

June 30, 2020

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

SUBMITTED VIA EMAIL: pubcom@finra.org

Re: FINRA Regulatory Notice 20 – 05 Request for Comments on Proposal to Implement the Recommendations of the CE Council Regarding Enhancements to the Continuing Education Program for Securities Industry Professionals

Dear Ms. Mitchell:

National Regulatory Services (NRS) appreciates the opportunity to comment on Regulatory Notice 20-05, proposing to implement the Securities Industry/Regulatory Council on Continuing Education's (CE Council's) recommendations for enhancing continuing education requirements for security professionals (Proposal¹). NRS commends the Financial Industry Regulatory Authority, Inc. (FINRA) for undertaking these efforts and views the Proposal as a positive step toward fostering investor protection by ensuring that securities industry registered professionals have sufficient knowledge and training.

NRS supports the Proposal, subject to the comments and recommendations set forth below.

Background on NRS and NRS Clients

NRS serves 6,000 broker-dealers, investment advisers, and investment companies ranging from small institutions to the largest global investment management complexes, private fund managers and other financial firms. Many of these firms provide retirement and financial planning advice to retail investors.

Since 1983, NRS has provided its clients with exceptional compliance and consulting services, compliance technology solutions, national conferences, seminars, the NRS Investment Adviser Certified Compliance Professional (IACCP®) designation program and, through its FIRE brand, securities exam prep and Firm Element continuing education. NRS FIRE Solutions is a recognized leader in securities examination preparation. NRS is a division of Accuity, the leading provider of global payment routing data, AML screening software, and services that allow organizations, across multiple industries, to maximize efficiency and facilitate compliance

¹ See, generally, FINRA Regulatory Notice 20-05.

of their transactions. For more than 150 years, Accuity has provided its worldwide clients, including financial institutions, corporations and government organizations in over 150 countries, with solutions and services packaged in multiple formats to serve their diverse needs.

FINRA requests comment on all aspects of the proposal and specifically requests comment concerning the following issues:

1. Does focusing the Regulatory Element on rule changes and significant regulatory issues relevant to each registration category seem appropriate? Would this help distinguish the Regulatory Element from the Firm Element? Are there other topics that should be included within the Regulatory Element?
2. Would the transition to an annual Regulatory Element requirement or the focus on rule changes and significant regulatory issues relevant to each registration category disparately impact specific populations? If so, would the introduction of greater diversity in instructional formats and delivery modes alleviate any such potential impacts? Are there any other mitigations that FINRA should consider to address any such potential impacts?
3. FINRA is proposing possible enhancements to the CRD system and FinPro system to facilitate the transition to an annual Regulatory Element requirement. Would enhanced reporting and automated notification functions help mitigate the additional efforts required to monitor participation in, and completion of, an annual requirement? What other system enhancements would firms find helpful?
4. Are member firms currently requiring all registered persons to complete Firm Element training? Does the express recognition of other training requirements, including the annual compliance meeting, towards satisfying the Firm Element training mitigate the potential burdens associated with extending the Firm Element to all registered persons?
5. Are the eligibility criteria for participation in the proposed program to maintain a qualification status for a terminated registration category appropriate? Is a participation time period of seven years sufficient? Should FINRA consider other options for eligibility or the length of time an individual can participate in the program?
6. In light of the proposed program to maintain a qualification status for a terminated registration category through continuing education, should FINRA eliminate the two year qualification period?
7. Are there approaches other than the proposed changes that FINRA should consider?
8. What other economic impacts, including costs and benefits, might be associated with the proposal? Who might be affected and how? Please provide estimates or estimated ranges for costs and benefits wherever possible.
9. Would the proposal impose any other competitive impacts that FINRA has not considered?

NRS has organized our comments based on the various questions in the Proposal. Rather than responding to all questions and sub-questions, NRS has limited this response to those matters for which we believe our experience and insights are most relevant.

