

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63554; File No. SR-ISE-2010-115)

December 15, 2010

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Regarding Registration and Qualification Requirements for Associated Persons

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 1, 2010, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules to amend its rules [sic] regarding the registration of associated persons. The text of the proposed rule change is provided below (underlining indicates additions; [brackets] indicate deletions):

Rule 313. Registration Requirements

(a) Registration of Individual Associated Persons Engaged in the Securities Business.

(1) Individual associated persons engaged or to be engaged in the securities business of a Member shall be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange. Before the registration can become effective, the individual associated person shall

¹ 15 U.S.C. 78s(b)(1).

submit the appropriate application for registration, pass a qualification examination appropriate to the category of registration as prescribed by the Exchange and submit any required registration and examination fees. A Member shall not maintain a registration with the Exchange for any person (1) who is no longer active in the Member's securities business; (2) who is no longer functioning in the registered capacity; or (3) where the sole purpose is to avoid an examination requirement. A Member shall not make application for the registration of any person where there is no intent to employ that person in the Member's securities business. A Member may, however, maintain or make application for the registration of an individual who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the Member, or a person who performs administrative support functions for registered personnel, or a person engaged in the securities business of a foreign securities affiliate or subsidiary of the Member.

(2) Persons Exempt from Registration. The following individual associated persons of Members are exempt from the registration requirements set forth in paragraph (1):

(A) individual associated persons whose functions are solely and exclusively clerical or ministerial;

(B) individual associated persons who are not actively engaged in the securities business;

(C) individual associated persons whose functions are related solely and exclusively to the Member's need for nominal corporate officers or for capital participation;

² 17 CFR 240.19b-4.

(D) individual associated persons whose functions are related solely and exclusively to:

(i) transactions in commodities;

(ii) transactions in security futures; and/or

(iii) effecting transactions on the floor of another national securities exchange and who are registered as floor members with such exchange.

(b) Financial/Operations Principal. Each Member subject to Exchange Act Rule 15c3-1 shall designate a Financial/Operations Principal. The duties of a Financial/Operations Principal shall include taking appropriate actions to assure that the Member complies with applicable financial and operational requirements under the Rules and the Exchange Act, including but not limited to those requirements relating to the submission of financial reports and the maintenance of books and records. Each Financial/Operations Principal is required to have successfully completed the Financial and Operations Principal Examination (Series 27 Exam). Each Financial/Operations Principal designated by a Trading Member shall be registered in that capacity with the Exchange as prescribed by the Exchange. A Financial/Operations Principal of a Member may be a full-time employee, a part-time employee or independent contractor of the Member.

(c) Chief Compliance Officer. Each Member shall designate a Chief Compliance Officer on Schedule A of Form BD. An individual designated as a Chief Compliance Officer is required to register with the Exchange and pass the appropriate heightened qualification examination(s) as prescribed by the Exchange. A person who has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to

January 1, 2002, and who has not been subject within the last ten years to any statutory disqualification as defined in Section 3(a)(39) of the Act; a suspension; or the imposition of a fine of \$5,000 or more for a violation of any provision of any securities law or regulation, or any agreement with, rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding shall be required to register in the category of registration appropriate to the function to be performed as prescribed by the Exchange, but shall be exempt from the requirement to pass the heightened qualification examination as prescribed by the Exchange.

(d) Registration Required Under Chapter 6. Individual associated persons of a Member that conduct a public customer business must also comply with the registration requirements set forth in Rule 601 and Rule 602. These additional registration categories include: (i) Registered Options Principal; and (ii) Registered Representative.

(e) Requirement for Examination on Lapse of Registration. Any person whose registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration has been terminated for two or more years immediately preceding the date of receipt by the Exchange of a new application shall be required to pass a qualification examination appropriate to the category of registration as prescribed by the Exchange.

Supplementary Material to Rule 313

.01 Each individual required to register under this Rule shall electronically file a Uniform Application for Securities Industry Registration (“Form U4”) through the Central Registration Depository system (“Web CRD”) operated by the Financial Industry Regulatory Authority, Incorporated (“FINRA”).

