



## *Enhancements Under Consideration for the Securities Industry Continuing Education Program*

### **Securities Industry/Regulatory Council on Continuing Education**

**September 6, 2018**

#### **Background**

Given the increasing complexity of products and services offered through the U.S. financial markets, providing timely, effective training to registered persons is of the utmost importance. Training is a critical factor in ensuring investor protection and preserving the integrity of the U.S. capital markets.

The Securities Industry/Regulatory Council on Continuing Education (CE Council) is composed of securities industry representatives and self-regulatory organizations (SROs). Formed in 1995 upon a recommendation from the Securities Industry Task Force on Continuing Education, the CE Council was tasked with facilitating the development of uniform continuing education (CE) requirements for registered persons of firms (CE program). The CE program consists of both a Regulatory Element and a Firm Element.

The CE Council focuses on maintaining and advancing the CE program to meet the needs of the industry in an efficient and cost effective manner. The CE Council also works to promote and provide educational opportunities that support investor protection and market integrity. Pursuing change, when necessary, is one element of how the CE Council strives to help financial professionals keep pace with educational requirements imposed on professionals in other industries. The CE Council seeks to advance important initiatives that enhance the ability of financial service professionals to remain current on regulatory initiatives and other topics that will allow them to service the investing public according to high standards in the industry.

The CE Council has introduced numerous changes over the past decade, most recently the transition of the Regulatory Element program from brick-and-mortar testing centers to online delivery. Moving the program online resulted in multiple benefits, including greater flexibility to participate at convenient times and locations (*i.e.*, starting and stopping throughout the open window is an option that did not previously exist). Individuals may now complete the Regulatory Element CE on tablets as well. With this transition, fees decreased from \$100 to \$55, reflecting the lower cost of taking the program outside of testing centers. This represents over \$20 million in savings to the industry since 2016. The CE Council is continuing its development of appropriate education for financial professionals while addressing operational and other industry concerns.

Since 1995, the CE program has consisted of two parts, a Regulatory Element and a Firm Element, facilitating a partnership between firms and regulators. The goal of the two-part CE program has been 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. The original intent was for the Regulatory Element to focus on regulatory requirements and industry standards, while the Firm Element focused on securities products, services and strategies offered by firms, amongst other topics such as firm policies and industry trends. The CE program provides a baseline CE requirement; firms often provide additional training to registered persons beyond that classified as Firm Element training. Registered persons also obtain additional training on their own by attending conferences and other events.

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### ***Regulatory Element***

The CE program requires each registered person to complete the Regulatory Element within prescribed intervals based on their registration anniversary date. An individual's registration anniversary date is generally the date they initially registered in the Central Registration Depository (CRD<sup>®</sup>) system. Registered persons who become subject to significant disciplinary action may be required to retake the Regulatory Element within 120 days of the effective date of the disciplinary action, if they remain registered.

FINRA administers the Regulatory Element through a Web-based delivery platform using a fixed content format. The Web-based delivery method provides participants with the flexibility to complete the Regulatory Element at a location of their choosing, including their private residence, at any time during their 120-day completion window. Additionally, participants do not need to complete the Regulatory Element in one sitting as previously required in testing centers.

The Regulatory Element currently includes the following four programs:

- S106 (for investment company and variable contracts representatives);
- S201 (for registered principals and supervisors);
- S901 (for operations professionals); and
- S101 (for all other registered persons).

Each of the programs includes four training modules (*e.g.*, Module A of the S101 program covers responsibilities to customers). Each module leads participants through a case that provides a story depicting situations encountered by registered persons in the course of their work. Each case also contains relevant educational content. Participants must review the story content of each case and respond to a series of related questions that assess participants' understanding of the materials presented. If a participant is unable to answer the questions in a particular case, they will have to retake that case until they can demonstrate proficiency with the subject matter.

Under the current fixed-content format, registered persons in the same registration category (*e.g.*, investment company and variable contracts representatives) who are subject to the Regulatory Element in a given year (*e.g.*, 2018) must complete the same content, with the exception of the self-selected module included in some programs.

