



June 25, 2018

By Electronic Mail to pubcom@finra.org.

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

**Re: FINRA Regulatory Notice 18-14:
SIFMA Comment on the Effectiveness and Efficiency of FINRA's
Rule on the Annual Compliance Meeting**

Dear Ms. Mitchell:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to respond to the request for comment issued by the Financial Industry Regulatory Authority (“FINRA”) in Regulatory Notice 18-14 (“RN 18-14”)² regarding FINRA Rule 3110(a)(7) and Supplementary Material .04, which require each registered representative and registered principal to participate, at least once each year, in an interview or meeting, at which compliance matters relevant to the particular representative or principal are discussed.

I. EXECUTIVE SUMMARY

SIFMA supports FINRA’s effort to retrospectively review the effectiveness and efficiency of FINRA Rule 3110(a)(7) and Supplementary Material .04. SIFMA believes that this process should balance the need to identify outdated and inefficient rules with concerns about investor protection. SIFMA appreciates

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$18.5 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² See [RN 18-14](#).

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FINRA's efforts to incorporate comments, including input provided by some of our member firms, regarding how the rules can best meet their investor-protection objectives through reasonably efficient means.

SIFMA has organized its comments on FINRA Rule 3110(a)(7) based on the questions raised in RN 18-14.

II. SIFMA COMMENTS ON RN 18-14

A. Has the rule effectively addressed the problem(s) it was intended to mitigate? To what extent has the original purposes of and need for the rule been affected by subsequent changes to the markets, the delivery of financial services, the applicable regulatory framework, or other considerations? Are there alternative ways to achieve the goals of the rule that FINRA should consider?

1. General Comments

SIFMA believes that the rule effectively addresses the original purpose of the rule: how to efficiently deliver the required annual compliance meeting. The rule provides firms with a clear and easily understood requirement that allows for the dissemination, with active management participation, of important compliance information to all registered employees.

Given the requirement applies to all firms, there is no competitive disadvantage to any particular member firm, and, since all registered employees must participate, it reduces most potential disagreement regarding topics or the delivery mechanism itself.

SIFMA does not think changes in the marketplace have eliminated or reduced the need for the annual compliance meeting requirement, in fact, it is probably more important than ever.

The current rule specifically permits remote and technology-based delivery methods, which provides efficiency and effectiveness in delivery. Alternatives do exist, but the need for and the basics of delivering a mandatory event will generally need to stay in place, so any change may not meaningfully result in a significant difference in impact.

There appears to be an opportunity to consolidate annual compliance meeting requirements with Continuing Education ("CE") given the overlap in population and topics and opportunities for increased efficiencies.

2. *3110 Annual Compliance Meeting Requirement & FINRA CE Requirement*

Several SIFMA member firms believe that the 3110 annual compliance meeting requirement has become duplicative, in both form and content, of the FINRA mandated continuing education requirement, particularly the Firm Element. In many respects, the 3110 annual compliance meeting requirement and the FINRA CE requirement cover the same audience of registered persons.

FINRA has indicated it is exploring changes to the CE program including identifying opportunities to: increase timeliness of regulatory content; improve synergy between regulatory and firm-provided content; and enable previously registered individuals to return to the industry through an alternative demonstration of qualification. FINRA has noted it is considering an annual, credit-based CE program delivered through a FINRA Gateway platform with compulsory content that will address timely regulatory issues and elective content that will address job and product-specific topics.

Some SIFMA members have already expressed strong support for these proposed changes to CE. SIFMA believes FINRA should consider folding into its current review of the CE program how the 3110 ACM requirement might be duplicative of the CE requirement and where greater efficiencies might be achieved.³

B. What has been your experience with implementation of the rule, including any ambiguities in the rule or challenges to comply with them?

The rule is generally straightforward and easily understood. Since it requires all registered employees to participate, SIFMA does not believe there is a great deal of interpretive ambiguity. By comparison, the Continuing Education Rule for the Firm Element does leave open some audience identification issues (*e.g.*, application to certain customer contact employees in a sales capacity).

Certain aspects of the documentation/follow up requirements of the rule seem outdated, *i.e.*, the requirement that any questions and answers be viewable on a central site such as the firm's intranet if the training is web-based. Firms that can demonstrate a reasonable amount of due diligence and follow up should not be penalized for representatives' failures to timely complete required training. Firms

³ See generally http://www.finra.org/sites/default/files/ARM_2018_presentation.pdf.