.02 Each individual required to register under this Rule shall electronically submit to Web CRD any required amendments to Form U4.

.03 Any Member that discharges or terminates the employment or retention of an individual required to register under this Rule shall comply with the termination filing requirements set forth in Rule 601(c) and Rule 603, which include the filing of a Form U5.

.04 Each individual required to register under this Rule is required to satisfy the continuing education requirements set forth in Rule 604 or any other applicable continuing education requirements as prescribed by the Exchange.

.05 The Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications for registration. Advanced age or physical infirmity will not individually of themselves constitute sufficient grounds to waive a qualification examination. Experience in fields ancillary to the securities business may constitute sufficient grounds to waive a qualification examination.

.06 For purposes of paragraph (a)(1) above, the Exchange shall consider an individual associated person to be engaged in the securities business of a Member if:

(a) the individual associated person engages in one or more of the following activities on behalf of the Member:

(1) proprietary trading;

(2) market-making;

(3) effecting transactions on behalf of a broker-dealer;

(4) supervision or monitoring of proprietary trading, market-making, or brokerage activities;

(5) supervision or training of those engaged in proprietary trading, market-making, or brokerage activities with respect to those activities; or

(b) the individual associated person engages in the management of one or more of the activities enumerated in subparagraphs (1) through (5) above as an officer, partner or a director.

.07 Each Member must register with the Exchange each individual acting in any of the following capacities: (i) officer; (ii) partner; (iii) director; (iv) supervisor of proprietary trading, market-making or brokerage activities; and/or (v) supervisor of those engaged in proprietary trading, market-making or brokerage activities with respect to those activities. Each Member must register with the Exchange at least two individuals acting in one or more of the capacities described in (i)-(v) above. The Exchange may waive this requirement if a Member demonstrates conclusively that only one individual acting in one or more of the capacities described in (i) through (v) above should be required to register. A Member that conducts proprietary trading only and has 25 or fewer registered persons shall only be required to have one officer or partner who is registered in this capacity.

For purposes of this Supplementary Material .07 to Rule 313, a Member shall be considered to conduct only proprietary trading if the Member has the following characteristics:

(a) The Member is not required by Section 15(b)(8) of the Exchange Act to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Exchange Act;

(b) All funds used or proposed to be used by the Member are the Trading Member's own capital, traded through the Member's own accounts;

(c) The Member does not, and will not, have customers; and

(d) All persons registered on behalf of the Member acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Member.

Rule 601. Registration of Options Principals

(a) no change.

(b) In connection with their registration, Options Principals shall electronically file a Uniform Application for Securities Industry Registration or Transfer (“Form U4”) [with] through the Central Registration Depository system (“Web CRD”) [System] operated by the Financial Industry Regulatory Authority, Incorporated (“FINRA”), shall successfully complete an examination prescribed by the Exchange for the purpose of demonstrating an adequate knowledge of the options business and of the Rules of the Exchange, and shall further agree in the U4 filing to abide by the Constitution and Rules of the Exchange and the Rules of the Options Clearing Corporation. Any person required to complete Form U4 shall promptly electronically file any required amendments to Form U4 [with the] through Web CRD.

(c) Termination of employment or affiliation of any Options Principal in such capacity shall be promptly electronically reported [to the] through Web CRD together with a brief statement of the reason for such termination on [Form U5] a Uniform Termination Notice for Securities Industry Registration (“Form U5”).

(d) and (e) no change.

Rule 602. Registration of Representatives

(a) and (b) no change

(c) In connection with their registration, Representatives shall electronically file a [Uniform Application for Securities Industry Registration or Transfer (Form U4) with the NASD’s] Form U4 through Web CRD [System] by appropriately checking the ISE as a requested registration on the electronic U4 filing, and shall successfully complete an examination

for the purpose of demonstrating an adequate knowledge of the securities business, and shall further agree in the U4 filing to abide by the Constitution and Rules of the Exchange and the Rules of the Clearing Corporation. Any person required to complete Form U4 shall promptly electronically file any required amendments to Form U4 [with the NASD's] through Web CRD [System].