Since its inception, FINRA has administered more than 4 million Regulatory Element sessions. Over 200,000 individuals complete the Regulatory Element annually.

### ***Firm Element***

The CE program also requires each firm to develop and administer an annual Firm Element training program for covered registered persons. In general, a covered registered person is any registered person who has direct contact with customers in the conduct of a member firm's securities sales, trading and investment banking activities and the immediate supervisor of any such person. The definition of "covered person" can differ between SROs. For example, the rules of the Cboe Options Exchange specify that a securities trader representative is a covered person.

The Firm Element must cover specified minimum standards (*e.g.*, suitability and sales practice considerations). Each firm must also consider its size, structure, scope of business, as well as regulatory

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developments and the performance of covered registered persons in the Regulatory Element, in planning, developing and implementing its Firm Element program. Further, each firm must administer its respective program in accordance with an annual needs analysis and written training plan and must maintain records documenting the content and completion of the program. The CE Council publishes and regularly updates the *Firm Element Advisory (FEA)*, which identifies and recommends pertinent regulatory and sales practice issues for firms to consider including in their training plans.

Although the CE program has operated effectively for more than 20 years and evolved during that period, changes in technology and learning theory have created opportunities for further improvement. For example, technological constraints that existed at program inception resulted in the current timeframes and format for administering the Regulatory Element. These constraints no longer exist. The 2015 transition to Web-based delivery of the Regulatory Element allows for increased efficiency, such as administering regulatory content in a more timely fashion, granting flexibility to individuals with geographic constraints (*i.e.*, proximity to testing centers), and presenting material in an optimal learning format. Similarly, the Firm Element exists in a changing environment where education standards can be defined to ensure delivery of an adequate level of training to registered individuals at all firms; to give credit to forms of training not recognized in Firm Element programs today; and to potentially allow credentialing programs to play a role in firm training plans.

### **CE Program Enhancements Under Consideration**

The CE Council is exploring a variety of options to enhance the CE program to better support the program's purpose and continue to meet the securities industry's needs. Throughout this exploration, the CE Council is focusing on the following goals:

1. communicating regulatory developments to the industry via the Regulatory Element in a timely fashion;
2. improving coordination between firm and regulatory training programs;
3. allowing for diverse instructional formats that facilitate the learning of a variety of content;
4. identifying and reducing redundancy among training requirements and programs;
5. ensuring all registered professionals in the industry receive adequate training;
6. enabling previously registered individuals to maintain their qualification status by satisfying CE requirements while out of the industry; and
7. considering more defined minimum standards of CE for the industry.

Based on the analysis completed so far, the CE Council has identified a number of possible program enhancements, as well as a few areas for which the CE Council is interested in gathering additional information on current firm practices and needs. The CE Council has received initial feedback from a series of focus groups composed of industry representatives. The goal of this document is to solicit broader feedback. For the more defined ideas, the CE Council hopes to gauge industry support and to identify challenges that the possible enhancements might create. Other ideas are in an earlier stage of development, and the goal for these is to gather initial feedback, identify important considerations and generate more defined ideas before articulating possible program changes.

The remainder of this document describes program changes under consideration and the topics for which the CE Council seeks additional information categorized into the general areas of Regulatory Element, Firm Element and Maintaining Qualifications.

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### *Regulatory Element*

The intended purpose of the Regulatory Element is to address regulatory requirements and industry standards. Based on this, the Regulatory Element should focus on ensuring that registered persons understand recently introduced rule changes and educating registered persons on significant regulatory issues facing the industry. With this in mind, analysis of the current program suggests that there may be opportunities for improvement in terms of relevance and timeliness of regulatory content, as well as synergy with the Firm Element. The CE Council is also interested in identifying opportunities to improve the CE delivery system functionality on which firms rely to ensure compliance with the Regulatory Element requirement.