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are using more technology with some no longer conducting live, instructor-led training. Requirements that are more in line with live training versus computer-based training are becoming more challenging given the growth and scale of licensed staff for many firms

It's also unclear whether "annual" means calendar year or could mean a fiscal year, *e.g.*, offer training in June 2018, can it be offered in August 2019 the next time. So, this is more than 12 months, but still within successive calendar years. SIFMA believes it would be efficient to provide firms with the flexibility in timing that allows firms to provide the ACM annually as long as it is within the calendar year.

As the industry has evolved, many representatives and principals participate in annual training related to their firm's code of conduct, AML/BSA/OFAC laws and regulations, information security policies and procedures, new products and services, risk management, etc. all of which have significant and meaningful compliance components. FINRA Rule 3110(a)(7) states that "[s]uch interview or meeting *may occur in conjunction with* the discussion of other matters..." To the extent that a firm's overall required training program for representatives and principals discusses "...compliance matters relevant to the activities of the representatives and principals..." SIFMA requests clarification or guidance that FINRA Rule 3110(a)(7) does not require a singular annual compliance meeting to meet the requirements of Rule 3110(a)(7) and that if a firm, pursuant to its annual training needs assessment process, determines that its overall training program includes a meaningful discussion of compliance matters relevant to the activities of representatives and principals, the firm would meet the requirements of Rule 3110(a)(7), provided that the training considered in the assessment met the delivery requirements of Supplementary Material .04. For example, where supported by the annual needs assessment, representatives and principals' participation in code of conduct, AML/BSA/OFAC and information security trainings could be sufficient to meet the requirements of Rule 3110(a)(7), provided the delivery of each training session met the delivery requirements of Supplementary Material .04 and the firm determined that compliance matters relevant to the activities of the representatives and principals were meaningfully discussed.

SIFMA also believes it would be beneficial if FINRA could clarify the timeframe for "delivering" the meeting to new hires and newly registered employees. Is it acceptable to capture them in the following year's program, or must they have the meeting immediately (even if the program has been completed for the year)?

C. What have been the economic impacts, including costs and benefits, from conducting compliance meetings? Has the rule furthered the supervision of registered persons, and are the benefits of compliance meetings commensurate with their costs? To what extent do the costs and benefits relate to the business attributes of the firm, such as its size and business model? Has the rule led to any negative unintended consequences?

Costs generally have not been prohibitive since the flexibility of the rule permits a variety of ways that registered employees can access the annual compliance meeting requirement, and training is done in the course of regular business (e.g., presented at team meetings, through a learning management system, etc.). For many firms the opportunity to provide a consistent compliance message, which is beneficial, is relatively easy given the technology-based solutions, but delivery live and in person in conjunction with other events is also a plus.

SIFMA notes that while the rule's flexibility permits a variety of ways to deliver the annual compliance meeting, for many large, geographically dispersed firms it is administratively, operationally, and financially prohibitive to deliver in-person meetings. The ability to leverage technology if imperative.

Given the nature of delivering self-paced content in an online format, the supervisory "messaging" of the content can be difficult to develop and may not be easily comprehended by the audience. Opportunities to improve include a) adjust the rule or provide separate guidance to better prescribe how supervisory "messaging" can be delivered, and b) adjust the rule to move away from a "meeting" format to a flexible educational deliverable focused on knowledge and awareness learning objectives since firms have almost universally concluded meetings are not necessary or as effective as other types of training and the language of the rule should be reflective of that.

D. Are compliance meetings held in-person or by other methods (e.g., on-demand webcast or course, video conference, interactive classroom setting, telephone or other electronic means)? To what extent is the method chosen dependent on the business attributes of the firm? Which methods are the most effective to conduct a compliance meeting?

SIFMA supports the rule's multiple delivery options that permit firms to evaluate the most appropriate and effective delivery method for the intended audience.

Compliance meetings are being held via instructor-led and computer-based methods. Some instructor-led sessions may constitute a classroom or conference room setting while others are conference calls. The easiest to deploy and track is computer-based. As stated previously, larger, geographically diverse firms typically employ technology-based remote delivery. For many firms, persons in particular business groups can be spread out amongst different cities, countries, and even regions. There are also time-zone differences to take into consideration. The flexibility of the rule permits firms to use a live presentation as part of a large conference attended by registered employees.

