

Regulatory Circular RG04-123

To: Members and Member Organizations

From: Department of Financial and Sales Practice Compliance

Date: December 1, 2004

Re: Amendments to CBOE Rule 9.3A that eliminate all exemptions from the requirement to complete the Regulatory Element of the Continuing Education Program.

Summary

On November 3, 2004, the Securities and Exchange Commission ("SEC") approved amendments to Exchange Rule 9.3A, Continuing Education for Registered Persons, which eliminate all current exemptions from the requirement to complete the Regulatory Element of the Continuing Education Program. The amendments will become effective: (1) on April 4, 2005; or (2) not more than 30 days following the implementation of the necessary related changes to Web CRD, whichever date is the latest to occur. If the implementation of changes to Web CRD occurs later than April, 4, 2005, CBOE will announce the effective date of the amendments in a future Regulatory Circular.

Questions regarding this Regulatory Circular may be directed to Barry Szurgot at (312) 786-7756 or Larry Bresnahan at (312) 786-7713.

Discussion

CBOE Rule 9.3A specifies the Continuing Education ("CE") requirements for registered persons subsequent to their initial qualification and registration with the CBOE. The requirements consist of a Regulatory Element and a Firm Element.¹ The Regulatory Element is a computer-based education program administered by NASD to help ensure that registered persons are kept up to date

¹ The Firm Element of the CE Program applies to any person registered with a CBOE member firm who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and to the immediate supervisors of such persons (collectively called "covered registered persons"). The requirement stipulates that each member firm must maintain a continuing education program for its covered registered persons to enhance their securities knowledge, skill and professionalism. Each firm has the requirement to annually conduct a training needs analysis, develop a written training plan, and implement the plan.

on regulatory, compliance and sales practice matters in the industry.² Unless exempt, each registered person is required to complete the Regulatory Element initially within 120 days after the person's second anniversary date and, thereafter, within 120 days after every third registration anniversary date.³ There are three Regulatory Element programs: the S201 Supervisor Program for registered principals and supervisors; the S106 Series 6 Program for Series 6 registered persons; and the S101 General Program for Series 7 and all other registrations.

Approximately 135,000 registered persons currently are exempt from the Regulatory Element. These include registered persons who, when the CE Program was adopted in 1995, had been registered for at least ten years and who did not have a significant disciplinary action⁴ in their CRD record for the previous 10 years ("grandfathered" persons). These also include those persons who had "graduated" from the Regulatory Element by satisfying their tenth anniversary requirement before July 1998, when Rule 9.3A was amended and the graduation provision eliminated and did not have a significant disciplinary action in their CRD record for the previous ten years.⁵

At its December 2003 meeting, the Securities Industry/Regulatory Council on Continuing Education ("Council")⁶ discussed the current exemptions from the Regulatory Element and agreed unanimously to recommend that the SROs repeal the exemptions and require all registered persons to participate in the Regulatory Element. In reaching this conclusion, the Council was of the view

² Rule 9.3A permits a member firm to deliver the Regulatory Element to registered persons on firm premises ("In-Firm Delivery") as an option to having persons take the training at a designated center provided that firms comply with specific requirements relating to supervision, delivery site(s), technology, administration, and proctoring. In addition, Rule 9.3A requires that persons serving as proctors for the purposes of In-Firm Delivery must be registered.

³ This is the current Regulatory Element schedule, as amended in 1998.

⁴ For purposes of Rule 9.3A, a significant disciplinary action generally means a statutory disqualification, a suspension or imposition of a fine of \$5,000 or more, or being subject to an order from a securities regulator to re-enter the Regulatory Element.

⁵ When Rule 9.3A was first adopted in 1995, the Regulatory Element schedule required registered persons to satisfy the Regulatory Element on the second, fifth, and tenth anniversary of their initial securities registration. After satisfying the tenth anniversary requirement, a person was "graduated" from the Regulatory Element. A graduated principal re-entered the Regulatory Element if he or she incurred a significant disciplinary action. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

⁶ The Council presently consists of 17 individuals, six representing self-regulatory organizations ("SROs") (the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, the NASD, the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange) and 11 representing the industry. The Council was organized in 1995 to facilitate cooperative industry/regulatory coordination of the CE Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping to develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, developing and updating information about the program for industry-wide dissemination, and maintaining the program on a revenue neutral basis while assuring adequate financial reserves.

that there is great value in exposing all industry participants to the benefits of the Regulatory Element, in part because of the significant regulatory issues that have emerged over the past few years. The Regulatory Element programs include teaching and training content that is continuously updated to address current regulatory concerns as well as new products and trading strategies. Exempt persons presently do not have the benefit of this material.

In addition, in 2005, the Council will introduce a new content module to the Regulatory Element programs that will specifically address ethics and will require participants to recognize ethical issues in given situations. Participants will be required to make decisions in the context of, for example, peer pressure, the temptation to rationalize, or a lack of clear-cut guidelines from existing rules or regulations. The Council strongly believes that all registered persons, regardless of their years of experience in the industry, should have the benefit of this training.

The amendments to CBOE Rule 9.3A will become effective: (1) on April 4, 2005; or (2) not more than 30 days following the implementation of the necessary related changes to Web CRD, whichever date is the latest to occur. If the implementation of changes to Web CRD occurs later than April 4, 2005, CBOE will announce the effective date of the amendments in a future Regulatory Circular.

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