Regulatory Element

NRS fully supports the Council's recommendations to implement an annual Regulatory Element Continuing Education program. We believe this will provide more efficient and uniform education on industry standards and developing industry topics. Making this an annual requirement will also simplify the process of tracking Regulatory Element requirements and allow firms to more easily incorporate a well-rounded education package into their Firm Element training program.

FINRA specifically requests comment concerning the following issues:

1. Does focusing the Regulatory Element on rule changes and significant regulatory issues relevant to each registration category seem appropriate?

NRS believes that FINRA's proposed approach to developing Regulatory Element content based on significant regulatory issues relevant to each registration category will provide a more meaningful training experience for each covered individual, as well as a front-line for the industry that is better prepared to deliver the service and knowledge that their customers need.

Tailoring instruction based on the participant's prior knowledge (field of practice by registration category) is known to be a powerful factor for improving learning outcomes. (Lalley & Gentile, 2009).² A one size fits all approach may have irrelevant content that would not be as easily embraced by the intended audience.

Would this help distinguish the Regulatory Element from the Firm Element?

To the front-line registered representatives, the distinction between Regulatory Element and Firm Element may not be apparently evident. From a firm's CE administrator perspective, the distinction should be evident in their purposes and particularly in how the Regulatory Element has influence over the firm's Firm CE Needs Analysis.

Historically, FINRA has used the results of Regulatory Element examinations to produce quarterly Performance Reports that compared scores of individuals (by registration category) within a member firm to industry average scores. These reports gave firms a meaningful assessment of training needs to consider in their CE Needs Analysis. NRS suggests that FINRA continue to produce these reports (quarterly or real-time) to identify training weaknesses at a firm level and provide important data that will allow firms and their CE vendors to improve the efficacy of their training program through targeted changes and updates.

² Lalley, J. P., & Gentile, J. R. (2009). Adapting instruction to individuals: based on the evidence, What should it mean? International Journal of Teaching and Learning in Higher Education, 20(3), 462–475. Retrieved from [http://www.isetl.org/ijtlhe/pdf/IJTLHE20\(3\).pdf#page=156](http://www.isetl.org/ijtlhe/pdf/IJTLHE20(3).pdf#page=156) \n <http://www.eric.ed.gov/PDFS/EJ869330.pdf>

NRS also fully supports the Council's recommendation to publish the anticipated learning topics as this would provide definition to the performance reports and a clear identification of specific training needs.

2. Would the transition to an annual Regulatory Element requirement or the focus on rule changes and significant regulatory issues relevant to each registration category disparately impact specific populations?

NRS does not believe *the focus on rule changes and significant regulatory issues will disparately impact specific populations.*

As mentioned earlier, NRS believes that an annual Regulatory Element requirement tailored to the audience will provide two benefits; 1) a reduction in annual training requirements (1/3 of original requirement), and 2) more meaningful content for the intended audience.

Firm Element and CE Needs Analysis

FINRA specifically requests comment concerning the following issues:

- Are member firms currently requiring all registered persons to complete Firm Element training? Does the express recognition of other training requirements, including the annual compliance meeting, towards satisfying the Firm Element training mitigate the potential burdens associated with extending the Firm Element to all registered persons?
- Are there approaches other than the proposed changes that FINRA should consider?
- Would the proposal impose any other competitive impacts that FINRA has not considered?

4. Does the express recognition of other training requirements, including the annual compliance meeting, towards satisfying the Firm Element training mitigate the potential burdens associated with extending the Firm Element to all registered persons?

NRS appreciates and supports the Council's efforts to reduce redundant training efforts by allowing training requirements for AML, Ethics, and ACM programs to satisfy Firm Element requirements. NRS recommends that FINRA add a condition that member firms use their CE Needs Analysis to identify those topics as a need and only if the course addresses the registered representative's broker-dealer responsibilities. A fiduciary duty course targeted at financial planners might not, for example, provide the proper specific training that a RR might need.

7. Are there approaches other than the proposed changes that FINRA should consider?

FINRA Centralized Catalogue

The Proposal, if adopted, would allow firms to select Firm Element content from firm-developed content or from content developed by a third-party or a self-regulatory organization (SRO). To assist firms in finding content, FINRA would develop a centralized,

course content catalogue (See discussion below regarding Content Uploaded to FINRA's LMS) with optional resources for Firm Element training.

