

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94532; File No. SR-CboeBYX-2022-006)

March 28, 2022

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Rules Relating to the Continuing Education for Registered Persons and Move those Rules from Interpretation and Policy .02 of Rule 2.5 to Proposed Rule 2.16 and to Amend Related Registration Requirements Provided Under Various Interpretations and Policies of Rule 2.5

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 15, 2022, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 its rules relating to the Continuing Education for Registered Persons and move those rules from Interpretation and Policy .02 of Rule 2.5 to proposed Rule 2.16 and to amend related registration requirements provided under various Interpretations and Policies of Rule 2.5. The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/byx/), at the Exchange's Office of the Secretary, 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 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

(i) Existing CE Program Background

The continuing education program for registered persons of broker-dealers ("CE Program") generally requires registered persons to complete continuing education consisting of a Regulatory Element. The Regulatory Element is delivered through a web-based delivery method called "CE Online," which is administered through the Financial Industry Regulatory Authority, Inc. ("FINRA") online continuing education system, and focuses on regulatory requirements and industry standards. The CE Program for registered persons is currently codified under Interpretation and Policy .02 of Exchange Rule 2.5. The Exchange now proposes to expand the CE Program to adopt rules pertaining to a Firm Element component of continuing education. The Firm Element would be provided by each firm and focus on securities products, services and strategies the firm offers, firm policies and industry trends. In addition, the Exchange proposes other changes to amend, move, reorganize and enhance its rules regarding its CE Program, as described below.

The Commission recently approved a proposal submitted by FINRA relating to its CE Program.⁵ The Exchange understands that other exchanges have or will propose similar amendments based on FINRA’s rule changes. Therefore, the Exchange proposes to amend and enhance its own CE Program as provided under proposed Rule 2.16 and its related registration requirements as provided under various Interpretations and Policies of Rule 2.5 in response to FINRA’s amended CE Program and to facilitate compliance with the Exchange’s CE Program requirements by members of multiple exchanges. The Exchange proposes to implement the proposed rule changes to align with FINRA’s CE Program implementation dates.⁶ Specifically, the proposed implementation dates are as follows: changes relating to proposed Rule 2.16(c) (Continuing Education Program for Persons Maintaining Their Qualification Following the Termination of a Registration Category) will become effective March 15, 2022; changes to recognize waiver of examination programs for individuals working for a financial services industry affiliate of a member that are administered by the Exchange’s affiliates, Cboe Exchange, Inc. (“Cboe”) and Cboe C2 Exchange, Inc. (“C2”), and by FINRA (referred to as the “FSA waiver programs” or “FSAWPs”) will become effective March 15, 2022; and all other changes, including changes reflected in proposed Rules 2.16(a) (Regulatory Element)⁷ and 2.16(b) (Firm Element) will become effective January 1, 2023.

⁵ See Securities and Exchange Act No. 93097 (September 21, 2021) 86 FR 53358 (September 27, 2021) (SR-FINRA-2021-015) (Order Approving a Proposed Rule Change To Amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements)).

⁶ See FINRA Regulatory Notice 21-41 (November 17, 2021).

⁷ An individual’s initial annual Regulatory Element due date will be December 31, 2023.

a. Regulatory Element

Interpretation and Policy .02(a) of Rule 2.5 currently requires a registered person to complete the applicable 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.⁸ The Exchange may extend these time frames for good cause shown.⁹ Unless otherwise determined, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration(s) deemed inactive and will be designated as "CE inactive" in the CRD system until the requirements of the Regulatory Element have been satisfied.¹⁰ A CE inactive person is prohibited from performing, or being

⁸ See Rule 2.5.02(a). An individual's registration anniversary date is generally the date they initially registered in the Central Registration Depository ("CRD®") system. However, an individual's registration anniversary date would be reset if the individual has been out of the industry for two or more years and is required to requalify by examination, or obtain an examination waiver, in order to reregister. An individual's registration anniversary date would also be reset if the individual obtains a conditional examination waiver that requires them to complete the Regulatory Element by a specified date. Non-registered individuals who are participating in the waiver program under proposed Rule 2.5.07 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member) ("FSAWP participants") are also subject to the Regulatory Element. See also proposed Rule 2.16(a)(5) (Definition of Covered Person). The Regulatory Element for FSAWP participants correlates to their most recent registration(s), and it must be completed based on the same cycle had they remained registered. FSAWP participants are eligible for a single, fixed seven-year waiver period from the date of their initial designation, subject to specified conditions. Registered persons who become subject to a significant disciplinary action, as specified in proposed Rule 2.16(a)(2) (Disciplinary Actions), may be required to retake the Regulatory Element within 120 days of the effective date of the disciplinary action, if they remain registered. Further, their cycle for participation in the Regulatory Element may be adjusted to reflect the effective date of the disciplinary action rather than their registration anniversary date.