(d) no change.

Rule 603. Termination of Registered Persons

(a) The discharge or termination of employment of any registered person, together with the reasons therefore, shall be electronically reported [to the NASD's] through Web CRD [System], by a Member immediately following the date of termination, but in no event later than thirty (30) days following termination on Form U5 [a Uniform Termination Notice for Securities Industry Registration (Form U-5)]. A copy of said termination notice shall be provided concurrently to the person whose association has been terminated.

(b) The Member shall electronically report [to the NASD's] through Web CRD [System], by means of an amendment to the Form [U-5] U5 filed pursuant to paragraph (a) above, in the event that the Member learns of facts or circumstances causing any information set forth in the notice to become inaccurate or incomplete. Such amendment shall be provided concurrently to the person whose association has been terminated no later than thirty (30) days after the Member learns of the facts or circumstances giving rise to the amendment.

Rule 604. Continuing Education for Registered Persons

(a) no change.

(b) In-house Delivery of Regulatory Element: Members will be permitted to administer the Regulatory Element of the Continuing Education program to their registered

persons by instituting a firm program acceptable to the Exchange. The following procedures are required:

(1) Senior Officer or Partner in Charge. The Member has designated a senior officer or partner to be responsible for the firm's delivery of the Regulatory Element of the Continuing Education program.

(2) Site Requirements. The location of all delivery sites will be under the control of the Member. Delivery of Regulatory Element continuing education will take place in an environment conducive to training (i.e., a training facility, conference room or other area dedicated to this type of purpose would be appropriate. Inappropriate locations would include a personal office or any location that is not or cannot be secured from traffic and interruptions). Where multiple delivery terminals are placed in a room, adequate separation between terminals will be maintained.

(3) Technology Requirements. The communication links and firm delivery computer hardware must comply with standards defined by the Exchange or its designated vendor.

(4) Supervision. The Member's written supervisory procedures must contain the procedures implemented to comply with the requirements of its delivery of Regulatory Element continuing education. The Member's written supervisory procedures must identify the senior officer or partner designated pursuant to paragraph (b)(1) above and contain a list of individuals authorized by the Member to serve as a proctor. Member locations for delivery of Regulatory Element continuing education will be specifically listed in the Member's written supervisory procedures.

(5) Proctors. All sessions will be proctored by an authorized person during the entire Regulatory Element continuing education session. Proctors must be present in the session room or must be able to view the person(s) sitting for Regulatory Element continuing education through a window or by video monitor. The individual responsible for proctoring at each administration will sign a certification that required procedures have been followed, that no material from Regulatory Element continuing education has been reproduced, and that no candidate received any assistance to complete the session. Such certification may be a part of the sign-in log required under paragraph (b)(6) below. Individuals serving as proctors must be individuals registered with the Exchange as "proctors" and supervised by the designated senior officer/partner for purposes of Member delivery of Regulatory Element continuing education. Proctors will check and verify the identification of all individuals taking Regulatory Element continuing education.

(6) Administration. All appointments will be scheduled in advance using the procedures and software specified by the Exchange, its agent or designated vendor to communicate with the Proctor system and the NASD's CRD System. The Member/proctor will conduct each session in accordance with the administrative and appointment scheduling procedures required by the Exchange or its designated vendor. A sign-in log will be maintained at the delivery facility. Logs will contain the date of each session, the name and social security number of the individual taking the session, that required identification was checked, the sign-in time, the sign-out time, and the name of the individual proctoring the session. Such logs are required to be retained pursuant to Securities Exchange Act of 1934 Rules 17a-3 and 17a-4. No material will be permitted

to be utilized for the session nor may any session-related material be removed. Delivery sites will be made available for inspection by the SROs. Before commencing in-firm delivery of the Regulatory Element continuing education, Members are required to file with their Designated Examining Authority ("DEA"), a letter of attestation (as specified below) signed by a senior officer or partner, attesting to the establishment of required procedures addressing senior officer or partner in-charge, supervision, site, technology, proctors, and administrative requirements.