### *Relevance*

In the current Regulatory Element program, FINRA systems assign each registered person to one of four programs based on the individual's active registrations as described above. The majority of representative-level registrants complete the S101 program, and registered principals complete the S201 program. Although there is an opportunity for registered representatives to select from a set of job functions to personalize the content of one of the S101 modules, the remaining three modules are identical for all registered representatives. Similarly, all S201 participants within a given year complete the same material, regardless of their qualifying registrations. One consequence of this structure is that some individuals complete content that is not directly relevant to the registrations they hold or the job roles in which they work. This format is a legacy of technological constraints that no longer exist. The CE Council is exploring methods of restructuring the Regulatory Element program to increase the relevance of content most individuals receive.

The structure under consideration revolves around identification of significant rule changes and other regulatory issues facing the industry. FINRA, in consultation with and final approval from the CE Council, would analyze the scope of each rule change and regulatory issue to determine which topics to address within the Regulatory Element program, the amount of learning content necessary to address each topic, and the relevance to each registration category. FINRA would then work with the CE Content committee, composed of industry experts, to create targeted learning units. Individuals would only receive those portions of the Regulatory Element that are pertinent to the registrations that they hold. This modular approach to administration, combined with the narrower focus, should reduce the total amount of content individuals complete while making the content more relevant to their roles.

### *Timeliness*

Under the current CE program, individuals complete Regulatory Element content on the second anniversary of their initial registration and every three years thereafter. The CE Council originally established this frequency to address the capacity challenges of the test center-based delivery model. The transition to online delivery in 2016 removes this constraint.

The current frequency is an obstacle to providing timely regulatory training on impactful rule changes and significant industry regulatory issues. The CE Council is considering moving to an annual Regulatory Element requirement to improve timeliness. Initial analysis of the change from narrowly focusing the Regulatory Element suggests that an annual program would consist of approximately one-third of the content of the current program. Administering the new program would not result in increased costs for firms or participants; the annual Regulatory Element for registered persons would have a fee of approximately one-third of the current \$55 fee.

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The CE Council recognizes that transitioning to an annual Regulatory Element requirement may increase work related to monitoring and verifying participation at some firms. The CE Council has discussed possible enhancements to FINRA systems to help with these challenges.

### *Regulatory Element Systems*

The CRD system is the primary industry system for managing Regulatory Element activities. The CE Council has discussed with FINRA the possibility of CRD system enhancements to improve functionality and address increased compliance work related to the possible transition of the Regulatory Element program to an annual requirement. FINRA is working on a general redesign effort of the CRD system and has already released a number of enhancements this year with additional features planned. Based on the work completed thus far, the CE Council believes that FINRA would be able to deliver enhancements to reporting and data access that could assist with the increased frequency of Regulatory Element participation.

FINRA has also released a system to improve access to data and delivery of services to registered representatives, although the system is not yet widely used. This system, the Financial Professional Gateway, consolidates a number of services already available to current and former registered representatives, such as retrieval of U5 forms and updates of addresses for individuals who have left the industry. The CE Council has discussed with FINRA the possibility of leveraging this system for delivery of the Regulatory Element. One of the core benefits would be the opportunity for firms to opt into system-generated email notifications. The system could send notifications directly to registered representatives at the start of their Regulatory Element window and periodically thereafter until they have met the requirement. The system would either notify or include firms in all such communications, depending upon the firm's preference. The CE Council believes that automated notifications to the registered representatives could substantially reduce the challenges faced by firm personnel responsible for monitoring Regulatory Element completion. The CE Council seeks feedback on the specific functionality that would most help firms manage an annual Regulatory Element requirement, including but not limited to reporting functionality and automated notifications.

### *Synergy with Firm Element*

The current Regulatory Element and Firm Element programs operate largely independently from one another. This results in duplication between the two programs at some firms. The CE Council believes that firms could better leverage the Regulatory Element as part of their overall training programs if they had a clearer understanding of the specific Regulatory Element content covered each year. Given the narrower focus for the Regulatory Element, the CE Council believes that it may be possible to publish the learning topics for the coming year well in advance. The CE Council seeks input from firms about the value of such information and the timing necessary to support the development of firm training programs to meet the Firm Element requirements.

