

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84353; File No. SR-BX-2018-047)

October 3, 2018

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend, Reorganize and Enhance Membership, Registration and Qualification Rules, and to Make Conforming Changes to Certain Other Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 27, 2018, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. 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 Exchange proposes to amend, reorganize and enhance its membership, registration and qualification rules, and to make conforming changes to certain other rules.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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 Exchange 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange 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

Overview

The Exchange has adopted registration requirements to ensure that associated persons attain and maintain specified levels of competence and knowledge pertinent to their function. In general, the current rules require that persons engaged in a member’s investment banking or securities business who are to function as representatives or principals register with the Exchange in each category of registration appropriate to their functions by passing one or more qualification examinations,³ and exempt specified associated persons from the registration requirements.⁴ They also prescribe ongoing continuing education requirements for registered persons.⁵ The Exchange now proposes to amend, reorganize and enhance its rules regarding registration, qualification examinations and continuing education, as described below.

Recently, the Commission approved a FINRA proposed rule change consolidating and adopting NASD and Incorporated NYSE rules relating to qualification and registration requirements into the Consolidated FINRA Rulebook,⁶ restructuring the FINRA representative-

³ See, e.g., Exchange Rules 1021, Registration Requirements, 1022, Categories of Principal Registration, 1031, Registration Requirements, 1032, Categories of Representative Registration, and 1041, Registration Requirements for Assistant Representatives.

⁴ See Rule 1060, Persons Exempt from Registration.

⁵ See Rule 1120, Continuing Education Requirements.

⁶ The current FINRA rulebook consists of: (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from the New York Stock Exchange (“NYSE”) (the “Incorporated NYSE rules”). While the NASD rules generally apply to all FINRA members, the Incorporated NYSE rules apply only to those members of FINRA that are also members of the NYSE.

level qualification examinations, creating a general knowledge examination and specialized knowledge examinations, allowing permissive registration, establishing an examination waiver process for persons working for a financial services affiliate of a member, and amending certain continuing education (“CE”) requirements (collectively, the “FINRA Rule Changes”).⁷ The FINRA Rule Changes will become effective on October 1, 2018.

The Exchange now proposes to amend, reorganize and enhance certain of its corresponding membership, registration and qualification requirement rules in part in response to the FINRA Rule Changes, and also in order to conform the Exchange’s rules more closely to those of its affiliated exchanges in the interest of uniformity and to facilitate compliance with membership, registration and qualification regulatory requirements by members of multiple Nasdaq-affiliated exchanges including BX. Last, the Exchange proposes to enhance its registration rules by adding a new registration requirement applicable to developers of algorithmic trading systems similar to a requirement adopted by FINRA pursuant to a 2016 FINRA proposed rule change.⁸

⁷ See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (Order Approving File No. SR-FINRA-2017-007). See also FINRA Regulatory Notice 17-30 (SEC Approves Consolidated FINRA Registration Rules, Restructured Representative-Level Qualification Examinations and Changes to Continuing Education Requirements) (October 2017). FINRA articulated its belief that the proposed rule change would streamline, and bring consistency and uniformity to, its registration rules, which would, in turn, assist FINRA members and their associated persons in complying with the rules and improve regulatory efficiency. FINRA also determined to enhance the overall efficiency of its representative-level examinations program by eliminating redundancy of subject matter content across examinations, retiring several outdated representative-level registrations, and introducing a general knowledge examination that could be taken by all potential representative-level registrants and the general public. FINRA amended certain aspects of its continuing education rule, including by codifying existing guidance regarding the effect of failing to complete the Regulatory Element on a registered person’s activities and compensation.

⁸ See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR-FINRA-2016-007). In its proposed rule change

As part of this proposed rule change, current IM-1002-2, Status of Persons Serving in the Armed Forces of the United States; IM-1002-3, Failure to Register Personnel; 1021, Registration of Principals; 1022, Categories of Principal Registration; IM-1022-2, Limited Principal-General Securities Sales Supervisor; 1031, Registration Requirements, sections (a) – (e); 1032, Categories of Representative Registration; 1060, Persons Exempt from Registration⁹; 1070, Qualification Examinations and Waiver of Requirements; 1080, Confidentiality of Examinations; 1120, Continuing Education Requirements; and Chapter II, Section 2, Requirements for Options Participation, Subsections (g) and (h), are proposed to be deleted. Rule 1140, Electronic Filing Rules, is proposed to be amended and relocated. A number of other rules are proposed to be amended with conforming changes, or relocated in view of the foregoing amendments.¹⁰

In place of the deleted rules and rule sections, the Exchange proposes to adopt a new 1200 Series of rules captioned Registration, Qualification and Continuing Education, generally conforming to FINRA’s new 1200 Series of rules resulting from the FINRA Rule Changes, but with a number of Exchange-specific variations.¹¹ The proposed new 1200 Series is also being

FINRA addressed the increasing significance of algorithmic trading strategies by amending its rules to require registration, as Securities Traders, of associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities.

⁹ Provisions currently found in Rule 1060(b) are being amended and relocated to new Rule 2040, as discussed below.

¹⁰ Conforming amendments are proposed to Rules 0120, Definitions; 1001, FINRA Regulatory Contract, 1011, Definitions, 1050, Research Analysts; 3010, Supervision; 7003, Regulatory, Registration and Processing Fees; IM-9216, Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2); and 9630, Appeal. In the Exchange’s Options Rules, amendments are proposed to Chapter XI, Section 2, Registration of Options Principals and Section 3, Registration of Representatives.

¹¹ The proposed 1200 Series of Rules would consist of Rule 1210, Registration Requirements; Rule 1220, Registration Categories; Rule 1230, Associated Persons

proposed for adoption by BX’s affiliated exchanges in order to facilitate compliance with membership, registration and qualification regulatory requirements by members of two or more of those affiliated exchanges.¹² In the new 1200 Series the Exchange would, among other things, recognize additional associated person registration categories, recognize a new general knowledge examination, permit the maintenance of permissive registrations, and require Securities Trader registration of developers of algorithmic trading strategies consistent with a comparable existing FINRA registration requirement.¹³

The proposed rule change would become operative October 1, 2018 with the exception of the new registration requirement for developers of algorithmic trading strategies which would become operative on April 1, 2019.

Exempt from Registration; Rule 1240, Continuing Education Requirements; and Rule 1250, Electronic Filing Requirements for Uniform Forms.

¹² The Exchange’s five affiliated exchanges, The Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq PHLX LLC (“PHLX”), Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”), and Nasdaq MRX, LLC (“MRX”) (together with BX, the “Nasdaq Affiliated Exchanges”) are also submitting proposed rule changes to adopt the 1200 Series of rules. See SR-NASDAQ-2018-078, SR-Phlx-2018-61, SR-ISE-2018-82, SR-GEMX-2018-33, and SR-MRX-2018-31. The Exchange recently added a shell structure to its rulebook with the purpose of improving efficiency and readability and to align its rules more closely to those of the other Nasdaq Affiliated Exchanges. See Securities Exchange Act Release No. 82174 (November 29, 2017), 82 FR 57492 (December 5, 2017) (SR-BX-2017-054). Ultimately, the Exchange intends to submit another proposed rule change to transfer the 1200 Series of rules into the new shell structure. (The Exchange notes that the Phlx 1200 Series of rules would differ slightly from the 1200 Series of the other Nasdaq Affiliated Exchanges given Phlx’s trading floor and its unique membership structure which features the concept of a “member organization.”) [sic]

¹³ See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (order approving SR-FINRA-2016-007). In its proposed rule change to adopt this registration requirement, FINRA addressed the increasing significance of algorithmic trading strategies by proposing to require registration, as Securities Traders, of associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities.

Proposed Rules

A. Registration Requirements (Proposed Rule 1210)

Exchange Rules 1021(a) and 1031(a) currently require that persons engaged, or to be engaged, in the investment banking or securities business of a member who are to function as representatives or principals register with the Exchange in the category of registration appropriate to their functions as specified in Exchange Rules 1022 and 1032.¹⁴ The Exchange is proposing to consolidate and streamline provisions of Exchange Rules 1021(a) and 1031(a) and to adopt them as Exchange Rule 1210, subject to several changes.¹⁵

Proposed Rule 1210 provides that each person engaged in the securities business of a member must register with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in proposed Rule 1220, unless exempt from registration pursuant to proposed Rule 1230. Unlike current Rules 1021(a) and 1031(a), proposed Rule 1210 would not require persons engaged in the investment banking business of a member to register with the Exchange since a member's investment

¹⁴ In addition, IM-1002-3 provides that the failure to register an individual as a registered representative may be deemed to be conduct inconsistent with just and equitable principles of trade and may be sufficient cause for appropriate disciplinary action. As explained below the Exchange proposes to delete IM-1002-3 as superfluous.

¹⁵ Rule 1031, Registration Requirements, contains certain sections that are not affected by this proposed rule change. However, due to the overall organizational restructuring of the registration rules, those sections (current Rules 1031(c), (d) and (e)) are being relocated with nonsubstantive amendments to new Supplementary Material .12, Application for Registration and Jurisdiction, to proposed Rule 1210, Registration Requirements. These relocated provisions govern the process for applying for registration and amending the registration application, as well as for notifying the Exchange of termination of a member's association with a person registered with the Exchange. The Exchange proposes to adopt Rule 1210, Supplementary Material .12, into the 1200 Series in order to have uniform processes and requirements in this area across the Nasdaq Affiliated Exchanges. This relocated language is unique to the Exchange - the FINRA Rule Changes do not contain a counterpart Rule 1210 Supplementary Material .12. The Exchange anticipates amending Rule 1031(f) in a future proposed rule change.

banking business is not the primary concern of the Exchange or the focus of its operations.¹⁶

Proposed Exchange Rule 1210 also provides that such person is not qualified to function in any registered capacity other than that for which the person is registered, unless otherwise stated in the rules. This latter provision is a consolidation of similar provisions in the registration categories under the current Exchange rules.

Further, the Exchange is proposing to delete Exchange IM-1002-3 because it is superfluous. The failure to register a representative as required under current Exchange Rule 1031(a) is in fact a violation of Exchange rules.