Letter of Attestation for In-Firm Delivery of Regulatory Element Continuing Education

[Name of senior officer or partner] has established procedures for delivering Regulatory Element continuing education on its premises. I have determined that these procedures are reasonably designed to comply with SRO requirements pertaining to in-firm delivery of Regulatory Element continuing education, including that such procedures have been implemented to comply with senior officer or partner in-charge, supervision, site, technology, proctors, and administrative requirements.

Signature

Printed name

Title [Must be signed by a Principal Executive Officer (or Executive Representative) of the firm]

Date.

(7) Annual Representation. Each Member will be required to represent to the Exchange, annually, that they have continued to maintain, and reasonably believe that they have complied with, all required procedures outlined in paragraphs (b)(1)-(b)(6)

above for the previous year. Such attestation must be signed by a senior officer or partner.

(8) Definition of Senior Officer/Partner. For purposes of paragraph (b) of this rule, "senior officer or partner" means the chief executive officer or managing partner or either (A) any other officer or partner who is a member of the Member's executive or management committee or its equivalent committee or group or (B) if the Member has no such committee or group, any officer or partner having senior executive or management responsibility who reports directly to the chief executive officer or managing partner. If the chief executive officer or managing partner does not sign the attestation, a copy of the attestation shall be provided to the chief executive officer or managing partner.

[(b)] (c) Firm Element

(1) through (3) no change.

Supplementary Material to Rule 604

.01 For purposes of this Rule, the term “registered person” means any Member, Representative or other person registered or required to be registered under the Rules[, but does not include any such person whose activities are limited solely to the transaction of business on the Exchange with Members or registered broker-dealers].

.02 through .04 no change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments

it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE is proposing to amend its rules regarding qualification, registration and continuing education of individual associated persons.³ Specifically, in response to a request by the Division of Trading and Markets of the U.S. Securities and Exchange Commission and in light of recent market events, the Exchange is proposing to expand its registration and qualification requirements to include additional types of individual associated persons. The Exchange believes the proposed rule changes are consistent with Rule 15b7-1,⁴ promulgated under the Securities Exchange Act of 1934, as amended (“Exchange Act”),⁵ which provides: “No registered broker or dealer shall effect any transaction in...any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards...established by the rules of any national securities exchange...”

³ Under ISE Rule 100(a)(3), the term “associated person” or “person associated with a Member” means any partner, officer, director or branch manager of Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member or any employee of a Member. This filing refers specifically to the classification of “individual associated persons” as an organization could fall within the scope of this definition, and it is not ISE’s intention to require registration by an organization.

⁴ 17 CFR 240.15b7-1.

⁵ 15 U.S.C. 78a et seq.

Proposed Rule 313 establishes the qualification and registration requirements for associated persons of Members. This proposed rule also establishes registration requirements for a Chief Compliance Officer for each Member and for a Financial/Operations Principal for each Member subject to the Exchange Act Rule 15c3-1.⁶ Proposed Rule 313 also references the registration requirements set forth in Chapter 6 of the Exchange’s Rulebook for associated persons of Members that conduct a public customer business.⁷

Under the proposal, individual associated persons acting in the capacity of a sole proprietor, officer, partner, director or Chief Compliance Officer will be subject to heightened qualification requirements. In addition, an individual associated person that is engaged in the supervision or monitoring of proprietary trading, market-making or brokerage activities and/or that is engaged in the supervision or training of those engaged in proprietary trading, market-making or brokerage activities with respect to those activities will be subject to heightened qualification requirements. The Exchange believes that the heightened qualification requirements should enhance the supervisory structure for Members that do not conduct a public customer business.⁸

Specifically, the Exchange is proposing to require additional associated persons to submit the appropriate application for registration online through the Central Registration Depository

⁶ 17 CFR 240.15c3-1.

⁷ These proposed rule changes are consistent with those recently adopted by the Chicago Board of Options Exchange. Securities Exchange Act Release No. 62977 (Sept. 22, 2010), 75 FR 59773 (Sept. 28, 2010) (“CBOE Registration Proposal”); Securities Exchange Act Release No. 63314 (November 12, 2010), 75 FR 70957 (November 19, 2010) (“CBOE Approval Order”).