### *Firm Element*

The purpose of the Firm Element program is to address products, services and strategies offered by the firm as well as firm policies and industry trends. In exploring the current Firm Element program, the CE Council seeks feedback on the value of guidance and resources provided by CE Council to help firms and the typical amounts and formats of Firm Element content at various firms. The CE Council is also interested in feedback on redundancy with other industry training requirements, opportunities for reciprocity with other securities or related credential programs, and the sources of Firm Element content used by most firms.

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### *CE Council Guidance and Resources*

The CE Council maintains a current *FEA* on the CE Council website ([cecouncil.com](http://cecouncil.com)). This document provides general guidance on conducting an annual needs analysis, access to reports summarizing a firm's performance on the Regulatory Element and a number of regulator-provided training resources. The bulk of the document is devoted to current topics that firms could consider when planning their Firm Element programs. Each topic usually has one or more regulator resources that provide timely information on the subject. The CE Council is interested in feedback on the value of this resource as well as other guidance or tools that the CE Council could provide to help firms meet their Firm Element obligations.

### *Typical Characteristics of Firm Element Programs*

Many professions have structured CE programs to maintain professional credentials, including concepts like educational credits or assessment requirements. In contrast, the Firm Element requirement is relatively unstructured. Aside from some high-level content required by regulators, industry rules require firms to complete an annual needs analysis and develop a training program that is appropriate for their scope of business. The needs analysis remains an important component of a firm's program given that it allows firms to identify areas where training is needed or could be helpful while also accounting for the unique nature of the firm. Based on focus group discussions, firms seem to vary considerably in how they meet this requirement. For example, firms may train personnel on matters relating to suitability, confidentiality, anti-money laundering (AML), cybersecurity, products and services, and other topics to provide an effective education experience.

The CE Council is interested in understanding the typical amount of Firm Element content administered at firms as well as the various types of educational material and formats used. In particular, the CE Council is interested in understanding whether most firms rely solely on traditional and electronic courses or if seminars, conferences or other learning activities are also commonly used.

Further, the CE Council seeks feedback on providing guidance to firms on expectations for appropriate amounts of Firm Element content. Some firms provide very limited amounts of Firm Element, and the CE Council is concerned that registered representatives at those firms may not be receiving adequate training. The CE Council is interested in suggestions for creating minimum threshold requirement for Firm Element without introducing onerous requirements.

### *Other Training Requirements and Credentialing Programs*

The CE Council is aware that there are a number of industry training requirements outside the Firm Element program including AML training and an annual compliance meeting required by some regulators. The CE Council seeks feedback on how most firms coordinate these various training requirements and identifying redundancy when it arises.

The CE Council also recognizes that registered persons may have additional CE requirements associated with other professional credentials. The CE Council is interested in understanding the most common credential programs within the industry and identifying potential opportunities for reciprocity among programs. Some of the courses that satisfy these other CE requirements may also be appropriate for Firm Element training. Reciprocity between programs is an important consideration for the CE Council given that the time dedicated to training could address multiple requirements.

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### *Access to Firm Element Content*

Firms have a variety of options for sourcing Firm Element content. Some firms develop materials internally. Others rely on third-party training providers. The CE Council is interested in feedback on challenges faced in developing or acquiring appropriate content to meet Firm Element requirements.

The CE Council is considering creating a centralized content catalog to serve as an additional source of Firm Element content. FINRA and the CE Council would work together with third-party training providers to offer a large catalog of readily available materials that are centrally located for convenience. 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. Firms may also choose to create and develop content in-house as desired. In addition, FINRA and other SROs have existing educational courses and could develop additional courses as needed. Courses offered by third-party vendors, FINRA and others would be included and available in the course catalog. The CE Council is interested in understanding whether a centralized source of content would be helpful and the value of providing such a resource to the industry.

### *Maintaining Qualification Status Post Termination*

Currently, individuals whose registrations have been terminated for two or more years are required to requalify by examination, or obtain a waiver of the examination requirement, in order to re-register. Individuals whose registrations have been terminated cannot maintain their qualification status beyond the two-year period. The CE Council is considering a mechanism to support regulatory efforts to revise this current rule structure. With regard to the Securities Industry Essentials (SIE) Exam qualification (effective October 1, 2018), this qualification will continue to remain valid for four years but will not constitute registration on its own.