B. Minimum Number of Registered Principals (Proposed Rule 1210.01)

Rule 1021(e)(1) currently requires that a member, except a sole proprietorship, have a minimum of two registered principals with respect to each aspect of the member's investment banking and securities business pursuant to the applicable provisions of Rule 1022, provided however that a proprietary trading firm with 25 or fewer registered representatives shall only be required to have one registered principal. This requirement applies to applicants for membership and existing members. Exchange Rule 1021(e)(2) also provides that, pursuant to the Exchange's Rule 9600 Series, the Exchange may waive the principal requirements of Rule 1021(e)(1) in situations that indicate conclusively that only one person associated with an applicant for membership should be required to register as a principal. Rule 1021(e)(3) provides that an

¹⁶ Miami International Securities Exchange LLC ("MIAX") Rule 203(a) and ISE Rule 313(a)(1) likewise require registration of associated persons of members engaged in the member's securities business, but do not require registration with the exchanges of associated persons of members who engage in the member's investment banking business. Because the Exchange's proposed registration rules focus solely on securities trading activity, the proposed rules differ from the FINRA Rule Changes by omitting references to investment banking in proposed Rules 1210, 1210.03, 1210.10, 1220(a)(1), 1220(a)(2)(B), 1220(b), and 1240(b)(1), and also by omitting as unnecessary from Rule 1220(a)(10) a limitation on the qualification of a General Securities Sales Supervisor to supervise the origination and structuring of an underwriting.

applicant for membership, if the nature of its business so requires, must also have at least one person qualified for registration under Rule 1022(b) as a Financial and Operations Principal.¹⁷

The Exchange is proposing to adopt Rule 1021(e) as Rule 1210.01, subject to the following changes. The Exchange proposes to provide firms that limit the scope of their business with greater flexibility to satisfy the two-principal requirement. In particular, proposed Rule 1210.01 requires that a member have a minimum of two General Securities Principals, provided that a member that is limited in the scope of its activities may instead have two officers or partners who are registered in a principal category that corresponds to the scope of the member's activities.¹⁸ For instance, if a firm's business is limited to securities trading, the firm may have two Securities Trader Principals, instead of two General Securities Principals. Currently, a sole proprietor member (without any other associated persons) is not subject to the two-principal requirement because such member is operating as a one-person firm. Given that one-person firms may be organized in legal forms other than a sole proprietorship (such as a single-person limited liability company), proposed Exchange Rule 1210.01 provides that any member with only one associated person is excluded from the two principal requirement. In addition, proposed Rule 1210.01 clarifies that existing members as well as new applicants may request a waiver of the two-principal requirement. Finally, the Exchange is proposing to retain the existing rule's provision permitting a proprietary trading firm with 25 or fewer registered

¹⁷ Exchange Rule 1022(b) as well as other Exchange rules currently refer to categories of limited principal registration as "Limited Principal –" followed by the name of the registration category. In this proposed rule change and in the proposed rules, the Exchange will no longer employ the term "Limited Principal –" in identifying various principal registration categories. No substantive change is intended; shortening the names of the various principals simply improves readability of the rules.

¹⁸ The principal registration categories are described in greater detail below.

representatives to have just one registered principal. The FINRA Rule Changes do not include this provision.¹⁹

C. Permissive Registrations (Proposed Rule 1210.02)

Rules 1021(a) and 1031(a) currently permit a member to register or maintain the registration(s) as a representative or principal of an individual performing legal, compliance, internal audit, back-office operations or similar responsibilities for the member. Rule 1031(a) also permits a member to register or maintain the registration as a representative of an individual performing administrative support functions for registered persons. In addition, Rules 1021(a) and 1031(a) permit a member to register or maintain the registration(s) as a representative or principal of an individual engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

The Exchange is proposing to consolidate these provisions under Rule 1210.02. The Exchange is also proposing to expand the scope of permissive registrations and to clarify a member's obligations regarding individuals who are maintaining such registrations.

Specifically, proposed Rule 1210.02 allows any associated person to obtain and maintain any registration permitted by the member. For instance, an associated person of a member

¹⁹ The Exchange is not proposing provisions conforming to the new FINRA Rule 1210.01 requirements that all FINRA members are required to have a Principal Financial Officer and a Principal Operations Officer, because it believes that its proposed Rule 1220(a)(4), Financial and Operations Principal, which requires member firms operating pursuant to certain provisions of SEC rules to designate at least one Financial and Operations Principal, is sufficient. Further, the Exchange is not adopting the FINRA Rule 1210.01 requirements that (1) a member engaged in investment banking activities have an Investment Banking Principal, (2) a member engaged in research activities have a Research Principal, or (3) a member engaged in options activities with the public have a Registered Options Principal. The Exchange does not recognize the Investment Banking Principal or the Research Principal registration categories, and the Registered Options Principal registration requirement is set forth in Rule 1210.08 and its inclusion is therefore unnecessary in Rule 1210.01.

working solely in a clerical or ministerial capacity, such as in an administrative capacity, would be able to obtain and maintain a General Securities Representative registration with the member. As another example, an associated person of a member who is registered, and functioning solely, as a General Securities Representative would be able to obtain and maintain a General Securities Principal registration with the member. Further, proposed Rule 1210.02 allows an individual engaged in the securities business of a foreign securities affiliate or subsidiary of a member to obtain and maintain any registration permitted by the member.

The Exchange is proposing to permit the registration of such individuals for several reasons. First, a member may foresee a need to move a former representative or principal who has not been registered for two or more years back into a position that would require such person to be registered. Currently, such persons are required to requalify (or obtain a waiver of the applicable qualification examinations) and reapply for registration. Second, the proposed rule change would allow members to develop a depth of associated persons with registrations in the event of unanticipated personnel changes. Third, allowing registration in additional categories encourages greater regulatory understanding. Finally, the proposed rule change would eliminate an inconsistency in the current rules, which permit some associated persons of a member to obtain permissive registrations, but not others who equally are engaged in the member's business.

Individuals maintaining a permissive registration under the proposed rule change would be considered registered persons and subject to all Exchange rules, to the extent relevant to their activities. For instance, an individual working solely in an administrative capacity would be able to maintain a General Securities Representative registration and would be considered a registered person for purposes of rules relating to borrowing from or lending to customers, but the rule

would have no practical application to his or her conduct because he or she would not have any customers.

Consistent with the Exchange's supervision rules, members would be required to have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions.²⁰ With respect to an individual who solely maintains a permissive registration, such as an individual working exclusively in an administrative capacity, the individual's day-to-day supervisor may be a nonregistered person. Members would be required to assign a registered supervisor to this person who would be responsible for periodically contacting such individual's day-to-day supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor must be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor must be registered as a principal.²¹

D. Qualification Examinations and Waivers of Examinations (Proposed Rule 1210.03)

Rules 1021(a) and 1031(a) currently set forth general requirements that an individual pass an appropriate qualification examination before his or her registration as a representative or principal can become effective. The Exchange is proposing to consolidate these provisions and adopt them as Rule 1210.03.

²⁰ The FINRA Proposed Rules at Rule 1210.02 cite FINRA's own supervision rule, by number. Because the 1200 Series of rules is intended to apply to the Exchange as well as to its affiliates which have different supervision rules, proposed Rule 1210.02 refers generally to the supervision rules rather than identifying them by number.

²¹ In either case, the registered supervisor of an individual who solely maintains a permissive registration would not be required to be registered in the same representative or principal registration category as the permissively-registered individual.

In addition, as part of the FINRA Rule Changes FINRA has adopted a restructured representative-level qualification examination program whereby representative-level registrants would be required to take a general knowledge examination (the Securities Industry Essentials Exam or “SIE”) and a specialized knowledge examination appropriate to their job functions at the firm with which they are associating. Therefore, proposed Rule 1210.03 provides that before the registration of a person as a representative can become effective under proposed Rule 1210, such person must pass the SIE and an appropriate representative-level qualification examination as specified in proposed Rule 1220. Proposed Rule 1210.03 also provides that before the registration of a person as a principal can become effective under proposed Rule 1210, such person must pass an appropriate principal-level qualification examination as specified in proposed Rule 1220.

Further, proposed 1210.03 provides that if the job functions of a registered representative, other than an individual registered as an Order Processing Assistant Representative, change and he or she needs to become registered in another representative-level category, he or she would not need to pass the SIE again. Rather, the registered person would need to pass only the appropriate representative-level qualification examination.²² Thus under the proposed rule

²² The exception for Order Processing Assistant Representatives and Foreign Associates was adopted by FINRA in FINRA Rule 1210.03, and is included in proposed Exchange Rule 1210.03 without the reference to Foreign Associates which is a registration category the Nasdaq Affiliated Exchanges do not recognize. FINRA has stated that the SIE would assess basic product knowledge; the structure and function of the securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. Proposed Rule 1210.03 provides that all associated persons, such as associated persons whose functions are solely and exclusively clerical or ministerial, are eligible to take the SIE. Proposed Rule 1210.03 also provides that individuals who are not associated persons of firms, such as members of the general public, are eligible to take the SIE. FINRA has stated its belief that expanding the pool of individuals who are eligible to take the SIE would enable prospective securities industry professionals to demonstrate to prospective employers a basic level of knowledge prior to submitting a job application.

change, individuals seeking registration in two or more representative-level categories would experience a net decrease in the total number of exam questions they would be required to answer because the SIE content would be tested only once.

The proposed rule change solely impacts the representative-level qualification requirements. The proposed rule change does not change the scope of the activities under the remaining representative categories. For instance, after the operative date of the proposed rule change, a previously unregistered individual registering as a Securities Trader for the first time would be required to pass the SIE and an appropriate specialized knowledge examination. However, such individual may engage only in those activities in which a current Securities Trader may engage under current Exchange Rules.

Individuals who are registered on the operative date of the proposed rule change would be eligible to maintain those registrations without being subject to any additional requirements. Individuals who had been registered within the past two years prior to the operative date of the proposed rule change would also be eligible to maintain those registrations without being subject to any additional requirements, provided that they reregister with the Exchange within two years from the date of their last registration.

Further, registered representatives, other than an individual registered as an Order Processing Assistant Representative, would be considered to have passed the SIE in the CRD system, and thus if they wish to register in any other representative category after the operative

Further, this approach would allow for more flexibility and career mobility within the securities industry. While all associated persons of firms as well as individuals who are not associated persons would be eligible to take the SIE pursuant to proposed Rule 1210.03, passing the SIE alone would not qualify them for registration with the Exchange. Rather, to be eligible for registration with the Exchange, an individual would be required to pass an applicable representative or principal qualification examination and complete the other requirements of the registration process.

date of the proposed rule change, they could do so by taking only the appropriate specialized knowledge examination.²³ However, with respect to an individual who is not registered on the operative date of the proposed rule change but was registered within the past two years prior to the operative date of the proposed rule change, the individual's SIE status in the CRD system would be administratively terminated if such individual does not register within four years from the date of the individual's last registration.²⁴

In addition, individuals, with the exception of Order Processing Assistant Representatives, who had been registered as representatives two or more years, but less than four years, prior to the operative date of the proposed rule change would also be considered to have passed the SIE and designated as such in the CRD system. Moreover, if such individuals re-register with a firm after the operative date of the proposed rule change and within four years of having been previously registered, they would only need to pass the specialized knowledge examination associated with that registration position. However, if they do not register within four years from the date of their last registration, their SIE status in the CRD system would be administratively terminated. Similar to the current process for registration, firms would continue to use the CRD system to request registrations for representatives. An individual would be able to schedule both the SIE and specialized knowledge examinations for the same day, provided the individual is able to reserve space at one of FINRA's designated testing centers.

²³ Under the proposed rule change, only individuals who have passed an appropriate representative-level examination would be considered to have passed the SIE. Registered principals who do not hold an appropriate representative-level registration would not be considered to have passed the SIE. For example, an individual who is registered solely as a Financial and Operations Principal (Series 27) today would have to take the Series 7 to become registered as a General Securities Representative. Under the proposed rule change, in the future, this individual would have to pass the SIE and the specialized Series 7 examination to obtain registration as a General Securities Representative.

²⁴ As discussed below, the Exchange is proposing a four-year expiration period for the SIE.