⁸ Proposed Rule 313 specifies that individual associated persons, including Registered Options Principals and Registered Representatives, are also subject to the registration requirements set forth in Chapter 6 of ISE’s Rules, which is generally applicable to Members that conduct a public customer business.

system (“Web CRD”), which is operated by the Financial Industry Regulatory Authority, Incorporated (“FINRA”), successfully complete any qualification examination(s) as prescribed by the Exchange and submit any required registration and examination fees.⁹ Proposed Rule 313 will require registration and qualification by individual associated persons engaged or to be engaged in the securities business of a Member.¹⁰ An individual associated person will be considered to be a person engaged in the securities business of a Member if (i) the individual associated person conducts proprietary trading, acts as a market-maker, effects transactions on behalf of a broker-dealer account, supervises or monitors proprietary trading, market-making or brokerage activities on behalf of the broker-dealer, supervises or conducts training for those engaged in proprietary trading, market-making or brokerage activities on behalf of a broker-dealer account; or (ii) the individual associated person engages in the management of any individual associated person identified in (i) above as an officer, partner or director.¹¹

ISE will require all associated persons required to register under proposed Rule 313 that are not already registered in Web CRD to register (i.e., complete a Form U4) within 60 days of the approval date of this filing by the U.S. Securities and Exchange Commission.¹² With respect

⁹ Under the proposal, each individual associated person subject to the registration requirements in Rule 313 will be required to electronically file a Uniform Application for Securities Industry Registration (“Form U4”) through Web CRD.

¹⁰ An individual with an indirect ownership interest in a Member that is engaged in the securities business of such Member is required to register under proposed Rule 313.

¹¹ This requirement is consistent with FINRA’s registration requirement for “Principals” (as defined in NASD Rule 1021). ISE is declining to adopt the term “Principal” in the Exchange proposed rule change to avoid confusion with existing terms, such as “Option Principal.”

¹² Web CRD has been enhanced by FINRA to allow for general registration of applicable associated persons.

to the examination requirement associated with the proposed rule,¹³ ISE is working with other self-regulatory organizations (“SROs”) to develop an additional examination for associated persons who previously may not have been required to register under applicable SRO rules (e.g., proprietary options traders) that may be used as an alternative to the existing categories of registration.¹⁴ The Exchange will notify its Members via regulatory circular what qualification examination(s) will be acceptable for compliance with the requirements proposed in Rule 313.

The Exchange is proposing to identify in Rule 313 several categories of persons that are exempt from these additional registration requirements. The categories of individual associated persons that are exempt from the registration requirements include (i) individual associated persons functioning solely and exclusively in a clerical or ministerial capacity; (ii) individual associated persons that are not actively engaged in the securities business, (iii) individual associated persons functioning solely and exclusively to meet a need for nominal corporate officers or for capital participation; and (iv) individual associated persons whose functions are

¹³ The availability of the appropriate category on Web CRD for any new qualification examinations recognized by the Exchange may be subject to the timing for any required systems development on Web CRD.

¹⁴ ISE intends to develop with other SROs, within six months of the approval date of this filing, an alternative qualification examination(s) that is appropriate for the additional individual associated persons required to register under the proposed rule. Once the development of this examination(s) has been completed, the implementation and effective date will be subject to approval by the Commission and any necessary systems development schedules to implement the examination. If the an alternative examination(s) is not completed within six months of the approval date of this filing, the Exchange will establish a deadline for qualification based on the existing categories of registration and qualification examinations available on Web CRD, until such time as the development and implementation of an alternative examination(s) has been completed. The referenced categories of registration available on Web CRD include, but may not be limited to, the General Securities Representative (GS) and General Securities Principal (GP), as applicable to the type of business activities conducted. The accompanying qualification examination for the General Securities Representative is the Series 7 and the accompanying qualification examination for the General Securities Principal is the Series 24.

solely and exclusively related to transactions in commodities, transactions in security futures and/or effecting transactions on the floor of another national securities exchange and who are registered as floor members with such exchange. The Exchange believes these registration exemptions are appropriate because ISE would not consider individuals that fall into the exemptions to be actively engaged in securities business unless they are registered as floor members on another national securities exchange, in which case, they are already registered as floor members and not required to register at ISE. ISE believes incorporating these exemptions into the rule provides additional clarity to individual associated persons as to who will or will not be required to register under the proposed rule. Any applicable FINRA registration requirements would continue to apply to Members that are also members of FINRA.

