programs after October 1, 2015. Moreover, firms that have pre-existing in-firm delivery programs established prior to October 1, 2015 would not be able to use that delivery method for the S106, S201 and S901 Regulatory Element programs after October 1, 2015, which is the anticipated launch date of Web-based delivery for these programs. However, such firms may continue to use their pre-existing in-firm delivery programs for the S101 Regulatory Element program until January 4, 2016, which is the anticipated launch date of Web-based delivery for the S101 program.

FINRA is also proposing to eliminate NASD Rule 1043 relating to the registration of Proctors for in-firm delivery. FINRA is proposing to 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 Web-based delivery. Therefore, associated persons who are

registered as Proctors in the CRD system will not be required to take any actions.

The proposed Web-based delivery method will provide registered persons 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>14</sup>

In addition, Web-based delivery will significantly reduce the cost to the industry. The current fee for test-center and in-firm deliveries is \$100 per session.<sup>15</sup> In-firm deliveries receive a three dollar rebate per session. FINRA is proposing to amend Section 4(f) of Schedule A to the FINRA By-Laws to assess a fee of \$55 for each candidate who completes the Regulatory Element via the Web-based delivery method.<sup>16</sup> FINRA is also proposing to amend Section 4(f) of Schedule A to the FINRA By-Laws to clarify that registered persons will not be required to complete the Regulatory Element in a test center or via the in-firm method during the phase-out period.

The Web-based format will include safeguards to authenticate the identity of the CE candidate. For instance, prior to commencing a Web-based session, the candidate will be asked to provide a portion of their SSN (either first five or last four digits) and their date of birth. This information will only be used for matching data in the CRD system. The Web CE system will

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<sup>14</sup> While the proposed rule change 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 Web-based CE 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 Web-based CE and communicate the update to registered persons.

<sup>15</sup> 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.

<sup>16</sup> FINRA is not proposing any changes to the session fees for test-center and in-firm deliveries until it has completed the phase-out process described above.

discard this information after the matching process.

Further, before commencing a Web-based session, FINRA will require that each candidate agree to the Rules of Conduct for Web-based delivery. Among other things, the Rules of Conduct will require each candidate to attest that he or she is in fact the person who is taking the Web-based session. The Rules of Conduct will also require that each candidate 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 candidate has violated the Rules of Conduct, the candidate will forfeit the results of the Web-based session and may be subject to disciplinary action by FINRA.<sup>17</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>18</sup>

FINRA is not proposing any changes to the Firm Element requirements under FINRA Rule 1250(b).

FINRA is proposing to delete NYSE Rule 345A and NYSE Rule Interpretation 345A in their entirety as they are substantially similar to FINRA Rule 1250.

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<sup>17</sup> For instance, for cheating on the Regulatory Element, FINRA's Sanction Guidelines recommend a bar. See FINRA Sanction Guidelines at 40 (2013 [sic]), [http://www.finra.org/sites/default/files/Sanctions\\_Guidelines.pdf](http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf).

<sup>18</sup> Further, an associated person that 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.



FINRA will announce the effective date of the proposed rule change, which FINRA intends for October 2015, in a Regulatory Notice to be published no later than 90 days following Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>19</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(g)(3) of the Act,<sup>20</sup> which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members.

FINRA believes that the proposed rule change will improve members' compliance efforts and will allow registered persons to spend a greater amount of time on the review of CE materials and potentially achieve better learning outcomes, which will in turn enhance investor protection. Further, while the proposed rule change will provide more flexibility to members and registered persons, it will maintain the integrity of the CE program.

### B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

FINRA notes that the proposed rule change is specifically intended to reduce the burden on firms while preserving the integrity of the CE program. As described above, the Web-based delivery method will provide registered persons the flexibility to complete the Regulatory Element at any location that they choose. Further, Web-based delivery is efficient and offers

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<sup>19</sup> 15 U.S.C. 78o-3(b)(6).

<sup>20</sup> 15 U.S.C. 78o-3(g)(3).

significant cost savings over test-center and in-firm deliveries. With respect to the authentication process for Web-based delivery, the CE candidate's personal identifying information will be masked and will be submitted to FINRA through a secure, encrypted, network. The personal identifying information submitted via the Web-based system will be used for authentication purposes only – the information will not be stored in the Web-based system.

#### Economic Impact Assessment

##### (a) Need for the Rule

As discussed above, FINRA believes that there is diminishing utility in the test-center and in-firm delivery of the Regulatory Element given advances in Web-based technology. Moreover, members and registered persons have raised concerns with the test center delivery method because of the travel involved, the limited time currently available to complete a Regulatory Element session and the use of rigorous security measures at test centers. In addition, the test center delivery method is expensive to operate and support.

##### (b) Regulatory Objective

The proposed rule change is intended to reduce the burden on firms while preserving the integrity of the CE program.

##### (c) Economic Baseline

The proposed Web-based delivery method will affect members and registered persons through changes in the fee, location and allotted time for Regulatory Element sessions. The average annual in-firm and test-center deliveries over the past three years are 1,174 and 207,474, respectively. The current fee for in-firm and test-center deliveries is typically \$100 per session. In addition, the Regulatory Element must be completed at a test center or in-firm subject to specific conditions, and the current Regulatory Element session time is 3½ hours. The proposed

rule change will permit FINRA to provide CE training at a reduced cost, reduce the fee for the Regulatory Element session and provide registered persons with more flexibility regarding the location and allotted time to complete the session.

The proposed Web-based delivery of the Regulatory Element will also improve FINRA's ability to update content in response to rule changes and other industry demands. The current test center delivery method involves a multi-layered release and quality control process for implementing new content through the delivery vendors because FINRA and the delivery vendors each employ a release and quality control process. The overlapping processes, while necessary, require additional effort for FINRA staff to support. The proposed rule change will enable FINRA to update the content of the Regulatory Element directly and more efficiently through a single release and quality control process.

#### (d) Economic Impacts

The proposed Web-based delivery of the Regulatory Element will reduce direct and indirect costs of the program in a number of ways. First, the industry will benefit from the proposed decrease in the session fee from \$100 to \$55. Under the proposal, 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. Second, in contrast with the test center delivery method, the proposed Web-based delivery will not involve travel, meaning that registered persons will not lose travel time in order to participate, or overly rigorous security measures. Registered persons will be able to complete the Regulatory Element at a location of their choosing, including their private residence. Third, the proposed Web-based delivery will not impose any limit on the session time other than the 120-day window for completion of the Regulatory Element. Under the proposed Web-based delivery method, registered persons will be

able to spend a greater amount of time on the review of CE materials and potentially achieve better learning outcomes.

The Web-based format will provide FINRA the ability to update content in response to rule changes and other industry changes on a more timely basis. Also, it will significantly reduce the effort and cost associated with a multi-layered release and quality control process for implementing new content through the delivery vendors. Therefore, the proposed rule change will likely improve regulatory efficiency, promote better education of associated persons and enhance investor protection.

The proposed rule change is not expected to negatively impact the integrity of the CE program. The proposed Web-based delivery method will include safeguards to authenticate the identity of the CE candidate. Further, before commencing a Web-based session, FINRA will require that each candidate agree to the Rules of Conduct for Web-based delivery.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2015-015 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2015-015 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

Robert W. Errett  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).