⁹ See Rule 2.5.02(b).

¹⁰ Supra note 8. Individuals must complete the entire Regulatory Element session to be considered to have "completed" the Regulatory Element; partial completion is the same as non-completion.

compensated for, any activities requiring registration, including supervision. Moreover, if registered persons remain CE inactive for two consecutive years, they must requalify by retaking required examinations (or obtain a waiver of the applicable qualification examinations).¹¹

The Regulatory Element currently consists of a subprogram for registered persons generally, and a subprogram for principals and supervisors.¹² While some of the current Regulatory Element content is unique to particular registration categories, most of the content has broad application to both representatives and principals.¹³ The Regulatory Element was originally designed at a time when most individuals had to complete the Regulatory Element at a test center, and its design was shaped by the limitations of the test center-based delivery model. In 2015, the delivery of the Regulatory Element was transitioned to an online platform, referred to above as CE Online, which allows individuals to complete the content online at a location of their choosing, including their private residence. This online delivery provides for much greater flexibility in updating content in a timelier fashion, developing content tailored to each registration category and presenting the material in an optimal learning format.

¹¹ See Rule 2.5.02(b). This CE inactive two-year period is calculated from the date such persons become CE inactive, and it continues to run regardless of whether they terminate their registrations before the end of the two-year period. Therefore, if registered persons terminate their registrations while in a CE inactive status, they must satisfy all outstanding Regulatory Element prior to the end of the CE inactive two-year period in order to reregister with a Member without having to requalify by examination or having to obtain an examination waiver.

¹² The S101 (General Program for Registered Persons) and the S201 (Registered Principals and Supervisors).

¹³ The current content is presented in a single format leading individuals through a case that provides a story depicting situations that they may encounter in the course of their work.

b. Firm Element

As noted above, Exchange Rules do not currently provide for a Firm Element of the CE Program. However, as discussed in more detail further below, the Exchange is now proposing to introduce a Firm Element, which would be modeled after FINRA Rule 1240 and Cboe Rule 3.33(c).

c. Termination of a Registration

Currently, individuals whose registrations as representatives or principals have been terminated for two or more years may reregister as representatives or principals only if they requalify by retaking and passing the applicable representative- or principal-level examination or if they obtain a waiver of such examination(s) (the “two-year qualification period”).¹⁴ The two-year qualification period was intended to ensure that individuals who reregister are relatively current on their regulatory and securities knowledge.

¹⁴ See Rule 2.5.02(d). The two-year qualification period is calculated from the date individuals terminate their registration and the date the Exchange receives a new application for registration. The two-year qualification period does not apply to individuals who terminate a limited registration category that is a subset of a broader registration category for which they remain qualified. Such individuals have the option of reregistering in the more limited registration category without having to requalify by examination or obtain an examination waiver so long as they continue to remain qualified for the broader registration category. Further, the two-year qualification period only applies to the representative- and principal-level examinations; it does not extend to the Securities Industry Essentials (“SIE”) examination. The SIE examination is valid for four years, but having a valid SIE examination alone does not qualify an individual for registration as a representative or principal. Individuals whose registrations as representatives or principals have been revoked pursuant to Exchange Rule 8.11 (Judgment and Sanction) may only requalify by retaking the applicable representative- or principal-level examination in order to reregister as representatives or principals, in addition to satisfying the eligibility conditions for association with a firm. Waivers are granted on a case-by-case basis under Rule 2.5.01(b).