Finally, paragraph (d) of Rule 1070 currently permits the Exchange, in exceptional cases and where good cause is shown, to waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications for registration. The Exchange is proposing to transfer the provisions of Rule 1070(d) into proposed Rule 1210.03 with changes which track FINRA Rule 1210.03.²⁵ The proposed rule provides that the Exchange will only consider examination waiver requests submitted by a firm for individuals associated with the firm who are seeking registration in a representative- or principal-level registration category. Moreover, proposed Rule 1210.03 states that the Exchange will consider waivers of the SIE alone or the SIE and the representative- and principal-level examination(s) for such individuals.

E. Requirements for Registered Persons Functioning as Principals for a Limited Period (Proposed Rule 1210.04)

Exchange Rule 1021(d) provides that a person who is currently registered with a member as a representative and whose duties are changed by the member so as to require registration as a principal may function as a principal for up to 90 calendar days before he or she is required to pass the appropriate qualification examination for principal. In addition, it allows a formerly registered representative who is required to register as a principal to function as a principal without passing the appropriate principal qualification examination for up to 90 calendar days, provided the person first satisfies all applicable prerequisite requirements. A person who has never been registered does not qualify for this exception. This provision applies to a person associated with a member of another registered national securities exchange or association who is required to register in a principal classification under Exchange rules but who is not required to be so registered under the rules of the other exchange or association. It also applies to a

²⁵ Rules 1070(a), (b) and (c) provide general information relating to the examination process. The Exchange is proposing to delete these provisions given that they relate to the administration of the examination program rather than rule requirements.

person associated with an Exchange member who was not required to register with the Exchange as a principal prior to the adoption of Rule 1021 by the Exchange.

The Exchange is proposing to adopt Rule 1021(d) as Rule 1210.04, subject to the following changes. Proposed Rule 1210.04 states that a member may designate any person currently registered, or who becomes registered, with the member as a representative to function as a principal for a limited period, provided that such person has at least 18 months of experience functioning as a registered representative within the five-year period immediately preceding the designation. This change is intended to ensure that representatives designated to function as principals for the limited period under the proposed rule have an appropriate level of registered representative experience. The proposed rule clarifies that the requirements of the rule apply to any principal category, including those categories that are not subject to a prerequisite representative-level registration requirement, such as the Financial and Operations Principal registration category.²⁶ The Exchange is not conserving in Rule 1210.04 the language that this provision applies to persons associated with a member of another registered national securities exchange or association who are required to register as principals under Exchange rules but who are not required to be so registered under the rules of the other exchange or association. Similarly, it is not conserving the language concerning individuals not required to register as principal prior to adoption of the rule. The Exchange believes this language is superfluous, as the applicability to various individuals of proposed Rule 1210.04 speaks for itself and requires

²⁶ In this regard, the Exchange notes that qualifying as a registered representative is currently a prerequisite to qualifying as a principal on the Exchange except with respect to the Financial and Operations Principal registration category.

no elaboration.²⁷ Proposed Rule 1210.04 would increase the Rule 1021(d)'s 90 day period to 120 days, to provide additional flexibility for representatives functioning as principals for a limited period of time.

F. Rules of Conduct for Taking Examinations and Confidentiality of Examinations
(Proposed Rule 1210.05)

Before taking an examination, FINRA currently requires each candidate to agree to the Rules of Conduct for taking a qualification examination. Among other things, the examination Rules of Conduct require each candidate to attest that he or she is in fact the person who is taking the examination. These Rules of Conduct also require that each candidate agree that the examination content is the intellectual property of FINRA and that the content cannot be copied or redistributed by any means. If FINRA discovers that a candidate has violated the Rules of Conduct for taking a qualification examination, the candidate may forfeit the results of the examination and may be subject to disciplinary action by FINRA. For instance, for cheating on a qualifications examination, FINRA's Sanction Guidelines recommend a bar.²⁸

Effective October 1, 2018 FINRA has codified the requirements relating to the Rules of Conduct for examinations under FINRA Rule 1210.05. FINRA also adopted Rules of Conduct for taking the SIE for associated persons and non-associated persons who take the SIE.

The Exchange proposes to adopt its own version of Rule 1210.05, which would provide that associated persons taking the SIE are subject to the SIE Rules of Conduct, and that associated persons taking any representative or principal examination are subject to the Rules of Conduct for representative and principal examinations. Under the proposed rule, a violation of

²⁷ Proposed Rule 1210.04 omits FINRA Rule 1210.04's reference to Foreign Associates, which is a registration category not recognized by the Nasdaq Affiliated Exchanges, but otherwise tracks the language of FINRA Rule 1210.04.

²⁸ See SR-FINRA-2017-007, pp. 26 – 27.

the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations by an associated person would be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade, such as Exchange Rule 2110.²⁹ Further, if the Exchange determines that an associated person has violated the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations, the associated person may forfeit the results of the examination and may be subject to disciplinary action by the Exchange.

Proposed Rule 1210.05 states that the Exchange considers all of the qualification examinations content to be highly confidential. The removal of examination content from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such qualification examination or any other use that would compromise the effectiveness of the examinations and the use in any manner and at any time of the questions or answers to the examinations would be prohibited and would be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade. Finally, proposed Rule 1210.05 would prohibit an applicant from receiving assistance while taking the examination, and require the applicant to certify that no assistance was given to or received by him or her during the examination.³⁰

²⁹ Pursuant to Exchange Rule 2110, a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade. FINRA Rule 1210.05 cites FINRA Rule 2010, which is a comparable rule.

³⁰ In view of proposed Rule 1210.05, the Exchange is proposing to delete Rule 1080 which is largely duplicative. The Exchange is not adopting portions of FINRA's Rule 1210.05 which apply to non-associated persons, over whom the Exchange would in any event have no jurisdiction.

G. Waiting Periods for Retaking a Failed Examination (Proposed Rule 1210.06)

Rule 1070(e) currently sets forth waiting periods for retaking failed examinations. The rule provides that a person who fails a qualification examination would be permitted to retake the examination after either a period of 30 calendar days has elapsed from the date of the prior examination or the next administration of an examination administered on a monthly basis. However, if the person fails an examination three or more times in succession, he or she would be prohibited from retaking the examination either until a period of 180 calendar days has elapsed from the date of his or her last attempt to pass the examination or until the sixth subsequent administration of an examination administered on a monthly basis. The Exchange is proposing to adopt Rule 1070(e) as Rule 1210.06, with the following changes.

Proposed Rule 1210.06 provides that a person who fails an examination may retake that examination after 30 calendar days from the date of the person's last attempt to pass that examination. The proposed rule deletes the reference to examinations administered on a monthly basis because examinations are no longer administered in such a manner.

Proposed Rule 1210.06 further provides that if a person fails an examination three or more times in succession within a two-year period, the person is prohibited from retaking that examination until 180 calendar days from the date of the person's last attempt to pass it. These waiting periods would apply to the SIE and the representative- and principal-level examinations.³¹

³¹ FINRA Rule 1210.06 requires individuals taking the SIE who are not associated persons to agree to be subject to the same waiting periods for retaking the SIE. The Exchange is not including this language in proposed Rule 1210.06, as the Exchange will not apply the 1200 Series of rules in any event to individuals who are not associated persons of members.

H. CE Requirements (Proposed Rule 1210.07)

Pursuant to current Rule 1120, the CE requirements applicable to registered persons consist of a Regulatory Element³² and a Firm Element.³³ The Regulatory Element applies to registered persons and must be completed within prescribed time frames.³⁴ For purposes of the Regulatory Element, a “registered person” is defined in the current rule as any person registered with the Exchange as a representative or principal.³⁵ The Firm Element consists of annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the member. For purposes of the Firm Element, the term “covered registered persons” is defined as any registered person who has direct contact with customers in the conduct of the member’s securities sales, trading and investment banking activities, and the immediate supervisors of such persons.³⁶

The Exchange proposes to delete Rule 1120 and to replace it with Rule 1240, Continuing Education Requirements. The Exchange believes that all registered persons, regardless of their

³² See Rule 1120(a).

³³ See Rule 1120(b).

³⁴ Pursuant to Rule 1120(a), each registered person is required to complete the Regulatory Element initially within 120 days after the person’s second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date. Unless otherwise determined by the Exchange, a registered person who has not completed the Regulatory Element program within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under Rule 1120(a) must cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. A registration that is inactive for a period of two years will be administratively terminated. A person whose registration is so terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Exchange’s rules. The Exchange may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

³⁵ See Rule 1120(a)(5).

³⁶ See Rule 1120(b)(1).

activities, should be subject to the Regulatory Element of the CE requirements so that they can keep their knowledge of the securities industry current. Therefore, the Exchange is proposing Rule 1210.07, to clarify that all registered persons, including those who solely maintain a permissive registration, are required to satisfy the Regulatory Element, as specified in proposed Rule 1240. Individuals who have passed the SIE but not a representative or principal-level examination and do not hold a registered position would not be subject to any CE requirements.

Consistent with current practice, proposed Rule 1210.07 also provides that a registered person of a member who becomes CE inactive would not be permitted to be registered in another registration category with that member or be registered in any registration category with another member, until the person has satisfied the Regulatory Element.

I. Lapse of Registration and Expiration of SIE (Proposed Rule 1210.08)

Rule 1021(c) currently states that any person whose registration has been revoked pursuant to Rule 8310³⁷ or whose most recent registration as a principal has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application is required to pass a qualification examination for principals appropriate to the category of registration as specified in Rule 1022. Pursuant to Rule 1031(b), any person whose registration has been revoked pursuant to Rule 8310 or whose most recent registration as a representative or principal has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application is required to pass a qualification examination for representatives appropriate to the category of registration as

³⁷ Under Rule 8310(a)(3), the Exchange may impose one or more sanctions on a member or person associated with a member for each violation of the federal securities laws, rules or regulations thereunder, or Exchange rules, including suspending the membership of a member or suspending the registration of a person associated with a member for a definite period or a period contingent on the performance of a particular act.

specified in Rule 1032. The two years are calculated from the termination date stated on the individual's Form U5 (Uniform Termination Notice for Securities Industry Registration) and the date the Exchange receives a new application for registration.

The Exchange is proposing to consolidate the requirements of Rules 1021(c) and 1031(b) and adopt them as Rule 1210.08. Proposed Rule 1210.08 clarifies that, for purposes of the proposed rule, an application would not be considered to have been received by the Exchange if that application does not result in a registration.

Proposed Rule 1210.08 also sets forth the expiration period of the SIE. Based on the content covered on the SIE, the Exchange is proposing that a passing result on the SIE be valid for four years. Therefore, under the proposed rule change, an individual who passes the SIE and is an associated person of a firm at the time would have up to four years from the date he or she passes the SIE to pass a representative-level examination to register as a representative with that firm, or a subsequent firm, without having to retake the SIE. In addition, an individual who passes the SIE and is not an associated person at the time would have up to four years from the date he or she passes the SIE to become an associated person of a firm, pass a representative-level examination and register as a representative without having to retake the SIE.