E. What are the costs and benefits to conduct compliance meetings either in-person or using other methods (e.g., on-demand webcast or course, video conference, interactive classroom setting, telephone or other electronic means)? Relative to conducting meetings in-person, to what extent do the other methods decrease costs or increase efficiency? When using the other methods to conduct compliance meetings, are firms able to use existing, internal technologies? Is a firm's ability to use existing, internal technologies dependent on the business attributes of the firm?

SIFMA believes that while there are certain costs associated with computer-based training (for example, development, delivery, and maintenance costs), generally it is more cost-effective and easier to comply with the rule by deploying computer-based training. One of the rule requirements is that firms must ensure that each attendee stayed for the entire session. Depending upon the number of attendees, location, and other conditions it may not be possible to assure that not even one person left the room, even if for a few minutes. By using an online module, it requires the registered person to complete training in its entirety simply by the design of the module (i.e., learner interaction; sections that require the learner to interact before being allowed to proceed; not allowing a completion to register for the training mandate until every required task associated with the module has been fulfilled).

Many firms use existing technology for any given year (e.g., video, hosted on LMS) that may be enhanced through the year, but allow a mix of delivery options including for some to attend in person events. For employees in single or smaller broker-dealer employee offices, such as a registered banking center, remote delivery is crucial for many firms.

Relative to conducting meetings in-person, there are no travel and expense costs for staff when using computer-based training.

Some firms leverage a teleconference format where learners dial into a conference line and a live presentation is provided by an instructor using various sharing applications to present materials (Webex, LiveMeeting, Skype). This format can be cost effective for an audience of up to 2,500 registered associates. Generally, it becomes more cost effective to deliver a self-paced online format for larger firms. For example, delivering a virtual instructor-led format of an annual meeting to 25,000 registered individuals costs about \$250,000 in just conference call costs. The industry average for an hour-long online training module cost is approximately \$35,000.

One large member firm that produced and delivered online interactive video training with professional actors estimated total direct costs to be approximately \$100,000 including vendor production costs of \$80,000 and an internal production, administration and completion tracking costs of \$20,000. In addition, this firm estimated “consumption costs,” or time spent by 15,000 representatives to complete the training, to exceed \$500,000.

Because every hour of training is costly to develop, deliver, *and* complete, we strongly support FINRA’s willingness to increase efficiencies and eliminate overlap and duplication in training and education wherever possible.

F. Can FINRA make the rules, interpretations or attendant administrative processes more efficient and effective? Are there alternatives to the rule that would better communicate compliance obligations to registered persons or would reduce its costs?

SIFMA believes that the rule largely provides a flexible approach and achieves its underlying purpose in an efficient and effective manner.

Certain aspects of the rule could be improved in light of advances in technology and firms use of electronic means of deploying the annual compliance meeting. Firms have been using technology and computer-based training for years to meet a host of mandates that are regulatory or internal firm requirements. Supplying contact information for participants in case they have questions has been sufficient, as well as having affirmations at the end of training modules which instruct the learner to reach out to their manager or compliance manager with any questions or concerns. FINRA’s requirements regarding timing, and that questions

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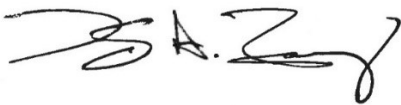
and answers be posted on intranet sites are not efficient. *See also* response to Question 2.

III. CONCLUSION

SIFMA appreciates the opportunity to comment on the RN 18-14. We commend FINRA for its efforts towards ensuring that Rule 3110(a)(7) and Supplementary Material .04 remain relevant and appropriately designed to achieve their objectives. SIFMA believes the comments included in this letter are consistent with FINRA's efforts to retrospectively review these rules to realize their regulatory effectiveness and efficiency. SIFMA looks forward to a continuing dialogue with FINRA.

If you have any questions or would like additional information, please contact me at (202) 962-7386 (kzambrowicz@sifma.org).

Very truly yours,

A handwritten signature in black ink, appearing to read "K. Zambrowicz", is centered on the page. The signature is fluid and cursive.

Kevin Zambrowicz
*Managing Director &
Associate General Counsel*

cc: Mary Beth Findlay, Co-Chair, SIFMA Compliance & Regulatory Policy
Committee

Ann McCague, Co-Chair, SIFMA Compliance & Regulatory Policy
Committee