Additionally, under the proposal, the Exchange may waive the qualification examination requirement where good cause is shown. Similar rules are in place at the New York Stock Exchange, Inc. (“NYSE”) and FINRA.¹⁵ In determining whether a waiver shall be granted, the Exchange shall consider, among other things, previous industry employment, training and/or the successful completion of similar qualification examinations of other self-regulatory organizations. Under the proposed Rule, individual associated persons whose activities are limited solely to the transaction of business on the floor of another exchange will be subject to the continuing education requirements set forth in Rule 604 or any other continuing education requirements as prescribed by the Exchange.

The Exchange also is proposing to require the designation of a Financial/Operations Principal by each member that is subject to Exchange Act Rule 15c3-1, and the designation of a Chief Compliance Officer by each Member. Under the proposed rule, the Financial/Operations

¹⁵ See NASD Rule 1070 (Qualification Examinations and Waiver of Requirements) and NYSE Rule 345 (Employees – Registration, Approval, Records).

Principal and Chief Compliance Officer are required to register and pass the appropriate qualification examination.¹⁶ The registration requirements for a Financial/Operations Principal are consistent with CBOE Rule 3.6A,¹⁷ and the requirements for a Chief Compliance Officer are consistent with proposed amendments to CBOE Rule 3.6A (which in turn are consistent with FINRA Rule 3130 and NASD Rule 1022).¹⁸ The proposal includes a limited exemption from the requirement to pass the appropriate qualification examination by a Chief Compliance Officer. Specifically, a person that has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to January 1, 2002, and who has not been subject within the last ten years to any statutory disqualification as defined in Section 3(a)(39) of the Act; a suspension; or the imposition of a \$5,000 or more fine for a violation(s) of any provision of any securities law or regulation, or any agreement with, rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such self-regulatory organization in connection with a disciplinary proceeding, shall be required to register in the category of registration appropriate to the function to be performed as prescribed by the Exchange, but shall be exempt from the requirement to pass the heightened qualification examination as prescribed by the Exchange.

¹⁶ The appropriate qualification examination for a Financial/Operations Principal is the Series 27 exam. The appropriate qualification examination for a Chief Compliance Officer is the Series 14 exam. ISE is working with FINRA to establish this category of registration and make the accompanying qualification examination available at ISE on Web CRD.

¹⁷ The duties of a Financial/Operations Principal include taking appropriate actions to assure that the Member complies with applicable financial and operational requirements under SRO rules and the Exchange Act. The Exchange notes that it is not the Designated Examining Authority for any of its Members, but for consistency with other SRO rules, the Exchange is proposing to include the designation of a Financial/Operations Principals in its Rules.

¹⁸ CBOE Registration Proposal, supra note 7.

In addition, the Exchange is proposing to require registration and successful completion of a heightened qualification examination by at least two individuals that are each an officer, partner or director of each Member.¹⁹ However, the Exchange notes that all individuals who engage in supervisory functions of the Member's securities business shall be required to register and pass the appropriate heightened qualification examination(s) relevant to the particular category of registration. Members that are sole proprietors are exempt from this requirement. In addition, the Exchange may waive the requirement to have two officers, partners and/or directors registered if a Member conclusively demonstrates that only one officer, partner or director should be required to register. For example, a Member could conclusively demonstrate that only one individual is required to register if such Member is owned by one individual (such as a single member limited liability company), such individual acts as the only trader on behalf of the Member, and the Member employs only one other individual who functions only in a clerical capacity. The ability to waive this registration requirement is consistent with similar FINRA rules regarding principal registration.²⁰

ISE is also proposing to allow a Member that conducts proprietary trading only and has 25 or fewer registered persons to have only one officer or partner registered under this section rather than two. This exception is similar to that of several other exchanges and reflects that such Members do not necessitate the same level of supervisory structure as those Members that have customers or are larger in size. For purposes of this requirement, a Member is be [sic]

¹⁹ With the exception of its application to sole proprietors, this requirement is consistent with the registration requirement set forth in NASD Rule 1021 addressing registration of two Principals (as defined in NASD Rule 1021).