Moreover, an individual holding a representative-level registration who leaves the industry after the operative date of the proposed rule change would have up to four years to re-associate with a firm and register as a representative without having to retake the SIE. However, the four-year expiration period in the proposed rule change extends only to the SIE, and not the representative- and principal-level registrations. The representative- and principal-level registrations would continue to be subject to a two year expiration period as is the case today.

J. Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member (Proposed Rule 1210.09)

The Exchange is proposing Rule 1210.09 to provide a process whereby individuals who would be working for a financial services industry affiliate of a member³⁸ would terminate their registrations with the member and would be granted a waiver of their requalification requirements upon re-registering with a member, provided the firm that is requesting the waiver and the individual satisfy the criteria for a Financial Services Affiliate (“FSA”) waiver.³⁹ The purpose of the FSA waiver is to provide a firm greater flexibility to move personnel, including senior and middle management, between the firm and its financial services affiliate(s) so that they may gain organizational skills and better knowledge of products developed by the affiliate(s) without the individuals having to requalify by examination each time they returned to the firm.

Under the proposed waiver process, the first time a registered person is designated as eligible for a waiver based on the FSA criteria, the member with which the individual is registered would notify the Exchange of the FSA designation. The member would concurrently file a full Form U5 terminating the individual’s registration with the firm, which would also terminate the individual’s other SRO and state registrations.

To be eligible for initial designation as an FSA-eligible person by a member, an individual must have been registered for a total of five years within the most recent 10-year

³⁸ Proposed Rule 1210.09 defines a “financial services industry affiliate of a member” as a legal entity that controls, is controlled by or is under common control with a member and is regulated by the SEC, Commodity Futures Trading Commission (“CFTC”), state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

³⁹ There is no counterpart to proposed Rule 1210.09 in the Exchange’s existing rules. FINRA Rule 1210.09 was recently adopted as a new waiver process for FINRA registrants, as part of the FINRA Rule Changes.

period prior to the designation, including for the most recent year with that member.⁴⁰ An individual would have to satisfy these preconditions only for purposes of his or her initial designation as an FSA-eligible person, and not for any subsequent FSA designation(s). Thereafter, the individual would be eligible for a waiver for up to seven years from the date of initial designation⁴¹ provided that the other conditions of the waiver, as described below, have been satisfied. Consequently, a member other than the member that initially designated an individual as an FSA-eligible person may request a waiver for the individual and more than one member may request a waiver for the individual during the seven-year period.⁴²

⁴⁰ For purposes of this requirement, a five year period of registration with the Exchange, with FINRA or with another self-regulatory organization would be sufficient.

⁴¹ Individuals would be eligible for a single, fixed seven-year period from the date of initial designation, and the period would not be tolled or renewed.

⁴² The following examples illustrate this point:

Example 1. Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate. Firm A does not submit a waiver request for the individual. After working for Firm A's financial services affiliate for three years, the individual directly joins Firm B's financial services affiliate for three years. Firm B then submits a waiver request to register the individual.

Example 2. Same as Example 1, but the individual directly joins Firm B after working for Firm A's financial services affiliate, and Firm B submits a waiver request to register the individual at that point in time.

Example 3. Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate for three years. Firm A then submits a waiver request to reregister the individual. After working for Firm A in a registered capacity for six months, Firm A re-designates the individual as an FSA-eligible person by notifying FINRA and files a Form U5. The individual rejoins Firm A's financial services affiliate for two years, after which the individual directly joins Firm B's financial services affiliate for one year. Firm B then submits a waiver request to register the individual.

Example 4. Same as Example 3, but the individual directly joins Firm B after the second period of working for Firm A's financial services affiliate, and Firm B submits a waiver request to register the individual at that point in time.

An individual designated as an FSA-eligible person would be subject to the Regulatory Element of CE while working for a financial services industry affiliate of a member. The individual would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. If the individual fails to complete the prescribed Regulatory Element during the 120-day window for taking the session, he or she would lose FSA eligibility (i.e., the individual would have the standard two-year period after termination to re-register without having to retake an examination). The Exchange is making corresponding changes to proposed Rule 1240 (currently Rule 1120, Continuing Education).

Upon registering an FSA-eligible person, a firm would file a Form U4 and request the appropriate registration(s) for the individual. The firm would also submit an examination waiver request to the Exchange,⁴³ similar to the process used today for waiver requests, and it would represent that the individual is eligible for an FSA waiver based on the conditions set forth below. The Exchange would review the waiver request and make a determination of whether to grant the request within 30 calendar days of receiving the request. The Exchange would summarily grant the request if the following conditions are met:

(1) Prior to the individual's initial designation as an FSA-eligible person, the individual was registered for a total of five years within the most recent 10- year period, including for the most recent year with the member that initially designated the individual as an FSA-eligible person;

⁴³ The Exchange would consider a waiver of the representative-level qualification examination(s), the principal-level qualification examination(s) and the SIE, as applicable.

(2) The waiver request is made within seven years of the individual's initial designation as an FSA-eligible person by a member;

(3) The initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5;

(4) The individual continuously worked for the financial services affiliate(s) of a member since the last Form U5 filing;

(5) The individual has complied with the Regulatory Element of CE; and

(6) The individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4, and has not otherwise been subject to a statutory disqualification while the individual was designated as an FSA-eligible person with a member.

Following the Form U5 filing, an individual could move between the financial services affiliates of a member so long as the individual is continuously working for an affiliate. Further, a member could submit multiple waiver requests for the individual, provided that the waiver requests are made during the course of the seven-year period.⁴⁴ An individual who has been designated as an FSA-eligible person by a member would not be able to take additional examinations to gain additional registrations while working for a financial services affiliate of a member.

⁴⁴ For example, if a member submits a waiver request for an FSA-eligible person who has been working for a financial services affiliate of the member for three years and re-registers the individual, the member could subsequently file a Form U5 and re-designate the individual as an FSA-eligible person. Moreover, if the individual works with a financial services affiliate of the member for another three years, the member could submit a second waiver request and re-register the individual upon returning to the member.

K. Status of Persons Serving in the Armed Forces of the United States (Proposed Rule 1210.10)

IM-1002-2(a) and (b) currently provide specific relief to registered persons serving in the Armed Forces of the United States. Among other things, these rules permit a registered person of a member who volunteers for or is called into active duty in the Armed Forces of the United States to be registered in an inactive status and remain eligible to receive ongoing transaction-related compensation. IM-1002-2(c) also includes specific provisions regarding the deferment of the lapse of registration requirements in Exchange Rules 1021(c) and 1031(b) for formerly registered persons serving in the Armed Forces of the United States.

The Exchange is proposing to adopt IM-1002-2 as Rule 1210.10 with the following changes. To enhance the efficiency of the current notification process for registered persons serving in the Armed Forces, proposed Rule 1210.10 requires that the member with which such person is registered promptly notify the Exchange of such person's return to employment with the member. A sole proprietor must similarly notify the Exchange of his or her return to participation in the securities business. Further, proposed Rule 1210.10 provides that the Exchange would also defer the lapse of the SIE for formerly registered persons serving in the Armed Forces of the United States.⁴⁵

L. Impermissible Registrations (Proposed Rule 1210.11)

Rules 1021(a) and 1031(a) currently prohibit a member from maintaining a representative or principal registration with the Exchange for any person who is no longer active in the

⁴⁵ Proposed Rule 1210.10 tracks FINRA Rule 1210.10 except for the statement that inactive registered persons are not to be included within the definition of "Personnel" for purposes of dues or assessments as provided in Article VI of the FINRA By-Laws. Instead, proposed Rule 1210.10 conserves language from existing IM-1002-2 stating that inactive persons under the rule are not included within the scope of fees, if any, charged by the Exchange with respect to registered persons.

member's investment banking or securities business, who is no longer functioning as a representative or principal as defined under the rules or where the sole purpose is to avoid the requalification requirement applicable to persons who have not been registered for two or more years. These rules also prohibit a member from applying for the registration of a person as representative or principal where the member does not intend to employ the person in its investment banking or securities business. These prohibitions do not apply to the current permissive registration categories.

In light of proposed Rule 1210.02, the Exchange is proposing to delete these provisions and instead adopt Rule 1210.11 prohibiting a member from registering or maintaining the registration of a person unless the registration is consistent with the requirements of proposed Rule 1210.⁴⁶

M. Registration Categories (Proposed Rule 1220)

The Exchange is proposing to integrate the various registration categories and related definitions under the Exchange's rules into a single rule, Rule 1220, subject to the changes described below.⁴⁷

1. Definition of Principal (Proposed Rule 1220(a)(1))

Rule 1021(b) currently defines the term "principal" to include sole proprietors, officers, partners, managers of offices of supervisory jurisdiction and directors who are actively engaged in the management of the member's investment banking or securities business, such as

⁴⁶ As discussed above, the Exchange is also proposing Rule 1210, Supplementary Material .12, Application for Registration and Jurisdiction, which is not included in FINRA Rule 1210. Proposed Exchange Rule 1210, Supplementary Material .12, is based upon portions of existing Exchange Rule 1031.

⁴⁷ For ease of reference, the Exchange proposes to adopt as Rule 1220, Supplementary Material .07, in chart form, a Summary of Qualification Requirements in chart form for each of the Exchange's permitted registration categories discussed below.

supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions. The Exchange is proposing to streamline and adopt Rule 1021(b) as Rule 1220(a)(1).

For the reason discussed above in connection with proposed Rule 1210, proposed Rule 1220(a)(1) would not apply to individuals who are not engaged in the management of the member's securities business even if they are engaged in the management of the member's investment banking business. The proposed rule clarifies that a member's chief executive officer ("CEO") and chief financial officer ("CFO") (or equivalent officers) are considered principals based solely on their status. The proposed rule further clarifies that the term "principal" includes any other associated person who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules. In addition, the proposed rule provides that the phrase "actively engaged in the management of the member's securities business" includes the management of, and the implementation of corporate policies related to, such business as well as managerial decision-making authority with respect to the member's securities business and management-level responsibilities for supervising any aspect of such business, such as serving as a voting member of the member's executive, management or operations committees.

2. General Securities Principal (Proposed Rule 1220(a)(2))

Rule 1022(a)(1) currently requires that an associated person who meets the definition of "principal" under Rule 1021 and each person designated as Chief Compliance Officer ("CCO") on Schedule A of the member's Form BD (Uniform Application for Broker-Dealer Registration) register as a General Securities Principal. A person registering as a General Securities Principal must pass the General Securities Principal examination. The rule, however, provides that such person is not required to register as a General Securities Principal if the person's activities are so

limited as to qualify such person for one or more of the limited principal categories specified in Rule 1022. Further, the rule does not preclude individuals registered in a limited principal category from registering as General Securities Principals. Rule 1022(a)(1) also includes transitioning and grandfathering provisions for CCO's.

Rule 1022(a)(1) provides that a person seeking to register as a General Securities Principal must satisfy the General Securities Representative prerequisite registration. Rule 1022(a)(3) includes a grandfathering provision for persons who were registered as principals before the adoption of the General Securities Principal registration category. Rule 1022(a)(4) provides that an associated person registered solely as a General Securities Principal is not qualified to function as a Financial and Operations Principal, General Securities Sales Supervisor or Securities Trader Principal unless the General Securities Principal is also registered in these other categories.