As an alternative to a centralized content catalogue, NRS recommends a *centralized directory* of approved courses and of approved third-party content providers. We believe that a centralized directory will help firms quickly find courses organized by topic across multiple providers. Ideally, this directory would include course title, course description, intended audience, learning objectives, skill level and length of each course.

FINRA Qualified Content Provider Program

NRS recommends that FINRA adopt a "FINRA Qualified Content Provider" program. Third-party content providers would need to apply for the program and the application process would include a review of the provider and the content offered. If the provider is approved, FINRA can list each Qualified Content Provider's name and course descriptions in the centralized directory. After approval, content providers will be subject to periodic content audits to ensure their materials remain current and fit within FINRA's Qualified Content Provider guidelines.

Content Uploaded to FINRA's Learning Management System (LMS)

NRS believes that having content providers upload content to a centralized content catalogue (FINRA's LMS) may have the unintended consequence of imposing a substantial operational burden on FINRA and would present unsurmountable technology support challenges. More specifically, by offering course content to firms, through their LMS, it will seem as though FINRA endorses the content, itself. Under these circumstances, investor protection would warrant that FINRA inspect and approve each piece of offered content. FINRA could not offer the content without assuming some level of responsibility for it.

A Qualified Content Provider status, however, only means that the content provider and a sampling of their content has gone through FINRA's review and remains up to date with any ongoing program requirements.

If FINRA were to adopt this approach, it would:

- Simplify and standardize the process for FINRA and providers
- Reduce third-party review costs
- Reduce the resources needed to review and approve course submissions for both FINRA and content providers
- Eliminate the requirement for content providers to upload courses to the FINRA's LMS
- Identify content providers who have undergone FINRA's approval process
- Provide members with a centralized location for Firm Element CE topics
- Avoid the unintended consequence of creating regulatory guidance

There is precedent for this approach. In fact, the Certified Financial Planner Board of Standards, Inc. utilizes a similar approach through its [CFP Quality Partner program](#).³

SRO versus Third-party Vendor Content

NRS believes that the two-part continuing education model currently employed is very well designed. SROs are best able to identify systemic, industry-wide issues that are covered in the Regulatory Element and firms are able to identify the specific training needs of their representatives and build a Firm Element program based on the products they sell, their policies and procedures and recurring issues they encounter.

NRS believes that Firm Element course content should be developed and offered by third-party content providers because SROs creating Firm Element training may have the unintended consequence of creating regulatory guidance. It is probable that Firm Element training designed by an SRO would be perceived as authoritative guidance from the SRO on the specified subject matter. To avoid this, it would be preferable to have content generated by third-party content providers, that are subject to quality control measures implemented and executed by FINRA. If SROs do create course content, they should take steps to ensure that the course content will not, inadvertently, become regulatory guidance; or, will not be construed as such by industry participants. In addition, SRO provided training would likely be selected by most broker-dealers who would consider it a riskless choice and would eliminate the commercial providers that deliver diversity and innovation in the Firm Element training market.

Additional Concerns:

If FINRA mandates the use of their LMS to deliver third-party training from their catalog it will present numerous challenges. Some of these concerns are outlined below.

Technology and Support Challenges:

- Courses are built using various authoring platforms and have several options for publishing content. This will lead to inconsistent content rendering and curriculums will lack uniformity. We are concerned that this will result in a disjointed and incohesive user experience.
- Clients use a variety of different workstation configurations. This will require support and technical resources skilled in troubleshooting internet, browser and operating system issues.

³ See information regarding CFP Quality Partner model, available at (insert link to information regarding this program)
<https://www.cfp.net/for-education-partners/continuing-education-providers/ce-sponsors/resources/ce-quality-partners>

- Content providers develop content in various ways and leverage different instructional strategies and methodologies. Even simple navigation functions may differ between courses from multiple vendors. This may present difficulties and feel disjointed to students taking courses from multiple vendors while expecting uniformity across FINRA's platform.
- We update content on a daily basis, so unless third-party content providers are given admin access to FINRA's LMS, it will create unnecessary delays in uploading content updates and keeping content current.
- As multiple vendors continually upload updated content, how will FINRA maintain version control? Most LMS platforms support version control, but third-party vendors handle this process differently and have systems in place to support various client populations.