²⁰ See NASD Rule 1021(e).

considered to conduct only proprietary trading if it has the following characteristics: (i) the Member is not required by Section 15(b)(8) of the Exchange Act to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Exchange Act; (ii) all funds used or proposed to be used by the Member are the Member's own capital, traded through the Member's own accounts; (iii) the Member does not, and will not, have customers; and (iv) all persons registered on behalf of the Member acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Member. The description of what constitutes proprietary trading for purposes of this requirement is appropriate in that it provides additional clarity for associated persons to evaluate whether two individuals are required to register.

Proposed Rule 313 also sets forth the requirements for examinations where there is a lapse in registration. Specifically, an individual associated person shall be required to pass the appropriate qualification examination for the category of registration if the individual associated person's registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration has been terminated for a period of two or more years.

Additionally, the Exchange proposes to update Rule 604 regarding continuing education requirements so that it is consistent with other SRO rules.²¹ Specifically, the Exchange proposes to add a provision detailing the procedures required for in-house delivery of the regulatory element. The required procedures address responsibly [sic] for the education program, site requirements, technology requirements, supervision requirements, and administration of the program. Members are required to file with their Designated Examining Authority, a letter of attestation signed by a senior officer or partner, attesting to the establishment of the required

²¹ E.g., CBOE Rule 9.3A.

procedures, and must annually represent that they have continued to maintain all required procedures for the previous year. While the Exchange does not have a floor, for consistency with other SRO rules, the Exchange also proposes to delete language that excludes those people whose activities are limited solely to the transaction of business on a floor from the definition of “registered person” for purposes of the Rule 604.²²

Finally, this filing proposes to make non-substantive changes to ISE Rule 601(Registration of Options Principals), Rule 602 (Registration of Representatives) and Rule 603(Termination of Registered Persons) to define and reference certain terms consistently within these rules and with proposed Rule 313. Specifically, these rules currently contain inconsistent references to the Central Registration Depository, and the registration and termination forms required to be filed under the rules. Additionally, these rules contain reference to the National Association of Securities Dealers or “NASD” which is now known as the Financial Industry Regulatory Authority or “FINRA.”

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁴ which requires, among other things, that the Exchange’s rules be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Specifically, the enhanced registration and qualification requirements will provide additional protection to investors and further promote the public interest.

²² See CBOE Registration Proposal, *supra* note 7.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

In addition, the Exchange believes that the proposed rule change is consistent with Section 6(c) of the Act,²⁵ in general, and furthers the objectives of Section 6(c)(3)(B) of the Act,²⁶ which provides, among other things, that a national securities exchange may bar a natural person from becoming associated with a member if such natural person does not meet the standards of training, experience and competence as prescribed by the rules of the national securities exchange. The Exchange also believes that the proposed rule change furthers the objectives of Section 6(c)(3)(C) of the Act,²⁷ which provides, among other things, that a national securities exchange may bar any person from becoming associated with a member if such person does not agree to supply the exchange with such information with respect to its dealings with the member as may be specified by the rules of the exchange and to permit the examination of its books and records to verify the accuracy of any information so supplied..

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

²⁵ 15 U.S.C. 78f(c).

²⁶ 15 U.S.C. 78f(c)(3)(B).

²⁷ 15 U.S.C. 78f(c)(3)(C).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2010-115 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2010-115. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies

of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-ISE-2010-115 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Florence E. Harmon
Deputy Secretary

²⁸ 17 CFR 200.30-3(a)(12).