The Exchange is proposing to streamline the provisions of Rule 1022(a) and adopt them as Rule 1220(a)(2) with the following changes.

The Exchange is proposing to more clearly set forth the obligation to register as a General Securities Principal. Specifically, proposed Rule 1220(a)(2)(A) states that each principal as defined in proposed Rule 1220(a)(1) is required to register with the Exchange as a General Securities Principal, subject to the following exceptions. The proposed rule provides that if a principal's activities are limited to the functions of a Compliance Official, a Financial and Operations Principal, a Securities Trader Principal, a Securities Trader Compliance Officer, or a Registered Options Principal, then the principal shall appropriately register in one or more of

these categories.⁴⁸ Proposed Rule 1220(a)(2)(A) further provides that if a principal's activities are limited solely to the functions of a General Securities Sales Supervisor, then the principal may appropriately register in that category in lieu of registering as a General Securities Principal, provided that if the principal is engaged in options sales activities he or she shall be required to register as a General Securities Sales Supervisor or as a Registered Options Principal.⁴⁹

Proposed Rule 1220(a)(2)(B) requires that an individual registering as a General Securities Principal satisfy the General Securities Representative prerequisite registration and pass the General Securities Principal qualification examination.

In conjunction with the elimination of the Corporate Securities Representative registration category by FINRA, the Exchange is proposing that Rule 1220(a)(2)(B) provide that, subject to the lapse of registration provisions in proposed Rule 1210.08, General Securities Principals who obtained the Corporate Securities Representative prerequisite registration on the Exchange in lieu of the General Securities Representative prerequisite registration and individuals who had been registered as such within the past two years prior to the operative date of the proposed rule change, may continue to supervise corporate securities activities as currently permitted.⁵⁰ Proposed Rule 1220(a)(2)(B) requires all other individuals registering as General

⁴⁸ The Exchange is proposing to recognize the Compliance Official and Securities Trader Compliance Officer registration categories for the first time as a result of this proposed rule change.

⁴⁹ The Exchange's proposed Rule 1220(a)(2)(A) deviates somewhat from the counterpart FINRA rule in that it does not offer various limited registration categories provided for in FINRA's new Rule 1220(a)(2)(A).

⁵⁰ The Exchange itself does not recognize the Corporate Securities Representative registration category, but understands that FINRA and Nasdaq currently accept Corporate Securities Representative registration as a prerequisite to General Securities Principal registration.

Securities Principals after October 1, 2018, to first become registered as a General Securities Representative pursuant to Rule 1220(b)(2).⁵¹

The Exchange is also proposing to eliminate the grandfathering provision for individuals who were registered as principals prior to the adoption of the General Securities Principal registration category because it no longer has any practical application. Finally, the Exchange is proposing to delete the provision that persons eligible for registration in other principal categories are not precluded from registering as General Securities Principals because it is superfluous.⁵²

3. Compliance Official (Proposed Rule 1220(a)(3))

The Exchange is proposing to adopt Rule 1022(a)(1)'s CCO registration requirement as Rule 1220(a)(3), subject to the following changes.

Specifically, proposed Rule 1220(a)(3) provides that each person designated as a Chief Compliance Officer on Schedule A of Form BD shall be required to register with the Exchange

⁵¹ The Exchange is not adopting the FINRA Rule 1220(a)(2)(B) language permitting an individual registering as a General Securities Principal after October 1, 2018 to register as a General Securities Sales Supervisor and to pass the General Securities Principal Sales Supervisor Module qualification examination. The Exchange believes that individuals registering as General Securities Principals should be required to demonstrate their competence for that role by passing the General Securities Principal qualification examination.

⁵² Proposed Rule 1220(a)(2) generally tracks FINRA Rule 1220(a)(2), except that it omits references to a number of registration categories which FINRA recognizes but that the Exchange does not, and it includes a reference to the Securities Trader Compliance Officer category which the Exchange proposes to recognize, but which FINRA does not. Additionally, proposed Rule 1220(a)(2)(A)(i) extends that provision's exception to the General Securities Principal registration requirement to certain principals whose activities are "limited to" (rather than "include") the functions of a more limited principal. The Exchange believes that activities "limited to" expresses the intent of that exception more accurately than activities that "include." Finally, proposed Rule 1220(a)(2)(B) specifies that registration as a Corporate Securities Representative must be with the Exchange in order to fulfill the Corporate Securities Representative registration prerequisite for General Securities Principal registration pursuant to that rule.

as a General Securities Principal, provided that such person may instead register as a Compliance Official if his or her duties do not include supervision of trading. All individuals registering as Compliance Official shall, prior to or concurrent with such registration, pass the Compliance Official qualification examination. An individual designated as a Chief Compliance Officer on Schedule A of Form BD of a member that is engaged in limited securities business could also be registered in a principal category under Rule 1220(a) that corresponds to the limited scope of the member's business.

Additionally, proposed Rule 1220(a)(3) provides that an individual designated as a Chief Compliance Officer on Schedule A of Form BD may register and qualify as a Securities Trader Compliance Officer if, with respect to transactions in equity, preferred or convertible debt securities, or options such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with a member. All individuals registering as Securities Trader Compliance Officers would be required to first become registered pursuant to paragraph (b)(4) as a Securities Trader, and to pass the Compliance Official qualification exam.⁵³

⁵³ Proposed Rule 1220(a)(3) differs from FINRA Rule 1220(a)(3), Compliance Officer. The Exchange does not recognize the Compliance Officer registration category. Similarly, FINRA does not recognize the Compliance Official or the Securities Trader Compliance Officer registration categories which the Exchange proposes to recognize. However, FINRA Rule 1220(a)(3), like proposed Rule 1220(a)(3), offers an exception pursuant to which a Chief Compliance Officer designated on Schedule A of Form BD may register in a principal category that corresponds to the limited scope of the member's business.

4. Financial and Operations Principal, [sic] (Proposed Rule 1220(a)(4))

Rule 1022(b)(1) currently provides that every member operating pursuant to the provisions of SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), shall designate as Limited Principal—Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who performs [sic] the duties described in Rule 1022(b)(2).⁵⁴ Each person associated with a member who performs such duties is required to register as a Limited Principal—Financial and Operations with the Exchange and pass an appropriate qualification examination before such registration may become effective. A person registered solely as a Limited Principal—Financial and Operations is not qualified to function in a principal capacity with responsibility over any area of business activity not described in 1022(b)(2).

Financial and Operations Principals are not subject to a prerequisite representative registration, but they must pass the Financial and Operations Principal examination.

The Exchange is proposing to move the provisions in Rules 1022(b) regarding Financial and Operations Principals to Rule 1220(a)(4)(A), substituting the word “and” for the current word “or” found in Rule 1022(b)(2)(F) in order to conform to FINRA Rule 1220(a)(4)(A) in describing the duties of a Financial and Operations Principal.⁵⁵

⁵⁴ These duties include (A) final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; (B) final preparation of such reports; (C) supervision of individuals who assist in the preparation of such reports; (D) supervision of and responsibility for individuals who are involved in the actual maintenance of the member’s books and records from which such reports are derived; (E) supervision and/or performance of the member’s responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; (F) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member’s back office operations; or (G) any other matter involving the financial and operational management of the member.

⁵⁵ FINRA Rule 1220(a)(4) differs from proposed Rule 1220(a)(4) in that it includes an Introducing Broker-Dealer Financial and Operations Principal registration requirement. Additionally, proposed Rule 1220(a)(4) contains a requirement, which the FINRA rule

5. Investment Banking Principal (Proposed Rule 1220(a)(5))

The Exchange does not recognize the Investment Banking Principal registration category and is reserving Rule 1220(a)(5), retaining the caption solely to facilitate comparison with FINRA's rules.

6. Research Principal (Proposed Rule 1220(a)(6))

The Exchange does not recognize the Research Principal registration category and is reserving Rule 1220(a)(6), retaining the caption solely to facilitate comparison with FINRA's rules.

7. Securities Trader Principal (Proposed Rule 1220(a)(7))

Existing Rule 1022(h) requires each person associated with a member who is included within the definition of principal and who will have supervisory responsibility over the securities trading activities described in Rule 1032(b) to register as a Securities Trader Principal. To qualify for registration as a Securities Trader Principal, such person must become qualified and registered as a Securities Trader under Rule 1032(b) and pass the General Securities Principal qualification examination. A person who is qualified and registered as a Securities Trader Principal under Rule 1022(h) may only have supervisory responsibility over the Securities Trader activities specified in Rule 1032(b), unless such person is separately qualified and registered in another appropriate principal registration category, such as the General Securities Principal registration category. Conversely, a person who is registered as a General Securities Principal may not supervise the trading activities described in Rule 1032(b) unless such person

does not, that each person associated with a member who performs the duties of a Financial and Operations Principal must register as such with the Exchange. Further, as discussed above, the Exchange is not adopting a Principal Financial Officer or Principal Operations Officer requirement like FINRA Rule 1220(a)(4)(B), as it believes the Financial and Operations Principal requirement is sufficient. Finally, proposed Rule 1220(a)(4)(B)(v) and (vi) contain minor wording variations from the FINRA rule.

has also become qualified and registered as a Securities Trader under Rule 1032(b) by passing the Securities Trader qualification examination and registering as a Securities Trader Principal.

The Exchange is proposing to delete Rule 1022(h) and to adopt in its place Rule 1220(a)(7), Securities Trader Principal. Similar to the current rule, proposed Rule 1220(a)(7) requires that a principal responsible for supervising the securities trading activities specified in proposed Rule 1220(b)(4)⁵⁶ register as a Securities Trader Principal. The proposed rule requires individuals registering as Securities Trader Principals to be registered as Securities Traders and to pass the General Securities Principal qualification examination.

8. Registered Options Principal (Proposed Rules 1220(a)(8))

Chapter II, Section 2(g) of the rulebook currently requires that members engaged in security futures or options transactions with public customers have at least one Registered Options and Security Futures Principal. It also provides that every person engaged in the supervision of options and security futures sales practices shall be registered as a Registered Options and Security Futures Principal and pass the appropriate qualification examination for Registered Options and Security Futures Principal, or an equivalent examination acceptable to the Exchange. Further, each person required to register and qualify as a Registered Options and Security Futures Principal must, prior to or concurrent with such registration, be or become qualified pursuant to the Rule 1030 Series, as either a General Securities Representative or a Limited Representative—Corporate Securities and a Registered Options and Security Futures Representative. The rule provides that a person registered solely as a Registered Options and Security Futures Principal is not qualified to function in a principal capacity with responsibility over any area of business activity not prescribed in Chapter II, Section 2(g). Chapter II, Section

⁵⁶ Proposed Rule 1220(b)(4), discussed below, provides for representative-level registration in the “Securities Trader” category.

2(g)(5) provides that any person who is registered as a Registered Options and Security Futures Principal, or who becomes registered as a Registered Options and Security Futures Principal before a revised examination that includes security futures products is offered, must complete a firm-element continuing education program that addresses security futures and a principal's responsibilities for security futures before such person can supervise security futures activities. Finally, Chapter II, Section 2 of the Exchange's options rules further requires that members that have one Registered Options Principal promptly notify the Exchange and agree to specified conditions if such person is terminated, resigns, becomes incapacitated or is otherwise unable to perform his or her duties.

