

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75581; File No. SR-FINRA-2015-015)

July 31, 2015

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

I. Introduction

On June 4, 2015, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to change the method of delivery for the Regulatory Element of the Continuing Education (“CE”) program. The proposed rule change was published for comment in the Federal Register on June 17, 2015.³ The Commission received four comment letters on the proposed rule change.⁴ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Web-Based Delivery

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 75154 (June 11, 2015), 80 FR 34777 (“Notice”).

⁴ See letters from Kevin Zambrowicz, Associate General Counsel & Managing Director and Stephen Vogt, Assistant Vice President & Assistant General Counsel, Securities Industry and Financial Markets Association, dated July 7, 2015 (“SIFMA Letter”); Daniel Kosowsky, Chief Compliance Officer, Morgan Stanley Smith Barney LLC and Rose-Anne Richter, Chief Compliance Officer, Morgan Stanley & Co. LLC, dated July 8, 2015 (“Morgan Stanley Letter”); David T. Bellaire, Executive Vice President & General Counsel, Financial Services Institute, dated July 8, 2015 (“FSI Letter”); and Michele Van Tassel, President, Association of Registration Management, dated July 8, 2015 (“ARM Letter”).

As FINRA described in the Notice, the CE requirements under FINRA Rule 1250 consist of a Regulatory Element and a Firm Element. The Regulatory Element applies to registered persons and consists of periodic computer-based training on regulatory, compliance, ethical, and supervisory subjects and sales practice standards, which must be completed within prescribed timeframes.⁵ 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 at a firm that meets the requirements in Rule 1250 for in-firm delivery of CE.⁶

FINRA proposed to amend FINRA Rule 1250 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, and to eliminate the requirements for in-firm delivery of the Regulatory Element.⁷ FINRA proposed to implement Web-based delivery for the S106, S201, and S901 Regulatory Element programs on October 1, 2015, and to implement Web-based delivery for the S101 Regulatory Element program on January 4, 2016. FINRA also proposed to phase-out test-center delivery by no later than six months after January 4, 2016.⁸

⁵ See Notice, supra note 3 at 34778 (describing the Regulatory Element in more detail, including the timeframes for completing the Regulatory Element). Currently, candidates have three and a half hours to complete their CE session.

⁶ See id. at n. 8 (describing in-firm delivery procedures).

⁷ FINRA also proposed to delete Incorporated NYSE Rule 345A (Continuing Education for Registered Persons) and Incorporated NYSE Rule Interpretation 345A (Continuing Education for Registered Persons). According to FINRA, these rules are substantially similar to FINRA Rule 1250.

⁸ Under the proposal, firms will not be able to establish new in-firm delivery programs after October 1, 2015. Firms that have pre-existing in-firm delivery programs that are established before October 1, 2015 will not be able to use that delivery method for the S106, S201, and S901 Regulatory Element programs after October 1, 2015, and they will

In proposing these changes, FINRA noted that Web-based delivery will provide registered persons the flexibility to complete the Regulatory Element at a location of their choosing and at any time during their 120-day window for completion of the Regulatory Element, consistent with their firm's requirements. In addition, there will be no three and a half hour time limitation, as there is currently. FINRA also noted that the Web-based format will include safeguards to authenticate the identity of the CE candidate (e.g., by asking the candidate to provide a portion of his Social Security Number ("SSN") and date of birth). Before commencing a Web-based session, each candidate must agree to the Rules of Conduct for Web-based delivery. If FINRA discovers that a candidate has violated the Rules of Conduct, the candidate will forfeit the results of the session and may be subject to disciplinary action by FINRA. FINRA considers violations of the Rules of Conduct to be conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

B. Proctor Registration

Currently, NASD Rule 1043 requires an associated person who is designated by a firm as a proctor for the purposes of in-firm delivery of the Regulatory Element to be registered as a Proctor with FINRA through the filing of a Form U4 (Uniform Application for Securities Industry Registration or Transfer).⁹ In light of the Web-based delivery proposal, FINRA proposed to eliminate NASD Rule 1043, and to automatically terminate the Proctor registration category in the CRD system on January 4, 2016.

not be able to use that delivery method for the S101 Regulatory Element program after January 4, 2016.

⁹ Currently, an associated person who is already registered in another registration category may be designated as a proctor by a firm without having to register as a Proctor with FINRA.

C. Fee for Web-Based Delivery

Currently, the fee for test-center and in-firm deliveries is \$100 per session, although in-firm deliveries receive a three-dollar rebate per session.¹⁰ FINRA proposed to establish a \$55 fee for each candidate who completes the Regulatory Element via the Web-based delivery method.¹¹ However, 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.

III. Comment Letters

The Commission received four comment letters that supported the proposed rule change.¹² In particular, the commenters noted that the proposal would modernize FINRA's CE

¹⁰ There are also additional fees for taking the session outside of 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. See also Notice, supra note 3 at 34779.

¹¹ FINRA also proposed to amend its fee schedule to clarify that registered persons will not be required to complete the Regulatory Element in a test center or in-firm during the phase-out period.