The central idea is to allow previously registered individuals to complete an annual Regulatory Element as well as additional content equivalent to Firm Element while out of the securities industry. If individuals do so, they would not have to requalify by examination or obtain a waiver of the examination requirement upon returning to the industry. These individuals would still be required to satisfy all other conditions of registration, including satisfying the eligibility requirements for association with a firm.

The CE Council is exploring the details of such a program, identifying necessary eligibility requirements for participation and considering the impact on the two-year termination rule.

### *Program Considerations*

Individuals seeking to maintain their qualification status while no longer associated with a firm would need to complete the required annual Regulatory Element and additional assigned learning units (*i.e.*, Firm Element equivalent). Completion of the Regulatory Element is straightforward for these individuals — they would participate in the same way that registered individuals do and use the same systems to complete their CE program. The CE Council is considering how best to account for the additional content equivalent to Firm Element including the appropriate amount and variety of additional content. Without establishing an industry Firm Element baseline expectation, it is difficult to determine the appropriate expectation for individuals who are maintaining their qualification outside the industry. Although the CE Council could make a determination, any decision would likely serve as a benchmark for firm programs. The CE Council seeks feedback from firms on how to best approach this.

Delivery of the Firm Element content to individuals who are maintaining their qualification status is more straightforward. Such individuals would complete the assigned learning units on FINRA's platform using content from the proposed centralized content catalog. Given that these individuals would not be associated

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with a firm, the FINRA CE delivery platform provides the most efficient and effective means of tracking their compliance with the proposed CE requirements.

Both the Regulatory Element and additional learning units assigned to these individuals would correlate to the individual's terminated registration(s) and require annual completion based on their established registration anniversary date.

The approach under consideration is similar to that taken by other professions, such as the legal profession, and is intended to address industry concerns regarding the challenges securities professionals experience when reentering the industry after an absence.

### *Eligibility Requirements and Program Duration*

There would likely be some limits on eligibility to maintain qualification status. For instance, the Financial Services Affiliate Waiver Program (FSAWP) that goes into effect in October 2018 requires an individual to be registered as a representative for five years within the previous 10-year period, as well as to be registered for the entirety of the most recent year. If eligible, an individual can participate within the FSAWP program for up to seven years. Similar eligibility requirements and program length might be used for individuals maintaining their qualification status under the new program. The CE Council seeks feedback on potential eligibility requirements and program durations.

The CE Council is considering introducing this program to provide a mechanism for individuals to maintain qualification status after leaving the industry. The CE Council is unsure if this program should be available to individuals who remain associated with a firm after terminating their registrations. The expanded availability of permissive registrations for associated persons that will go into effect in October 2018 allows such individuals to maintain their registrations, albeit in a permissive capacity. The CE Council seeks feedback on the appropriateness and importance of allowing associated persons to maintain their qualification status via this program as an alternative to permissive registration.

The CE Council does not intend for this program to be available to individuals whose registrations have been revoked and who are required to requalify by examination in order to re-register.

### *Two-Year Termination Rule*

Under the current registration rules, an individual who re-registers within two years of termination is not required to requalify by examination or obtain a waiver. Consistent with this provision, the CE Council is considering including a two-year "catch-up" opportunity as part of the potential program. Individuals within two years of their termination would have the opportunity to complete any lapsed annual CE requirement in conjunction with their re-registration. This step would be in lieu of completing the annual CE requirements at each registration anniversary.

## **Questions**

The CE Council and the SROs have included questions in the section below to highlight the areas of greatest interest. In addition to any general feedback, the CE Council would appreciate consideration of these questions in all responses. In responding to the questions, please provide a discussion of the types (direct vs. indirect) and sources (*e.g.*, compliance, staffing or technology) of potential costs and benefits wherever appropriate. Please also provide empirical data or other factual support for your responses wherever possible and to the extent you feel it would be helpful to articulate your viewpoint.