Content Review and Approval Challenges:

- Multiple providers will likely be interested in posting content to the centralized catalog (FINRA's LMS) and this will present a number of resource challenges for FINRA and third-party content providers.
- We are concerned about the content review process and whether FINRA has the bandwidth to properly review each course being submitted.
- FINRA has struggled with keeping their own catalog current (de-flashing courses), as well as content updates based on Regulation Best Interest and Suitability changes. Recent communications indicated that some of these updates may not be available through 2021 and forced FINRA to add a pop-up disclaimer to courses stating that the course has not been updated.
"Our update efforts will continue throughout 2020 and 2021, but for the time being, there are 36 courses that will include a Reg BI pop-up disclaimer at the 'Welcome' screen to let readers know that the course has not been updated with Reg BI language yet."
- Given the already present resource challenges, we are concerned with the review process and turnaround time to get courses approved for upload to the FINRA LMS.
- Processing royalty payments to third-party content providers will add additional responsibility on FINRA to track and report registrations and completions back to content providers.

Maintaining Qualification While Inactive

- 5. Are the eligibility criteria for participation in the proposed program to maintain a qualification status for a terminated registration category appropriate? Is a participation time period of seven years sufficient? Should FINRA consider other options for eligibility or the length of time an individual can participate in the program?**

6. In light of the proposed program to maintain a qualification status for a terminated registration category through continuing education, should FINRA eliminate the two-year qualification period?

NRS Comments:

NRS supports FINRA's proposal for annual continuing education allowing RRs to maintain their qualification in terminated registration categories up to seven years. The proposal has wide industry support, is uniform with continuing education requirements of other professional programs and provides individual choice to participate in the current two-year qualification period or an extended seven-year period.

Economic Impact to Competitors and Third-Party Content Providers

8. What other economic impacts, including costs and benefits, might be associated with the proposal? Who might be affected and how?

Without knowing the proposed pricing structure or revenue sharing arrangements, NRS is concerned that FINRA could be setting the price for Firm Element courses that all other vendors would have to match to remain competitive. In some instances, this could cause a significant disadvantage and result in third-party vendors exiting the business.

9. Would the proposal impose any other competitive impacts that FINRA has not considered?

A centralized content catalog offered by FINRA would likely be selected by most broker-dealers who would consider it a riskless choice and would eliminate the commercial providers that deliver diversity and innovation in the Firm Element training market.

Firms use third-party vendors for more than just Firm Element. They also use online annual compliance meeting solutions, licensing exam preparation and annual compliance questionnaires. Using FINRA's LMS would eliminate the cohesive experience they receive from working from a single student dashboard.

NRS customers, for example, receive highly individualized support from a dedicated client service representative who helps them with course selection, program setup, student enrollment, and program completion binders/reports. In order to maintain this level of service, FINRA will have to build systems, processes and infrastructure to support these essential services that member firms rely on to develop optimal CE programs and protect their investors.

Conclusion

NRS continually interacts with broker-dealers and investment advisers of all sizes through our client relationships and national conferences. We take great pride in our educational offerings including the Investment Adviser Certified Compliance Professional program and FIRE CE and Exam Prep. NRS applauds FINRA's proposal to create a model rule for the continuing education of registered representatives. We urge FINRA to consider our comments in the spirit in which they were intended – insights and recommendations offered from our unique vantage point that we believe will enhance a thoughtful and well-intentioned continuing education program for registered representatives.

NRS appreciates the opportunity to comment on this proposal. If we may assist further or provide additional information or background on our comments, please let me know.

Respectfully,

A handwritten signature in black ink, reading "John E. Gebauer Jr." with a stylized, cursive script.

John Gebauer

President