

The SROs' proposals were published for comment in the **Federal Register** on December 20, 1994.<sup>5</sup> Two comments were received, and are discussed below. On January 30, and 31 and February 1, and 2, 1995, the NASD, CHX, CBOE, MSRB, PSE, AMEX, NYSE, and PHLX each filed Amendment No. 1 to their respective proposals.<sup>6</sup> These amendments made a variety of non-substantive, clarifying changes to the proposals and are incorporated into the discussion below.<sup>7</sup> This order approves the SROs' proposals, including all amendments made thereto.

## II. Description of Proposals

The proposed rule changes adopt uniform enabling rules for the implementation of a continuing education program for the securities industry.

### A. Background

In May 1993, a self-regulatory organization task force ("Task Force") was formed by the AMEX, CBOE, MSRB, NASD, NYSE, and PHLX, which

including members and registered representatives, but does not include any person whose activities are limited solely to the transaction of business on the floor of a national securities exchange with members or registered broker-dealers. When used with reference to the MSRB, however, the term "registered person" means any person registered with the appropriate enforcement authority as a municipal securities representative, municipal securities principal, municipal securities sales principal, or financial and operations principal pursuant to MSRB rule G-3.

<sup>5</sup> Securities Exchange Act Release No. 35102 (December 15, 1994), 59 FR 65563 (December 20, 1994).

<sup>6</sup> See letters from Craig L. Landauer, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Division of Market Regulation ("Division"), SEC, dated January 19, 1995, and Francois Mazur, Attorney, Division, SEC, dated January 30, 1995 ("NASD Amendment No. 1"); letter from David T. Rusoff, Foley & Lardner, to Francois Mazur, Attorney, Division, SEC, dated January 30, 1995 ("CHX Amendment No. 1"); letter from Arthur B. Reinstein, Senior Attorney, CBOE, to Holly Smith, Associate Director, Division, SEC, dated January 31, 1995 ("CBOE Amendment No. 1"); letter from Ronald W. Smith, Legal Associate, MSRB, to Francois Mazur, Attorney, Division, SEC, dated February 1, 1995 ("MSRB Amendment No. 1"); letter from Michael D. Pierson, Senior Attorney, PSE, to Francois Mazur, Attorney, Division, SEC, dated February 1, 1995 ("PSE Amendment No. 1"); letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, AMEX, to Glen Barrentine, Team Leader, Division, SEC, dated February 1, 1995 ("AMEX Amendment No. 1"); letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Francois Mazur, Attorney, Division, SEC, dated February 1, 1995 ("NYSE Amendment No. 1"); and letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Glen Barrentine, Team Leader, Division, SEC, dated February 2, 1995 ("PHLX Amendment No. 1").

<sup>7</sup> Among other things, the SROs' Amendments No. 1 made conforming changes to clarify the wording of the re-entry provisions of the rule proposals.

also included 12 representatives from a wide range of broker-dealer firms, to study the continuing education needs of the securities industry. In September 1993, the Task Force issued a report recommending a formal two-part continuing education program that would require uniform, industry-wide, periodic training for registered persons in regulatory matters and ongoing training programs conducted by firms to keep their employees updated on job and product-related subjects. The Task Force also recommended that a permanent Council on Continuing Education, composed of broker-dealer and SRO representatives, be formed to develop the content and provide ongoing maintenance of the continuing education program. Pursuant to this recommendation, the Securities Industry/Regulatory Council on Continuing Education ("Council") was formed in September 1993, with representatives from six SROs and thirteen broker-dealers.

After studying the recommendations of the Council, the SROs participating in the Council submitted proposed rule changes with the Commission to adopt continuing education requirements. The proposed rule changes could codify the Task Force's recommendations, allow uniform implementation of the continuing education program, and provide a means for the SROs to monitor and enforce the program's requirements.

### B. The Regulatory Element

The Regulatory Element requires uniform, periodic training in a variety of regulatory subjects. It provides that registered persons, unless exempt, must complete a prescribed training program after their second, fifth, and tenth registration anniversary dates.<sup>8</sup> The Regulatory Element will not apply to registered persons whose activities are limited solely to the transaction of business on the floor of a national securities exchange with members or registered broker-dealers.<sup>9</sup> The

<sup>8</sup> Any registered person who has terminated his or her association with a member and who, within two years of the date of termination, becomes reassociated in a registered capacity with a member, would be required to complete the training program at such intervals (two, five, and ten years) as would apply based upon the individuals' initial registration anniversary date rather than the date of reassociation in a registered capacity. In the event a non-associated person's second, fifth, or tenth anniversary date passes without such individual completing the appropriate phase of the training program on a timely basis, that person would be required to complete such phase prior to becoming reassociated in a registered capacity.

<sup>9</sup> Amendments No. 1 as filed by the NYSE, AMEX, CBOE, CHX, PSE, and PHLX revised the language of the proposal to clarify that the foregoing

Regulatory Element also will not apply to persons registered for more than ten years as of the effective date of the rule, unless such persons become subject to the re-entry provisions described below. Persons registered for ten years or less as of the effective date of the rule will be required to satisfy the Regulatory Element and complete the computer-based training program after the occurrence of the next relevant registration anniversary date and on any applicable registration anniversary date(s) thereafter.<sup>10</sup>

The Regulatory Element will be administered using computer-based interactive training techniques and will consist of standardized subject matters covering compliance, ethics, and sales practice issues, among other subjects. Failure to complete the program within prescribed time-frames (*i.e.*, within 120 days after the occurrence of the applicable registration anniversary date, or as otherwise determined by the SROs) will result in a person's registration being deemed inactive and that person being prohibited from performing the functions of a registered person until such time as the person has completed the program. The applicable SRO will terminate administratively the registration of anyone who is inactive for two years, provided that upon application and a showing of good cause, the SRO may allow a registered person additional time to satisfy the program requirements.<sup>11</sup>

Unless otherwise determined by a self-regulatory organization, a registered person, including anyone who has completed all or part of the Regulatory Element of the program or who meets the exemption for persons registered more than ten years, will be required to re-enter the Regulatory Element and satisfy all of its requirements in the event such person:

exemption covers non-member registered persons as well as registered persons who are members. See *supra* note 6.

<sup>10</sup> As a result, a person whose tenth year anniversary date falls on the implementation date of the continuing education requirement would have to participate in the Regulatory Element within 120 days of that date. Alternatively, a person registered more than ten years on the implementation date, and not subject to a disciplinary action within the last ten years, would not have to participate in the Regulatory Element.

<sup>11</sup> Anyone administratively terminated must requalify by taking the appropriate exam (*e.g.*, the General Securities Registered Representative Examination or "Series 7") before such person's registration could be reactivated. The Commission recently approved the use of a revised Series 7 examination. See Securities Exchange Act Release Nos. 35021 (November 29, 1994), 59 FR 62768 (December 6, 1994) (approving PHLX proposal), and 34853 (October 18, 1994), 59 FR 53694 (October 25, 1994) (approving NYSE proposal).