(ii) Proposed Rule Change

After extensive work with the Securities Industry/Regulatory Council on Continuing Education (“CE Council”), FINRA, other Self-Regulatory Organizations and industry participants, the Exchange proposes the following changes to the Exchange’s CE Program under Rule 2.5 and proposed Rule 2.16 to align with FINRA Rule 1240 and Cboe Rule 3.33.

a. Transition to Annual Regulatory Element for Each Registration Category

As noted above, currently, the Regulatory Element generally must be completed every three years, and the content is broad in nature. Based on changes in technology and learning theory, the Regulatory Element content can be updated and delivered in a timelier fashion and tailored to each registration category, which would further the goals of the Regulatory Element.¹⁵ Therefore, to provide registered persons with more timely and relevant training on significant regulatory developments, the Exchange proposes adopting Rule 2.16(a) to require registered persons to complete the Regulatory Element annually by December 31.¹⁶ The proposed amendment would also require registered persons to complete Regulatory Element content for each representative or

¹⁵ When other self-regulatory organizations’ CE Programs were originally adopted in 1995, registered persons were required to complete the Regulatory Element on their second, fifth and 10th registration anniversary dates. See Securities Exchange Act Release No. 35341 (February 8, 1995), 60 FR 8426 (February 14, 1995) (Order Approving File Nos. SR-AMEX-94-59; SR-CBOE-94-49; SR-CHX-94-27; SR-MSRB-94-17; SR-NASD-94-72; SR-NYSE-94-43; SR-PSE-94-35; and SR-PHLX-94-52). The change to the current three-year cycle in the other self-regulatory organizations’ CE Programs was made in 1998 to provide registered persons more timely and effective training, consistent with the overall purpose of the Regulatory Element. See Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (Order Approving File Nos. SR-CBOE-97-68; SR-MSRB-98-02; SR-NASD-98-03; and SR-NYSE-97-33).

¹⁶ See proposed Rules 2.16(a)(1) and (a)(4).

principal registration category that they hold, which would also further the goals of the Regulatory Element.¹⁷

Under the proposed rule change, Members would have the flexibility to require their registered persons to complete the Regulatory Element sooner than December 31, which would allow Members to coordinate the timing of the Regulatory Element with other training requirements, including the Firm Element.¹⁸ For example, a Member could require its registered persons to complete both their Regulatory Element and Firm Element by October 1 of each year.

Individuals who would be registering as a representative or principal for the first time on or after the implementation date of the proposed rule change would be required to complete their initial Regulatory Element for that registration category in the next calendar year following their registration.¹⁹ In addition, subject to specified conditions, individuals who would be reregistering as a representative or principal on or after the implementation date of the proposed rule change would also be required to complete their initial Regulatory Element for that registration category in the next calendar year following their reregistration.²⁰

Consistent with current requirements, individuals who fail to complete their Regulatory Element within the prescribed period would be automatically designated as CE inactive.²¹

¹⁷ See proposed Rules 2.5.04 and 2.16(a)(1).

¹⁸ See proposed Rules 2.16(a)(1) and (a)(4).

¹⁹ See proposed Rule 2.16(a)(1).

²⁰ See proposed Rule 2.16(a)(4).

²¹ See proposed Rule 2.16(a)(2).

However, the proposed rule change preserves the Exchange's ability to extend the time by which a registered person must complete the Regulatory Element for good cause shown.²²

The Exchange also proposes adopting Rule 2.16(a) to provide that: (1) individuals who are designated as CE inactive would be required to complete all of their pending and upcoming annual Regulatory Element, including any annual Regulatory Element that becomes due during their CE inactive period, to return to active status;²³ (2) the two-year CE inactive period is calculated from the date individuals become CE inactive, and it continues to run regardless of whether individuals terminate their registrations;²⁴ (3) individuals who become subject to a significant disciplinary action may be required to complete assigned continuing education content as prescribed by the Exchange;²⁵ (4) individuals who have not completed any Regulatory Element content for a registration category in the calendar year(s) prior to reregistering would not be approved for registration for that category until they complete that Regulatory Element content, pass an examination for that registration category or obtain an unconditional examination waiver for that registration category, whichever is applicable;²⁶ and (5) the Regulatory Element requirements apply to individuals who are registered, or in the process of registering, as a representative or principal.²⁷

Under the proposed rule change, the amount of content that registered persons would be required to complete in a three-year, annual cycle for a particular registration category is expected to

²² Id. The proposed rule change provides that the request for an extension of time must be in writing and include supporting documentation, which is consistent with current practice.