The Exchange is proposing to adopt Chapter II, Section (2)(g) as Rule 1220(a)(8), Registered Options Principal, with certain changes. The registration category would now be titled Registered Options Principal, rather than Registered Options and Security Futures Principal.⁵⁷ All references to a revised examination that includes security futures products would be deleted. Instead, Rule 1220(b), Supplementary Material .02 will simply provide that each person who is registered with the Exchange as a Registered Options Principal (or as a General Securities Representative, Options Representative, or General Securities Sales Supervisor) shall be eligible to engage in security futures activities as a principal, as applicable, provided that such individual completes a Firm Element program as set forth in proposed Rule 1240 that addresses security futures products before such person engages in security futures activities.⁵⁸

⁵⁷ FINRA has also shortened references to "Registered Options and Security Futures Principal" in its rulebook to "Registered Options Principal". See Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (SR-FINRA-2008-032).

⁵⁸ Unlike FINRA Rule 1220.02, proposed Exchange Rule 1220.02 omits references to United Kingdom Securities Representatives and Canada Securities Representatives,

Proposed Rule 1220(a)(8) provides that a General Securities Sales Supervisor may also supervise options activities. Rule 1220(b), Supplementary Material .02 regarding security futures activities will apply to General Securities Sales Supervisors as well as to Registered Options Principals.⁵⁹

Further, as discussed below, the Exchange is proposing to eliminate the Options Representative and Corporate Securities Representative registration categories. In conjunction with these changes, the Exchange is proposing to eliminate registration as an Options Representative from the prerequisite choices in the current rule. Consequently, a person registering as a Registered Options Principal under proposed Rule 1220(a)(8) would be required to satisfy the General Securities Representative prerequisite registration.⁶⁰

Finally, the Exchange is proposing to adopt the Chapter II, Section 2 provisions regarding the loss of a sole Registered Options Principal with non-substantive changes as Supplementary Material .03 of Rule 1220.⁶¹

which are registration categories the Exchange does not recognize. In any case, the Exchange does not currently offer security futures products for trading.

⁵⁹ Rule 1220(b), Supplementary Material .02 regarding security futures activities will also apply to General Securities Representatives and to Options Representatives.

⁶⁰ Proposed Rule 1220(a)(8) differs from FINRA Rule 1220(a)(8) in that it omits certain references to other specific FINRA rules.

⁶¹ Chapter XI, Doing Business with the Public, at Section 2(a) provides that no order entry firm (“OEF”) shall be approved to transact options business with the public until those associated persons who are designated as Options Principals have been approved by and registered with the Exchange. Persons engaged in the management and supervision of the OEF’s business pertaining to options contracts must be designated as Options Principals and shall have responsibility for the overall oversight of the OEF’s options related activities on the Exchange. Similarly, Chapter XI, Sections 3(a) and (b) provide [sic] that no OEF shall be approved to transact business with the public until those persons associated with it who are designated representatives have been approved by and registered with the Exchange, and also that persons who perform duties for the OEF which are customarily performed by sales representatives or branch office managers shall be designated as representatives of the OEF. The foregoing provisions of Chapter XI are

9. Government Securities Principal (Rule 1220(a)(9))

The Exchange does not recognize the Government Securities Principal registration category and is reserving Rule 1220(a)(9), retaining the caption solely to facilitate comparison with FINRA's rules.

10. General Securities Sales Supervisor (Proposed Rules 1220(a)(10) and 1220.04)

Pursuant to Exchange Rule 1022(g), each associated person of a member who is included within the definition of "principal" in Rule 1021 may register as a Limited Principal - General Securities Sales Supervisor, instead of separately registering in multiple principal registration categories,⁶² if the individual's supervisory responsibilities are limited solely to securities sales activities. A person registering as a Limited Principal - General Securities Sales Supervisor must satisfy the General Securities Representative prerequisite registration and pass the General Securities Sales Supervisor examinations.⁶³ Moreover, a General Securities Sales Supervisor is precluded from performing any of the following activities: (1) supervision of the origination and structuring of underwritings; (2) supervision of market-making commitments; (3) final approval

specific to conducting an options business with the public and are not proposed to be amended in this proposed rule change, other than to add a customer protection requirement, similar to existing Phlx Rule 1024.08 and existing ISE Rule 602(d), that a person accepting orders from non-member customers (unless such customer is a broker-dealer registered with the Commission) is required to register with the Exchange and to be qualified by passing the General Securities Registered Representative Examination (Series 7). However, Chapter XI, Sections 2(b) and (c) and Section 3(c) also contain provisions regarding submission of Forms U4 and U5 to WebCRD that are duplicative of the proposed 1200 Series of rules, in particular proposed Rules 1210.12, Application for Registration and Jurisdiction, and 1250, Electronic Filing Requirements for Electronic Forms, and are therefore proposed to be deleted.

⁶² For instance, a principal supervising the sale of corporate securities and options must be registered as a General Securities Principal and a Registered Options Principal, unless the principal is registered as a General Securities Sales Supervisor.

⁶³ An individual may also register as a General Securities Sales Supervisor bypassing [sic] a combination of other principal-level examinations.

of advertisements as these are defined in Exchange Rule 2210; (4) supervision of the custody of firm or customer funds or securities for purposes of SEC Rule 15c3-3; or (5) supervision of overall compliance with financial responsibility rules. Current IM-1022-2 explains the purpose of the General Securities Sales Supervisor registration category.

The Exchange is proposing to adopt Rule 1022(g) and IM-1022-2 as Rules 1220(a)(10) and 1220.04, respectively.⁶⁴ Rule 1220(a)(10), however, omits the current Rule 1022(g) prohibition against supervision of the origination and structuring of underwritings, as that activity does not fall within the new, more limited scope of “securities trading” covered by the new 1200 Series of rules.

11. Investment Company and Variable Contracts Products Principal and Direct Participation Programs Principal (Rules 1220(a)(11) and (a)(12))

The Exchange does not recognize the Investment Company and Variable Contracts Products Principal registration category or the Direct Participation Programs Principal registration category. The Exchange is therefore reserving Rules 1220(a)(11) and (a)(12), retaining the captions solely to facilitate comparison with FINRA’s rules.

⁶⁴ The Exchange is not proposing to carry over into proposed Rule 1220(a)(10) the current Rule 1022(g)(2)(C)(iii) prohibition against final approval of advertisements by General Securities Sales Supervisors. The Exchange notes that FINRA removed this prohibition several years ago from NASD Rule 1022(g) (Limited Principal— General Securities Sales Supervisor) and NASD IM–1022–2 (Limited Principal— General Securities Sales Supervisor). See Securities Exchange Act Release No. 68918 (February 13, 2013), 78 FR 11925 (February 20, 2013) (SR-FINRA-2013-014). Also, unlike FINRA Rule 1220.04, proposed Exchange Rule 1220.04 refers to “multiple exchanges” rather than listing the various exchanges where a sales principal might be required to qualify in the absence of the General Securities Sales Supervisor registration category. It also omits FINRA internal cross-references.

12. Private Securities Offerings Principal (Rule 1220(a)(13))

The Exchange does not recognize the Private Securities Offerings Principal registration category and is therefore reserving Rule 1220(a)(13), retaining the caption solely to facilitate comparison with FINRA's rules.

13. Supervisory Analyst (Rule 1220(a)(14))

The Exchange does not recognize the Supervisory Analyst registration category and is therefore reserving Rule 1220(a)(14), retaining the caption solely to facilitate comparison with FINRA's rules.

14. Definition of Representative (Proposed Rule 1220(b)(1))

Rule 1011(k) currently defines the term "representative" as an associated person of a registered broker or dealer, including assistant officers other than principals, who is engaged in the investment banking or securities business for the member including the functions of supervision, solicitation or conduct of business in securities or who is engaged in the training of persons associated with a broker or dealer for any of these functions are designated as representatives. Rule 1011(k) further states that, as provided in Rule 1031, all representatives of members are required to be registered with the Exchange, and that representatives that are so registered are referred to as registered representatives.

The Exchange now proposes to adopt a definition of "representative" in proposed Rule 1220(b)(1). Current Rule 1011, Definitions, Section (k) would be amended by deleting the existing definition of representative, and replacing it with a cross reference to the new definition of representative in Rule 1220(b)(1). Proposed 1220(b)(1) would define the term representative as any person associated with a member, including assistant officers other than principals, who is engaged in the member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a member for any of these

functions. Unlike the current Rule 1011(k) “representative” definition, the new Rule 1220(b)(1) definition would be confined to associated persons of Exchange members (rather than to associated persons of broker dealers generally) who are engaged in the member’s securities business (and not also in the member’s investment banking business).

15. General Securities Representative (Proposed Rule 1220(b)(2))

Rule 1032(a) currently requires that an associated person who meets the definition of “representative” under Rule 1011 register as a General Securities Representative. A person registering as a General Securities Representative must pass the General Securities Representative examination. The rule, however, provides that a representative is not required to register as a General Securities Representative if the person’s activities are so limited as to qualify such person as a Securities Trader. Further, the rule does not preclude individuals registered in a limited representative category such as Securities Trader from registering as General Securities Representatives.

Similar to the proposed changes to the General Securities Principal registration category, the Exchange is proposing to more clearly set forth the obligation to register as a General Securities Representative. Specifically, proposed Rule 1220(b)(2)(A) states that each representative as defined in proposed Rule 1220(b)(1) is required to register with the Exchange as a General Securities Representative, except that if a representative’s activities include the functions of a Securities Trader, as specified in this Rule, then such person shall appropriately register as a Securities Trader.

Further, consistent with the proposed restructuring of the representative-level examinations, proposed Rule 1220(b)(2)(B) would require that individuals registering as General Securities Representatives pass the SIE and the General Securities Representative examination.⁶⁵

In addition, the Exchange is proposing to adopt Rule 1220.01 to provide individuals who are associated persons of firms and who hold foreign registrations an alternative, more flexible, process to obtain an Exchange representative-level registration. The Exchange believes that there is sufficient overlap between the SIE and these foreign qualification requirements to permit them to act as exemptions to the SIE. Under proposed Rule 1220.01, individuals who are in good standing as representatives with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator would be exempt from the requirement to pass the SIE, and thus would be required only to pass a specialized knowledge examination to register with the Exchange as a representative. The proposed approach would provide individuals with a United Kingdom or Canadian qualification more flexibility to obtain an Exchange representative-level registration. Finally, the Exchange is proposing to delete the provision that persons eligible for registration in other representative categories are not precluded from registering as General Securities Representatives because it is superfluous.

16. Operations Professional, Securities Trader, Investment Banking Representative, Research Analyst, Investment Company and Variable Contracts Products Representative, Direct Participation Programs Representative and Private Securities Offerings Representative (Rules 1220(b)(3), 1220(b)(4), 1220(b)(5), 1220(b)(6), 1220(b)(7), 1220(b)(8), 1220(b)(9) and 1220.05))

Operations Professional, Investment Banking Representative, Research Analyst, Investment Company and Variable Contracts Products Representative, Direct Participation

⁶⁵ Proposed Rule 1220(b)(2)(B) differs from FINRA Rule 1220(b)(2)(B) in that it omits references to various registration categories which FINRA recognizes but which the Exchange does not propose to recognize.