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### *Regulatory Element*

1. In order to increase the timeliness of Regulatory Element content, the CE Council is considering recommending moving to an annual requirement. Although the transition would reduce the amount of content included in a session to approximately one-third of the current program, the increased frequency could result in increased effort required to monitor participation. What are the potential impacts of this transition to firms?
2. The CE Council has discussed with FINRA possible enhancements to the CRD system and the Financial Professional Gateway. Would enhanced reporting and automated notification functions help mitigate the additional efforts required to monitor participation of an annual Regulatory Element requirement? What other system enhancements would firms find helpful?
3. The CE Council is considering narrowing the focus of the Regulatory Element to rule changes and significant regulatory issues. Does this seem like an appropriate focus? Are there other topics that should be included within the Regulatory Element?
4. The CE Council is considering adoption of a modular structure in place of the current Regulatory programs. Does this seem like a good way to increase the relevance of the Regulatory Element content? Are there concerns with determining relevance of topics based on registrations held, keeping in mind this will have a de minimis effect on the time required to complete the annual course?
5. The CE Council is exploring the possibility of publishing the Regulatory Element topics for the coming year in advance of introducing such topics. If this information were available, would firms factor it into their Firm Element training plans? How much detail would be necessary for it to be useful? How early would the CE Council need to publish the information to allow for timely alignment with Firm Element planning activities?

### *Firm Element*

6. Is the current Firm Element Advisory (FEA) useful? Do firms reference the FEA when planning their training programs? Which aspects of the FEA are most helpful? Are there other resources the CE Council should provide to help firms meet their Firm Element requirements?
7. How much Firm Element training does the typical covered person receive? Are electronic and in-person courses the standard format for delivering Firm Element training? Do most courses include an assessment component? What other learning activities do firms commonly use to meet Firm Element requirements?
8. Is Firm Element generally limited to covered persons? Do firms typically offer similar amounts of training to registered persons who are not covered persons? Do firms offer similar training opportunities to unregistered persons? Should the Firm Element requirement apply to all registered persons? What types of training do covered persons undertake that should be included as Firm Element training?
9. How could the CE Council communicate reasonable expectations for amounts of Firm Element without introducing an onerous process? Are there other ways to ensure firms provide adequate training to securities professionals?
10. Aside from Firm Element, what are the most significant regulatory training courses used by firms? Do firms include these other requirements as part of their Firm Element training programs?
11. Do most firms maintain training programs to ensure associated persons meet the requirements of non-regulatory credentialing programs? Which credentialing programs have the most significant

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impact on firm training programs? Do firms include these training requirements within their Firm Element training plans? Are there credentialing programs with which the CE Council should consider establishing formal reciprocity agreements?

12. How often do firms use content from third-party training providers to meet their Firm Element requirements? Would a centralized content catalog with offerings from multiple providers be beneficial for the industry?

### *Maintaining Qualification Status Post Termination*

13. Should the CE Council pursue a recommendation to allow previously registered individuals to maintain their qualification status while away from the industry? Does a CE program seem like an appropriate way to accomplish this?
14. If the CE Council recommended introducing a CE program that allowed individuals to maintain their qualification status while outside the industry, how much CE would be sufficient?
15. If the CE Council recommended introducing such a program, should it impose an experience requirement for individuals to be eligible? If the CE Council recommended establishing a minimum duration of prior registration, what would be a reasonable requirement?
16. Should there be a limit to how long a previously registered individual could maintain their qualification status via the CE program under consideration? If so, what duration is appropriate?
17. Should the program allow previously registered individuals to maintain their qualification status while associated with a firm but working in a capacity that does not require registration? How would this interact with the expanded opportunity for an associated person to hold a permissive registration?
18. How important is maintaining the two-year termination rule if individuals are able to maintain qualification status while away from the industry? Is the opportunity for individuals to complete lapsed CE when re-registering within two years of termination a sufficient replacement for the two-year termination rule?

### *General Questions*

19. In developing a specific recommendation to change the industry CE requirements, what are the most important issues for the CE Council to consider?
20. Are there alternative approaches, other than the ideas discussed here, that the CE Council should consider? What are the relative benefits and costs of any alternative approach?