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ See proposed Rule 3.33(a)(4).

²⁷ See proposed Rule 3.33(a)(5).

be comparable to what most registered persons are currently completing every three years. In some years, there may be more required content for some registration categories depending on the volume of rule changes and regulatory issues. In addition, an individual who holds multiple registrations may be required to complete additional content compared to an individual who holds a single registration because, as noted above, individuals would be required to complete content specific to each registration category that they hold. However, individuals with multiple registrations would not be subject to duplicative regulatory content in any given year. The more common registration combinations would likely share much of their relevant regulatory content each year. For example, individuals registered as General Securities Representatives and General Securities Principals would receive the same content as individuals solely registered as General Securities Representatives, supplemented with a likely smaller amount of supervisory-specific content on the same topics. The less common registration combinations may result in less topic overlap and more content overall.

b. Adoption of Firm Element, Recognition of Other Training Requirements for Firm Element, and Application of Firm Element to Covered Registered Persons

The Exchange proposes to adopt proposed Rule 2.16(b) to include a Firm Element component for its CE Program that aligns with Cboe Rule 3.33(b) and FINRA Rule 1240(b). The proposed rule would require Members to maintain a continuing and current education program for its registered persons to enhance their securities knowledge, skills and professionalism. At a minimum, each Member would be required to at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the Member's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of registered persons in the Regulatory Element. If a Member's analysis determines a need for supervisory training for persons with supervisory responsibilities such training must be included in the Member's training plan. The proposed rule would also require that programs used

to implement a Member’s training plan must be appropriate for the business of the Member and, at a minimum, must cover training topics related to the role, activities or responsibilities of the registered person and to professional responsibility. In addition, the proposed rule would provide that each Member must administer its continuing education Firm Element program in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by registered persons.

To align the Firm Element requirement with other required training, proposed Rule 2.16(b) would also expressly allow Members to consider training relating to the AML compliance program and the annual compliance meeting toward satisfying an individual’s annual Firm Element requirement.²⁸ The Exchange also proposes to apply the Firm Element requirement to “covered registered persons,” which would include any person registered with a Member, including person who is permissively registered as a representative or principle pursuant to proposed Rule 2.5.08, as discussed below, thereby aligning the description of “covered registered persons” in the Firm Element requirement with the description of “covered persons” in the Regulatory Element requirement.²⁹

c. Maintenance of Qualification After Termination of Registration

The Exchange proposes to adopt Rules 2.16(c), 2.16.01, and 2.16.02 to provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing continuing education. The proposed rule change would not eliminate the two-year qualification period.

²⁸ See proposed Rule 2.16(b)(2)(D).

²⁹ The group of persons who may be considered a “covered registered person” under the Firm Element provisions in proposed Rule 2.16(b)(1) is a subset of the group of persons who may be considered a “covered person” under the Regulatory Element provisions in proposed Rule 2.15(a)(5).

Rather, it would provide such individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration(s). Eligible individuals who elect not to participate in the proposed continuing education program would continue to be subject to the current two-year qualification period. The proposed rule change is generally aligned with other professional continuing education programs that allow individuals to maintain their qualification to work in their respective fields during a period of absence from their careers (including an absence of more than two years) by satisfying continuing education requirements for their credential.

The proposed rule change would impose the following conditions and limitations:

- individuals would be required to be registered in the terminated registration category for at least one year immediately prior to the termination of that category;³⁰
- individuals could elect to participate when they terminate a registration or within two years from the termination of a registration;³¹
- individuals would be required to complete annually all prescribed continuing education;³²
- individuals would have a maximum of five years in which to reregister;³³

³⁰ See proposed Rule 2.16(c)(1).

³¹ See proposed Rule 2.16(c)(2).

³² See proposed Rule 2.16(c)(3). However, upon a participant's request and for good cause shown, the Exchange would have the ability to grant an extension of time for the participant to complete the prescribed continuing education. A participant who is also a registered person must directly request an extension of the prescribed continuing education from the Exchange.

³³ See proposed Rule 2.16(c).

