

Information Memo

New York Stock Exchange, Inc.
20 Broad Street
New York, NY 10005

Member Firm Regulation



Number 04-55
October 29, 2004

ATTENTION: COMPLIANCE, LEGAL, REGISTRATION AND TRAINING DEPARTMENTS

TO: ALL MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: AMENDMENTS TO RULE 345A THAT RESCIND ALL EXEMPTIONS FROM PARTICIPATION IN CONTINUING EDUCATION REGULATORY ELEMENT PROGRAMS

Summary

Exchange Rule 345A (the “Rule”) provides, in part, that no member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person unless such person has complied with the Regulatory Element¹ continuing education requirements of the Rule. The Regulatory Element generally requires registered persons to complete a standardized compliance-based program at prescribed intervals; however, certain registered persons have been exempted from this requirement.

On September 16, 2004, the Securities and Exchange Commission (the “Commission”) approved amendments to Exchange Rule 345A that rescind all exemptions from required participation in Regulatory Element programs.² As discussed in greater detail below, the amendments are expected to become effective on April 4, 2005.

Background

The Regulatory Element requires each subject registered person to complete a standardized, computer-based, interactive continuing education program within 120 days of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Exchange. The purpose of this requirement is to help ensure

¹ See NYSE Rule 345A(a).

² See Release No.34-50404 (September 16, 2004); 69 FR 57126 (September 23, 2004) (File No. SR-NYSE-2004-33).

that registered persons are kept up-to-date on regulatory, compliance, and sales practice-related industry rules and issues. There are three Regulatory Element programs: The S201 Supervisor Program, the S106 Series 6 Program, and the S101 General Program for Series 7 and all other registrations. Persons who fail to complete the Regulatory Element within the prescribed time frame are deemed inactive and may not perform, nor receive compensation for, functions requiring registration.

“Grandfathered” Exemptions

The Rule has, heretofore, exempted from Regulatory Element requirements persons who were continuously registered without a disciplinary action³ for more than ten years as of the Rule’s effective date (July 1, 1995).

“Graduated” Exemptions

The Rule initially required that registered persons complete a Regulatory Element program on their second, fifth, and tenth registration anniversary dates. Once the tenth anniversary program requirement was satisfied, the registered person became exempt from Regulatory Element requirements going forward (absent a disciplinary action). For instance, since the Rule became effective in July 1995, a person who became registered in August 1985 could “graduate” from future Regulatory Element obligations by completing a single program in August 1995 to satisfy their tenth anniversary requirement.

Amendments to Rule 345A discontinued this “graduation” exemption in July 1998,⁴ but registered persons who were “graduated” prior to these amendments have, heretofore, been exempt from Regulatory Element requirements.

The Amendments

Given the rapidly changing nature of the securities industry and the importance of regulation, the Securities Industry/Regulatory Council on Continuing Education (the “Council”)⁵ feels that it is more important than ever that all registered persons are familiar with a Regulatory Element curriculum that will include significant new Exchange and industry rules, new products and services offered by firms, and other

³ For purposes of Rule 345A, a “disciplinary action” includes a statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934; 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 program. See Rule 345A(a)(3)(i) – (iii).

⁴ See Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998)(File No. SR-NYSE-97-33). See also NYSE Information Memo No. 98-19 dated June 22, 1998.

⁵ The Council consists of representatives from securities firms and from six self-regulatory organizations (SROs) including: the NYSE, the American Stock Exchange, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, and the Philadelphia Stock Exchange. The SEC and The North American Securities Administrators Association have liaisons to the Council.

important current aspects of regulatory emphasis. In response, the Exchange has filed, and the Commission has approved, amendments to Rule 345A that rescind all exemptions from required participation in Regulatory Element programs granted to date.

In addition, as part of its ongoing commitment to communicate and reinforce the importance of compliance with just and equitable principles of trade, the Exchange, in conjunction with the Council, has developed a Regulatory Element module that focuses specifically on ethics. Although Regulatory Element programs have consistently included ethical considerations in a variety of business scenarios, we determined that the importance of ethical conduct should be more prominently featured and more emphatically stressed to all registered industry persons. The ethics module will be incorporated into all existing programs in early 2005.

Effective Date and Schedule Requirements

As noted above, Rule 345A requires registered persons to complete their Regulatory Element requirement within 120 days of the second anniversary of their initial registration or “base” date, and every three years thereafter. Beginning April 4, 2005 (the anticipated effective date of the amendments), registered persons who had been eligible for “grandfathered” or “graduated” exemptions will be required to participate in Regulatory Element programs as prescribed by this schedule.

The anticipated effective date of April 4, 2005 has been established to allow for necessary changes to the Web Central Registration Depository system (“Web CRD”) related to the elimination of the exemptions. If these changes to Web CRD are not completed on a timely basis, an adjusted effective date will be set within 30 days from their completion. Should such an adjustment to the effective date be necessary, NYSE members and member organizations will be advised accordingly via Information Memo.

Questions regarding this Information Memo may be directed to Stephen Kasprzak at (212) 656-5226 or to your Finance Coordinator.

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Attachments