Programs Representative and Private Securities Offerings Representative. The Exchange has not adopted these registration categories for its associated persons. The Exchange is reserving Rules 1220(b)(3) – Operations Professional, and related Rule 1220.05; 1220(b)(5) – Investment Banking Representative, 1220(b)(6) – Research Analyst; Investment Company and Variable Contracts Products Representative – Proposed Rule 1220(b)(7); 1220(b)(8) – Direct Participation Programs Representative; and 1220(b)(9) - Private Securities Offerings Representative, retaining the captions, solely to facilitate comparison with FINRA’s rules.

Securities Trader – Proposed Rule 1220(b)(4). Pursuant to current Exchange Rule 1032(f), each associated person of a member who is included within the definition of “representative” in Rule 1101 is required to register as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities or foreign currency options on the Exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis or the direct supervision of such activities.⁶⁶ The rule provides an exception from the registration requirement for any associated person of a member whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with the member. Individuals registering as Securities Traders must pass the Securities Trader examination. Finally, the rule provides that registered Securities Traders are not qualified to function in any other registration category, unless he or she is also qualified and registered in such other registration category.

⁶⁶ Proposed Rule 1220(b)(4)(A) differs from FINRA Rule 1220(b)(4)(A) in that it applies to trading on the Exchange while the FINRA rule is limited to the specified trading which is “effected otherwise than on a securities exchange.” Additionally, the FINRA rule does not specifically extend to options trading.

The Exchange now proposes to amend the rule, and adopt it as proposed Rule 1220(b)(4). As amended, the Rule would require individuals registering as Securities Traders to pass the SIE as well as the Securities Trader qualification exam, and it would be expanded to refer not just to foreign currency options, but to the trading of options generally.

Additionally, proposed Rule 1220(b)(4)(A) would require each person associated with a member who is: (i) primarily responsible for the design, development or significant modification of an algorithmic trading strategy relating to equity, preferred or convertible debt securities or options; or (ii) responsible for the day-to-day supervision or direction of such activities to register with the Exchange as a Securities Trader.⁶⁷

For purposes of this proposed new registration requirement an “algorithmic trading strategy” is an automated system that generates or routes orders (or order-related messages) but does not include an automated system that solely routes orders received in their entirety to a market center. The proposed registration requirement applies to orders and order related messages whether ultimately routed or sent to be routed to an exchange or over the counter. An order router alone would not constitute an algorithmic trading strategy. However, an order router that performs any additional functions would be considered an algorithmic trading strategy. An algorithm that solely generates trading ideas or investment allocations—including an automated investment service that constructs portfolio recommendations—but that is not equipped to automatically generate orders and order-related messages to effectuate such trading ideas into the

⁶⁷ As noted above, this new registration requirement was recently added to the FINRA rulebook. The Exchange has determined to add a parallel requirement to its own rules, but also to add options to the scope of products within the proposed rule’s coverage. See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR-FINRA-2016-007).

market—whether independently or via a linked router—would not constitute an algorithmic trading strategy.⁶⁸

The associated persons covered by the expanded registration requirement would be required to pass the requisite qualification examination and be subject to the same continuing education requirements that are applicable to individual Securities Traders. The Exchange believes that potentially problematic conduct stemming from algorithmic trading strategies—such as failure to check for order accuracy, inappropriate levels of messaging traffic, wash sales, failure to mark orders as “short” or perform proper short sale “locates,” and inadequate risk management controls—could be reduced or prevented, in part, through improved education regarding securities regulations for the specified individuals involved in the algorithm design and development process.

The proposal is intended to ensure the registration of one or more associated persons that possesses knowledge of, and responsibility for, both the design of the intended trading strategy and the technological implementation of the strategy, sufficient to evaluate whether the resulting product is designed to achieve regulatory compliance in addition to business objectives. For example, a lead developer who liaises with a head trader regarding the head trader’s desired algorithmic trading strategy and is primarily responsible for the supervision of the development of the algorithm to meet such objectives must be registered under the proposal as the associated person primarily responsible for the development of the algorithmic trading strategy and supervising or directing the team of developers. Individuals under the lead developer’s supervision would not be required to register under the proposal if they are not primarily responsible for the development of the algorithmic trading strategy or are not responsible for the

⁶⁸ See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR-FINRA-2016-007).

day-to-day supervision or direction of others on the team. Under this scenario, the person on the business side that is primarily responsible for the design of the algorithmic trading strategy, as communicated to the lead developer, also would be required to register. In the event of a significant modification to the algorithm, members, likewise, would be required to ensure that the associated person primarily responsible for the significant modification (or the associated person supervising or directing such activity), is registered as a Securities Trader.

A member employing an algorithm is responsible for the algorithm's activities whether the algorithm is designed or developed in house or by a third-party. Thus, in all cases, robust supervisory procedures, both before and after deployment of an algorithmic trading strategy, are a key component in protecting against problematic behavior stemming from algorithmic trading. In addition, associated persons responsible for monitoring or reviewing the performance of an algorithmic trading strategy must be registered, and a member's trading activity must always be supervised by an appropriately registered person. Therefore, even where a firm purchases an algorithm off-the-shelf and does not significantly modify the algorithm, the associated person responsible for monitoring or reviewing the performance of the algorithm would be required to be registered.

Pursuant to proposed Rule 1220(b)(4)(B) each person registered as a Securities Trader on October 1, 2018 and each person who was registered as a Securities Trader within two years prior to October 1, 2018 would be qualified to register as a Securities Trader without passing any additional qualification examinations. All other individuals registering as Securities Traders after October 1, 2018 would be required, prior to or concurrent with such registration, pass the SIE and the Securities Trader qualification examination.

17. Eliminated Registration Categories (Proposed Rule 1220.06)

Consistent with the FINRA Rule Changes, the Exchange is proposing to eliminate from its rules the Options Representative category that FINRA is eliminating effective October 1, 2018.⁶⁹ Proposed Rule 1220.06, which is proposed to be adopted on a uniform basis by the Nasdaq Affiliated Exchanges, provides that, subject to the lapse of registration provisions in proposed Rule 1210.08, individuals who are registered with the Exchange in any capacity recognized by the Exchange (such as the Options Representative category) immediately prior to October 1, 2018, and each person who was registered with the Exchange in such categories within two years prior to October 1, 2018, shall be eligible to maintain such registrations with the Exchange. However, if individuals registered in such categories terminate their registration with the Exchange and the registration remains terminated for two or more years, they would not be able to re-register in that category. In addition, proposed Rule 1220.06 would include the current

⁶⁹ Chapter II, Section 2(h) of the Exchange's rulebook provides that each person associated with a member who is included within the definition of a representative as defined in Rule 1031 may register with BX as a Limited Representative—Options and Security Futures if: (A) such person's activities in the investment banking or securities business of the member involve the solicitation or sale of option or security futures contracts, including option contracts on government securities as that term is defined in Section 3(a)(42)(D) of the Act, for the account of a broker, dealer or public customer; and (B) such person passes an appropriate qualification examination for Limited Representative—Options and Security Futures. It also provides that each person seeking to register and qualify as a Limited Representative—Options and Security Futures must, concurrent with or before such registration may become effective, become registered with BX or another SRO as either as a Limited Representative—Corporate Securities or Limited Representative—Government Securities. The Limited Representative—Options and Security Futures registration category is the same as the Options Representative category. The Exchange has very few registrants in this category, and none in the Corporate Securities or Limited Representative—Government Securities categories (for which there is no provision in the Exchange's rules).

restrictions to which Order Processing Assistant Representatives are subject under Nasdaq rules.⁷⁰

18. Grandfathering Provisions

In addition to the grandfathering provisions in proposed Rule 1220(a)(2) (relating to General Securities Principals) and proposed Rule 1220.06 (relating to the eliminated registration categories), the Exchange is proposing to include grandfathering provisions in proposed Rule 1220(a)(8) (Registered Options Principal), 1220(b)(2) (General Securities Representative), and 1220(b)(4) (Securities Trader). Specifically, the proposed grandfathering provisions provide that, subject to the lapse of registration provisions in proposed Rule 1210.08, individuals who are registered in specified registration categories on the operative date of the proposed rule change and individuals who had been registered in such categories within the past two years prior to the operative date of the proposed rule change would be qualified to register in the proposed corresponding registration categories without having to take any additional examinations.

N. Associated Persons Exempt from Registration (Proposed Rules 1230 and 1230.01)

Rule 1060(a) currently provides that the following persons associated with a member are not required to register:

- (1) persons associated with a member whose functions are solely and exclusively clerical or ministerial;
- (2) persons associated with a member who are not actively engaged in the investment banking or securities business;

⁷⁰ See Nasdaq Rule 1042. Proposed Exchange Rule 1220.06 omits references to a number of registration categories it does not propose to recognize, but which FINRA refers to in its own Rule 1220.06.

(3) persons associated with a member whose functions are related solely and exclusively to the member's need for nominal corporate officers or for capital participation;

(4) persons associated with a member whose functions are related solely and exclusively to: (A) effecting transactions on the floor of another national securities exchange and who are registered as floor members with such exchange; (B) transactions in municipal securities; (C) transactions in commodities; (D) transactions in security futures, provided that any such person is registered with FINRA or a registered futures association; or (E) transactions in variable contracts and insurance premium funding programs and other contracts issued by an insurance company; (F) transactions in direct participation programs; (G) Reserved; (H) transactions in government securities; or (I) effecting sales as part of a primary offering of securities not involving a public offering pursuant to Section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder; and

(5) persons associated with a member that are not citizens, nationals, or residents of the United States or any of its territories or possessions and that will conduct all of their securities activities in areas outside the jurisdiction of the United States and will not engage in any securities activities with or for any citizen, national or resident of the United States.

Rule 1060(a) is not meant to provide an exclusive or exhaustive list of exemptions from registration. Associated persons may otherwise be exempt from registration based on their activities and functions.

The Exchange is proposing to adopt Rule 1060(a) as Rule 1230 subject to the following changes. As noted above, Rule 1060(a) exempts from registration those associated persons who are not actively engaged in the investment banking or securities business. Rule 1060(a) also exempts from registration those associated persons whose functions are related solely and exclusively to a member's need for nominal corporate officers or for capital participation.⁷¹ The Exchange believes that the determination of whether an associated person is required to register must be based on an analysis of the person's activities and functions in the context of the various registration categories. The Exchange does not believe that categorical exemptions for associated persons who are not "actively engaged" in a member's investment banking or securities business, associated persons whose functions are related only to a member's need for nominal corporate officers or associated persons whose functions are related only to a member's need for capital participation is consistent with this analytical framework. The Exchange therefore is proposing to delete these exemptions. Rule 1060(a) further exempts from registration associated persons whose functions are related solely and exclusively to effecting transactions on the floor of another national securities exchange as long as they are registered as floor members with such exchange. Because exchanges have registration categories other than the floor member category, proposed Rule 1230 clarifies that the exemption applies to associated persons solely and exclusively effecting transactions on the floor of another national securities exchange, provided they are appropriately registered with such exchange.⁷² Additionally, the Exchange proposes to add Section 3 of Rule 1230, pursuant to which persons associated with a

⁷¹ These exemptions generally apply to associated persons who are corporate officers of a member in name only to meet specific corporate legal obligations or who only provide capital for a member, but have no other role in a member's business.