- individuals who have been CE inactive for two consecutive years, or who become CE inactive for two consecutive years during their participation, would not be eligible to participate or continue;³⁴ and
- individuals who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the termination of their registration or during their participation, would not be eligible to participate or continue.³⁵

The proposed rule change also includes a look-back provision that would, subject to specified conditions, extend the proposed option for maintaining qualifications following a registration category termination to (i) individuals who have been registered as a representative or principal within two years immediately prior to the March 15, 2022 implementation date of the proposed rule change; and (ii) individuals who have been FSWAP participants immediately prior to

³⁴ See proposed Rule 2.16(c)(4) and (c)(5).

³⁵ See proposed Rules 2.16(c)(1) and (c)(6). Individuals who are subject to a statutory disqualification would not be eligible to enter the proposed continuing education program. Individuals who become subject to a statutory disqualification while participating in the proposed continuing education program would not be eligible to continue in the program. Further, any content completed by such participants would be retroactively nullified upon disclosure of the statutory disqualification. The following example illustrates the application of the proposed rule change to individuals who become subject to a statutory disqualification while participating in the proposed continuing education program. Individual A participates in the proposed continuing education program for four years and completes the prescribed content for each of those years. During year five of his participation, he becomes subject to a statutory disqualification resulting from a foreign regulatory action. In that same year, the Exchange receives a Form U4 submitted by a member on behalf of Individual A requesting registration with the Exchange. The Form U4 discloses the statutory disqualification event. the Exchange would then retroactively nullify any content that Individual A completed while participating in the proposed continuing education program. Therefore, in this example, in order to become registered with the Exchange, he would be required to requalify by examination. This would be in addition to satisfying the eligibility conditions for association with a Member. See also Exchange Act Sections 3(a)(39) and 15(b)(4).

the March 15, 2022 implementation date of the proposed rule change.³⁶ With respect to the FSAWP, the Exchange itself does not have an FSW waiver program. However, the Exchange proposes to recognize waivers granted to individuals who are designated as participants in, and satisfying the conditions of, the FSW waiver program(s) of Cboe, C2 and/or FINRA, and also to make the look-back provision for the new maintaining qualifications requirements available to individuals who are participants in the FSA waiver programs of Cboe, C2 and/or FINRA immediately preceding March 15, 2022. The Exchange understands that, effective March 15, 2022, Cboe, C2 and FINRA do not plan to accept any new initial designations for individuals under their respective FSA waiver programs. Thus, what will remain of those programs will only be applicable to pre-existing participants. The Exchange also understands that, ultimately, the FSA waiver programs will expire in favor of the maintenance of qualification requirements under the Cboe, C2 and FINRA Rules, for which the Exchange's maintenance of qualification requirements under proposed are modeled.³⁷

In addition, the proposed rule change includes a re-eligibility provision that would allow individuals to regain eligibility to participate each time they reregister with a Member for a period of at least one year and subsequently terminate their registration, provided that they satisfy the other participation conditions and limitations.³⁸ The proposed rule change will have several important

³⁶ See proposed Rule 2.16.01. Such individuals would be required to elect whether to participate by the March 15, 2022 implementation date of the proposed rule change. If such individuals elect to participate, they would be required to complete their initial annual content by the end of 2022 (i.e., the end of the calendar year in which the proposed rule change is implemented). In addition, if such individuals elect to participate, their initial participation period would be adjusted based on the date that their registration was terminated.

³⁷ See proposed Rules 2.5.07 and 2.16.01.

³⁸ See proposed Rule 2.16.02.

benefits. It will provide individuals with flexibility to address life and career events and necessary absences from registered functions without having to requalify each time. It will also incentivize them to stay current on their respective securities industry knowledge following the termination of any of their registrations. The continuing education under the proposed option will be as rigorous as the continuing education of registered persons, which promotes investor protection. Further, the proposed rule change will enhance diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals.

Significantly, the proposed rule change will be of particular value to women, who continue to be the primary caregivers for children and aging family members and, as a result, are likely to be absent from the industry for longer periods.³⁹ In addition, the proposed rule change will provide longer-term relief for women, individuals with low incomes and other populations, including older workers, who are at a higher risk of a job loss during certain economic downturns and who are likely to remain unemployed for longer periods.⁴⁰

d. Other Changes to Exchange Rule 2.5

First, the Exchange proposes to correct a ministerial error by adding Rule 2.5.02 and the title “Registration Procedures” prior to the existing applicable rule text. The Exchange also proposes to adopt Rules 2.5.05 through 2.5.07 to conform to Cboe Rules 3.30.07 through 3.30.09, respectively, and to adopt Rule 2.5.08 to conform to Cboe Rule 3.30.02. Further, based on the Exchange’s

³⁹ See The Female Face of Family Caregiving (November 2018), available at <https://www.nationalpartnership.org/our-work/resources/economic-justice/femaleface-family-caregiving.pdf>.