¹² See supra note 4. These commenters also provided comments relating to the implementation of this proposed rule change. In particular, one commenter requested that FINRA continue to make CE training data and test results available to firms. See FSI Letter at 1 and 3. Two commenters requested that FINRA provide clarification on the level of information that will be available to firms regarding an individual's initiation of, and progress on, a particular CE session. See SIFMA Letter at 5 and ARM Letter at 2. Commenters also requested that FINRA consider the use of identifiers other than the SSN for candidates who do not have an SSN. See SIFMA Letter at 5, Morgan Stanley Letter at 1, and ARM Letter at 2-3. Two commenters requested that FINRA provide firms with an appropriate degree of flexibility with respect to individual CE deadlines if they encounter unexpected but demonstrated technical difficulties. See SIFMA Letter at 4 and ARM Letter at 2. In addition, these two commenters requested that FINRA provide guidance on the implementation of Web-based delivery, including clarification regarding how it will handle reasonably foreseeable technology and operational issues that may arise with the implementation and use of the Web-based CE program. See SIFMA Letter at 5 and ARM Letter at 2. One commenter suggested that FINRA provide help guides, user instructions, and frequently asked questions to minimize confusion about completing the CE requirements through the new process, and conduct information sessions for FINRA member firms to better prepare for questions and issues about the new CE delivery method and related completion process. See ARM Letter at 2. The Commission understands that FINRA will provide guidance on these issues. Finally, one

requirements,¹³ remove burdens associated with the test center delivery method (e.g., the time spent traveling to a test center),¹⁴ and reduce the fees and other costs associated with the Regulatory Element.¹⁵ Commenters also supported the flexibility associated with Web-based delivery.¹⁶ Moreover, two commenters supported FINRA's proposed timeline for implementing Web-based delivery.¹⁷ One of these commenters stated that a phased approach will provide firms with the flexibility needed to address technology, operations, and process issues that may arise.¹⁸ This commenter additionally requested that, if FINRA proposes materially new technology, delivery platforms, or other measures in the future, FINRA solicit comments on the proposed changes through a Regulatory Notice and seek and receive FINRA Board approval of the changes before implementing the changes.¹⁹

IV. Discussion and Commission Findings

After careful review of the proposed rule change and the comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.²⁰

commenter encouraged FINRA to continue to review its rulebook, interpretations, and fees. See SIFMA Letter at 6.

¹³ See SIFMA Letter at 4, Morgan Stanley Letter at 1, FSI Letter at 1-3, and ARM Letter at 3.

¹⁴ See SIFMA Letter at 4, Morgan Stanley Letter at 1, FSI Letter at 1-3, and ARM Letter at 1 and 3.

¹⁵ See SIFMA Letter at 4, Morgan Stanley Letter at 1, FSI Letter at 2, and ARM Letter at 1 and 3.

¹⁶ See SIFMA Letter at 4 and FSI Letter at 2.

¹⁷ See SIFMA Letter at 4 and ARM Letter at 2.

¹⁸ See SIFMA Letter at 4.

¹⁹ See id. See also ARM Letter at 3.

²⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,²¹ which requires, among other things, that FINRA rules 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 as it changes the delivery method for CE to make it more flexible and efficient, as well as, less costly for the industry. In addition, it will provide candidates the amount of time that they feel they need to complete their CE session, enabling them to use the resource material included in the CE program. Having additional time to take the CE session may result in better learning outcomes, which should enhance investor protection.

FINRA stated in the Notice that it has provided safeguards to preserve the integrity of the CE program.²² Moreover, as FINRA and the commenters noted, the proposed rule change would provide flexibility with respect to completing the Regulatory Element by eliminating the need to go to a test center to complete a Regulatory Element session.²³ The proposal also will reduce the fees and other costs associated with the Regulatory Element.²⁴ In addition, FINRA stated that Web-based delivery of the Regulatory Element will improve its ability to update the content in response to rule changes and other industry demands.²⁵ Specifically, FINRA will be able to

²¹ 15 U.S.C. 78o-3(b)(6).

²² See Notice, supra note 3 at 34779-80. The Commission notes that under FINRA's Sanction Guidelines, the recommended penalty for cheating on the Regulatory Element is a bar. See id. at n. 17. The Commission expects both FINRA and its member firms to take appropriate measures to avoid any abuse that could be associated with Web-based delivery of CE. As FINRA noted in the Notice, firms may impose conditions on their associated persons regarding completion of their CE requirements in a Web-based environment. See id. at n. 14.

²³ See id. at 34780 and supra notes 14 and 16.

²⁴ See Notice, supra note 3 at 34780 and supra notes 14-15.

²⁵ See Notice, supra note 3 at 34780.

update the Regulatory Element content directly and more efficiently because the update will no longer involve a multi-layered release and quality control process, which is required when FINRA employs vendors to deliver CE.²⁶ The ability to update the content of the Regulatory Element directly will make the process more efficient for FINRA and should promote better education of associated persons and consequently enhance investor protection.²⁷

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-FINRA-2015-015) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Robert W. Errett
Deputy Secretary

²⁶ See id.

²⁷ FINRA stated that 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.” See id. at 34779. This statement was based on the addition of the phrase “or such other technological manner and format as specified by FINRA,” to Rule 1250(a)(6). The Commission notes, however, that FINRA must comply with the requirements of Section 19(b) of the Act.

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).