⁷² Proposed Rule 1230 differs from FINRA Rule 1230 in that it includes a number of exemptions based upon current Nasdaq Rule 1060(a) which are not found in FINRA Rule 1230.

member that are not citizens, nationals, or residents of the United States or any of its territories or possessions, that will conduct all of their securities activities in areas outside the jurisdiction of the United States, and that will not engage in any securities activities with or for any citizen, national or resident of the United States need not register with the Exchange.⁷³

The Exchange proposes to adopt Rule 1230.01 to clarify that the function of accepting customer orders is not considered a clerical or ministerial function and that associated persons who accept customer orders under any circumstances are required to be appropriately registered. However, the proposed rule provides that an associated person is not accepting a customer order where occasionally, when an appropriately registered person is unavailable, the associated person transcribes the order details and the registered person contacts the customer to confirm the order details before entering the order.

O. Changes to CE Requirements (Proposed Rule 1240)

As described above, current Rule 1120 includes a Regulatory Element and a Firm Element. The Regulatory Element applies to registered persons and consists of periodic computer-based training on regulatory, compliance, ethical, supervisory subjects and sales practice standards. The Firm Element consists of at least annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the member. The Exchange is proposing to

⁷³ Individuals described by Section 3 of Rule 1230 who are associated with FINRA members may be registered with FINRA as Foreign Associates pursuant to FINRA Rule 1220.06. FINRA is eliminating this registration category effective October 1, 2018, and the Exchange has never recognized it.

delete Rule 1120 and replace it with Rule 1240. Proposed Rule 1240 would differ from current Rule 1120 in a number of respects, discussed below.⁷⁴

1. Regulatory Element

The Exchange is proposing to replace the term “registered person” under current Rule 1120(a) with the term “covered person” and make conforming changes to proposed Rule 1240(a). For purposes of the Regulatory Element, the Exchange is proposing to define the term “covered person” in Rule 1240(a)(5) as any person registered pursuant to proposed Rule 1210, including any person who is permissively registered pursuant to proposed Rule 1210.02, and any person who is designated as eligible for an FSA waiver pursuant to proposed Rule 1210.09. The purpose of this change is to ensure that all registered persons, including those with permissive registrations, keep their knowledge of the securities industry current. The inclusion of persons designated as eligible for an FSA waiver under the term “covered persons” corresponds to the requirements of proposed Rule 1210.09. In addition, consistent with proposed Rule 1210.09, proposed Rule 1240(a) provides that an FSA-eligible person would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. The proposed rule also provides that if an FSA-eligible person fails to complete the Regulatory Element during the prescribed time frames, he or she would lose FSA eligibility.

Further, the Exchange is proposing to add a rule to address the impact of failing to complete the Regulatory Element on a registered person’s activities and compensation. Specifically, proposed Rule 1240(a)(2) provides that any person whose registration has been

⁷⁴ Proposed Rule 1240 also differs slightly from FINRA Rule 1240 in that it omits references to certain registration categories which the Exchange does not recognize as well as an internal cross reference to FINRA Rule 4517.

deemed inactive under the rule may not accept or solicit business or receive any compensation for the purchase or sale of securities. However, like the FINRA rule, the proposed rule provides that such person may receive trail or residual commissions resulting from transactions completed before the inactive status, unless the member with which the person is associated has a policy prohibiting such trail or residual commissions.

The Exchange is also proposing to remove the requirements currently found in Rule 1120(a)(1) prescribing the specific Regulatory Elements administered by FINRA that are required for General Securities Representatives, Securities Traders or persons registered in a supervisory capacity, so that Rule 1240(a)(1) will conform more closely to the FINRA counterpart rule which does not identify specific Regulatory Element requirements for particular categories of registrant.

2. Firm Element

The Exchange believes that training in ethics and professional responsibility should apply to all covered registered persons. Therefore, proposed Rule 1240(b)(2)(B), which provides that the Firm Element training programs must cover applicable regulatory requirements, would also require that a firm's training program cover training in ethics and professional responsibility.

P. Electronic Filing Rules

Existing BX Rule 1140, Electronic Filing Rules, is proposed to be amended and relocated as Rule 1250, Electronic Requirements for Uniform Forms. Proposed Rule 1250 is based on existing Nasdaq Rule 1140 which is a more comprehensive version of existing BX Rule 1140.

Current BX Rule 1140 requires registration forms to be filed through an electronic process or such other process as the Exchange may prescribe to the Central Registration Depository. The rule includes supervisory requirements related to the submission of electronic filings, as well as Form U4 manual signature requirements. It also requires applicants'

fingerprint cards to be submitted by members, includes Form U5 filing requirements, and permits a member to employ a third party to file required forms electronically on its behalf.

Proposed Rule 1250 reorganizes and enhances the content of current BX Rule 1140. It would provide that all forms required to be filed under the Exchange's registration rules, including the Rule 1200 series, must be filed through an electronic process or such other process as the Exchange may prescribe to the Central Registration Depository. It would provide for the electronic filing of Form U4 amendments in a number of cases without the individual's manual signature, subject to certain safeguards and procedures, and would permit the delegation of filing functions by supervisors (again, subject to certain safeguards). Additionally, Rule 1250, Supplementary Material .02 would state clearly that members remain responsible for complying with the requirements of the rule even if forms are filed electronically by a third party pursuant to an agreement. Finally, it would establish a number of recordkeeping requirements related to electronic registration filings.

Rule 1250, as part of the uniform 1200 Series, will consolidate Form U4 and U5 electronic filing requirements in a single location, across the Nasdaq Affiliated Exchanges.

Q. Other Rules

The Exchange is deleting Rule 1060, Persons Exempt from Registration, as explained above. Rule 1060(b) however, contains provisions dealing with Nonregistered Foreign "Finders" and is simply being relocated with nonsubstantive changes to new Rule 2040.⁷⁵ The remaining rules identified above under "Overview" which are to be amended in this proposed rule change but are not further discussed herein simply update citations and/or make technical or nonsubstantive changes to the proposed new rules.

⁷⁵ The FINRA counterpart to current Rule 1060(b) occupies a similar location in the FINRA rulebook. See FINRA Rule 2040(c), Nonregistered Foreign Finders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed rule change will streamline, and bring consistency and uniformity to, the registration rules, which will, in turn, assist members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule change will also improve the efficiency of the examination program, without compromising the qualification standards, by eliminating duplicative testing of general securities knowledge on examinations and by removing examinations that currently have limited utility. In addition, the proposed rule change will expand the scope of permissive registrations, which, among other things, will allow members to develop a depth of associated persons with registrations to respond to unanticipated personnel changes and will encourage greater regulatory understanding. Further, the proposed rule change will provide a more streamlined and effective waiver process for individuals working for a financial services industry affiliate of a member, and it will require such individuals to maintain specified levels of competence and knowledge while working in areas ancillary to the securities business. The proposed rule change will improve the supervisory structure of firms by imposing an experience requirement for representatives that are designated by firms to function as principals for a 120-day period before having to pass an appropriate principal qualification examination. The proposed rule change will

⁷⁶ 15 U.S.C. 78f(b).

⁷⁷ 15 U.S.C. 78f(b)(5).

also prohibit unregistered persons from accepting customer orders under any circumstances, which will enhance investor protection.

The Exchange believes that, with the introduction of the SIE and expansion of the pool of individuals who are eligible to take the SIE, the proposed rule change has the potential of enhancing the pool of prospective securities industry professionals by introducing them to securities laws, rules and regulations and appropriate conduct before they join the industry in a registered capacity.

The extension of the Securities Trader registration requirement to developers of algorithmic trading strategies requires associated persons primarily responsible for the design, development or significant modification of an algorithmic trading strategy or responsible for the day-to-day supervision or direction of such activities to register and meet a minimum standard of knowledge regarding the securities rules and regulations applicable to the member employing the algorithmic trading strategy. This minimum standard of knowledge is identical to the standard of knowledge currently applicable to traditional securities traders. The Exchange believes that improved education of firm personnel may reduce the potential for problematic market conduct and manipulative trading activity.

Finally, the proposed rule change makes organizational changes to Exchange rules to maintain appropriate parallelism with corresponding Exchange rules, in order to prevent unnecessary regulatory burdens and promote efficient administration of the rules. The change also makes minor updates and corrections to the Exchange's rules which improve readability.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that all associated persons of members engaged in a securities

business are, and will continue to be, properly trained and qualified to perform their functions, will be supervised, and can be identified by regulators. The proposed new 1200 Series of rules, which are similar in many respects to the registration-related requirements adopted by FINRA effective October 1, 2018, should enhance the ability of member firms to comply with the Exchange's rules as well as with the Federal securities laws. Additionally, as described above, the Exchange intends the amendments described herein to eliminate inconsistent registration-related requirements across the Nasdaq Affiliated Exchanges, thereby promoting uniformity of regulation across markets. The new 1200 Series should in fact remove administrative burdens that currently exist for members seeking to register associated persons on multiple Nasdaq Affiliated Exchanges featuring varying registration-related requirements. Additionally, all similarly-situated associated persons of members will be treated similarly under the new 1200 Series in terms of standards of training, experience and competence for persons associated with Exchange members.

With respect to registration of developers of algorithmic trading strategies in particular, the Exchange recognizes that the proposal would impose costs on member firms employing associated persons engaged in the activity subject to the registration requirement. Specifically, among other things, additional associated persons would be required to become registered under the proposal, and the firm would need to establish policies and procedures to monitor compliance with the proposed requirement on an ongoing basis. However, given the prevalence and importance of algorithmic trading strategies in today's markets, the Exchange believes that associated persons engaged in the activities covered by this proposal must meet a minimum standard of knowledge regarding the applicable securities rules and regulations. To mitigate the costs imposed on member firms, the proposed rule change limits the scope of registration

requirement by excluding technological or development support personnel who are not primarily responsible for the covered activities. It also excludes supervisors who are not responsible for the “day-to-day” supervision or direction of the covered activities.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷⁸ and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b-4(f)(6)(iii)⁷⁹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative on October 1, 2018 to coincide with the effective date of FINRA’s proposed rule change on which the proposal is based.⁸⁰ The waiver of the operative delay would make the Exchange’s qualification requirements consistent with those of FINRA, as of October 1, 2018. Therefore, the Commission believes that the waiver of the 30-day operative

⁷⁸ 15 U.S.C. 78s(b)(3)(A).

⁷⁹ 17 CFR 240.19b-4(f)(6)(iii).

⁸⁰ See supra note 7. As discussed above, the Exchange has stated that the new registration requirements for developers of algorithmic trading strategies would become operative on April 1, 2019.

delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposal operative on October 1, 2018.⁸¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-BX-2018-047 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BX-2018-047. 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

⁸¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2018-047 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.⁸²

Eduardo A. Aleman
Assistant Secretary

⁸² 17 CFR 200.30-3(a)(12).