⁴⁰ See The COVID-19 Recession is the Most Unequal in Modern U.S. History (September 30, 2020), available at <https://www.washingtonpost.com/graphics/2020/business/coronavirus-recessionequality/> and Unemployment's Toll on Older Workers Is Worst in Half a Century (October 21, 2020), available at <https://www.aarp.org/work/working-at-50-plus/info-2020/pandemic-unemployment-older-workers/>.

proposal to move the subject matter of current Rule 2.5.02 to proposed Rule 2.16, the Exchange also proposes to renumber various Interpretations and Policies under Rule 2.5 accordingly. The Exchange proposes to adopt Rule 2.5.05 to provide that all registered representatives and principals must satisfy the regulatory element of continuing education. Specifically, proposed Rule 2.5.05 provides that all registered representatives and principals, including those individuals who solely maintain permissive registrations pursuant to proposed Rule 2.5.08 shall satisfy the Regulatory Element of continuing education for each representative or principal registration category that they hold as specified in Rule 2.5.01(i). If a person registered with a Member has a continuing education deficiency with respect to that registration as provided under proposed Rule 2.16, such person shall not be permitted to be registered in another registration category under Rule 2.5.01(i) with that Member or to be registered in any registration category under Rule 2.5.01(i), with another Member, until the person has satisfied the deficiency.

The Exchange also proposes to adopt Rule 2.5.06 to address lapses of registrations and expirations of the SIE. Specifically, proposed Rule 2.5.06 would provide that any person who was last registered in a representative registration category two or more years immediately preceding the date of receipt by the Exchange of a new application for registration in that registration category shall be required to pass a representative qualification examination appropriate to that registration category as specified in Rule 2.5.01(i), unless the person has maintained his or her qualification status for that registration category in accordance with proposed Rule 2.16(c) or as otherwise permitted by the Exchange. In addition, any person who last passed the SIE or who was last registered as a representative, whichever occurred last, four or more years immediately preceding the date of receipt by the Exchange of a new application for registration as a representative shall be required to pass the SIE in addition to a representative qualification examination appropriate to his

or her category of registration as specified in Rule 2.5.01(i). Any person who was last registered in a principal registration category two or more years immediately preceding the date of receipt by the Exchange of a new application for registration in that registration category shall be required to pass a principal qualification examination appropriate to that registration category as specified in Rule 2.5.01(i), unless the person has maintained his or her qualification status for the registration category in accordance with proposed Rule 2.16(c) or as otherwise permitted by the Exchange. Any person whose registration has been revoked and any person who has a continuing education deficiency for a period of two years as provided under Rule 2.5.01(i) shall be required to pass a representative or principal qualification examination appropriate to his or her category of registration as specified in Rule 2.5.01(i), to be eligible for registration with the Exchange. Finally, for purposes of Rule 2.5.06, an application shall not be considered to have been received by the Exchange if that application does not result in a registration.

The Exchange proposes to adopt Rule 2.5.07 which, as discussed above, would recognize a waiver for participants in the financial services industry affiliate waiver program(s) of Cboe, C2 and/or FINRA. Specifically, Rule 2.5.07 would provide that upon request by a Member, the Exchange shall waive the applicable qualification examination(s) for an individual designated as a participant in, and satisfying the conditions of, the FSA waiver program(s) of Cboe under its Rule 3.30.09, C2 under its Chapter 3, Section B, and/or FINRA under its Rule 2110.09.

By way of background, very generally, these FSA waiver programs provide that a member of Cboe, C2 or FINRA, respectively, may request that the exchange/FINRA waive the applicable qualification examination(s) for an individual designated with it as working for a financial services industry affiliate of a member if the following conditions are met:

- Prior to the individual’s initial designation, the individual was registered as a representative or principal with Cboe, C2 or FINRA, as applicable, 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;
- The waiver request is made within seven years of the individual’s initial designation;
- The initial designation and any subsequent designation(s) were made concurrently with the filing of the individual’s related Form U5;
- The individual continuously worked for the financial services industry affiliate(s) of a member since the individual’s last Form U5 filing;
- The individual has complied with the Regulatory Element of continuing education as specified in the Cboe, C2 or FINRA Rules, as applicable; and
- 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 as defined in Section 3(a)(39) of the Exchange Act while the individual was designated as eligible for a waiver.

As used in Rule 2.5.07, a “financial services industry affiliate” is a legal entity that controls, is controlled by or is under common control with a member and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

Last, the Exchange proposes to adopt Rule 2.5.08, which would provide for permissive registrations. Specifically, proposed Rule 2.5.08 would provide that a Member may make application for or maintain the registration as a representative or principal of any associated person of a Member and any individual engaged in the securities business of a foreign securities

affiliate or subsidiary of the Member. Individuals maintaining such permissive registrations shall be considered registered persons and subject to all Exchange rules, to the extent relevant to their activities. Consistent with the requirements of the Exchange's supervision rules, Members shall 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. With respect to an individual who solely maintains a permissive registration(s), the individual's direct supervisor shall not be required to be a registered person. However, for purposes of compliance with the Exchange's supervision rules, a Member shall assign a registered supervisor who shall be responsible for periodically contacting such individual's direct 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 shall be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor shall be registered as a principal. Moreover, the registered supervisor of an individual who solely maintains a permissive registration(s) shall not be required to be registered in the same representative or principal registration category as the permissively-registered individual.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁴¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴² requirements that the rules of an exchange be designed to

⁴¹ 15 U.S.C. 78f(b).

⁴² 15 U.S.C. 78f(b)(5).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to move to an annual Regulatory Element training with content tailored to an individual's representative or principal registration categories is designed to protect investors and is in the public interest. As noted in the order approving the similar changes to the FINRA CE Program,⁴⁴ the Commission found that "the rule is reasonably designed to minimize the potential adverse impact on firms and their registered persons. Furthermore, increasing the timeliness of registered persons' training, as well as the relevance of the training's content by tailoring it to each registration category that they hold, would enhance their education and compliance with their regulatory obligations."

The Exchange believes that the proposed changes to the Regulatory Element and the proposal to adopt the Firm Element portions of its CE Program will ensure that all registered persons receive timely and relevant training, which will, in turn, enhance compliance and investor protection. Further, the Exchange believes that establishing a path for individuals to maintain their qualification following the termination of a registration will reduce unnecessary

⁴³ Id.

⁴⁴ Supra note 5.

impediments to requalification and promote greater diversity and inclusion in the securities industry without diminishing investor protection.

The Exchange also believes that the proposed rule change will bring consistency and uniformity with Cboe's and FINRA's recently amended CE Program rules, which will, in turn, assist Members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule changes conform certain of the Exchange's continuing education and registration rules to align them with rules of Cboe, which will, in turn, prevent unnecessary regulatory burdens and to promote efficient administration of the rules. Finally, the proposed amendment 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule changes which are, in all material respects, based upon and substantially similar to, recent rule changes adopted by FINRA and Cboe, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE Program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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 Act⁴⁵ and Rule 19b-4(f)(6) thereunder.⁴⁶

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may 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 this proposed rule change may become operative immediately upon filing. In addition, Rule 19b-4(f)(6)(iii)⁴⁷ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

Waiver of the 30-day operative delay would allow the Exchange to implement proposed changes to its Continuing Education Rules by March 15, 2022 to coincide with one of FINRA's announced implementation dates, thereby eliminating the possibility of a significant regulatory gap between the FINRA and the Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for Members of the Exchange that are also

⁴⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴⁶ 17 CFR 240.19b-4(f)(6).

⁴⁷ 17 CFR 240.19b-4(f)(6)(iii).

FINRA members. For this reason, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.⁴⁸

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2022-006 on the subject line.

⁴⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-CboeBYX-2022-006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 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-CboeBYX-2022-006 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.⁴⁹

J. Matthew DeLesDernier
Assistant Secretary

⁴⁹ 17 CFR 200.30-3(a)(12).