

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-94400 ; File No. SR-NASDAQ-2022-021)

March 11, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange Registration Rules in General 4

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 7, 2022, The Nasdaq Stock Market LLC (“Nasdaq” 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 substantially 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 General 4, Rule 1240 (Continuing Education Requirements). While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on March 15, 2022.

The text of the proposed rule change is available on the Exchange’s Website at <https://www.listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

The Exchange proposes to amend its continuing education requirements in General 4, Rule 1240. This proposed rule change is based on a filing recently submitted by the Financial Industry Regulatory Authority, Inc. (“FINRA”), and is intended to harmonize the Exchange’s continuing education rules with those of FINRA so as to promote uniform standards across the securities industry.<sup>3</sup> The Exchange also proposes to amend its manual signature requirements in General 4, Rule 1250 (Form U4 Filing Requirements) to align with changes FINRA has made to similar rules.<sup>4</sup> Each change is discussed in detail below.

The proposed changes are based on the changes approved by the Commission in the approval order for SR-FINRA-2021-015 and as noticed in SR-FINRA-2021-003.<sup>5</sup> The Exchange is proposing to adopt such changes substantially in the same form as proposed by FINRA, with only minor changes necessary to conform to the Exchange’s existing rules such as to remove cross-references and rules that are applicable to FINRA members but not to Exchange members.

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<sup>3</sup> See Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (SR-FINRA-2021-015) (“FINRA Rule Change”).

<sup>4</sup> See Securities Exchange Release No. 91262 (March 5, 2021), 86 FR 13935 (March 11, 2021) (SR-FINRA-2021-003).

<sup>5</sup> See supra notes 3 and 4.

## **Continuing Education Rules**

### (i) **Background**

The continuing education program for registered persons of broker-dealers (“CE Program”) currently requires registered persons to complete continuing education consisting of a Regulatory Element and a Firm Element. The Regulatory Element, which is administered by FINRA, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends. The CE Program is codified under the rules of the self-regulatory organizations (“SROs”). The CE Program for registered persons of Exchange members is codified under General 4, Rule 1240.<sup>6</sup>

#### a. **Regulatory Element**

General 4, Rule 1240(a) (Regulatory Element) 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

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<sup>6</sup> See also General 4, Rule 1210.07 (All Registered Persons Must Satisfy the Regulatory Element of Continuing Education).

anniversary date.<sup>7</sup> The Exchange may extend these time frames for good cause shown.<sup>8</sup>

Registered persons who have not completed the Regulatory Element within the prescribed time frames will have their Exchange registrations deemed inactive and will be designated as “CE inactive” in the CRD system until the requirements of the Regulatory Element have been satisfied.<sup>9</sup> A CE inactive person is prohibited from performing, or being compensated for, any activities requiring FINRA registration, including supervision. Moreover, if registered persons

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<sup>7</sup> See General 4, Rules 1240(a)(1) (Requirements) and (a)(4) (Reassociation in a Registered Capacity). An individual’s registration anniversary date is generally the date they initially registered with the Exchange in the Central Registration Depository (“CRD<sup>®</sup>”) 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 General 4, Rule 1210.09 (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 General 4, Rule 1240(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 General 4, Rule 1240(a)(3) (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.

<sup>8</sup> See General 4, Rule 1240(a)(2) (Failure to Complete).

<sup>9</sup> See 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.

remain CE inactive for two consecutive years, they must requalify by retaking required examinations (or obtain a waiver of the applicable qualification examinations).<sup>10</sup>

The Regulatory Element consists of a subprogram for registered persons generally, and a subprogram for principals and supervisors.<sup>11</sup> 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.<sup>12</sup>

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, FINRA transitioned the delivery of the Regulatory Element to an online platform (“CE Online”), which allows individuals to complete the content online at a location of their choosing, including their private residence. This online delivery provides the Exchange with 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.

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<sup>10</sup> 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.

<sup>11</sup> The S101 (General Program for Registered Persons) and the S201 (Registered Principals and Supervisors).

<sup>12</sup> 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

General 4, Rule 1240(b) (Firm Element) currently requires each firm to develop and administer an annual Firm Element training program for covered registered persons.<sup>13</sup> The rule requires firms to conduct an annual needs analysis to determine the appropriate training.<sup>14</sup> Currently, at a minimum, the Firm Element must cover training in ethics and professional responsibility as well as the following items concerning securities products, services and strategies offered by the member: (1) general investment features and associated risk factors; (2) suitability and sales practice considerations; and (3) applicable regulatory requirements.<sup>15</sup>

A firm, consistent with its needs analysis, may determine to apply toward the Firm Element other required training. The current rule does not expressly recognize other required training, such as training relating to the anti-money laundering (“AML”) compliance program and training relating to the annual compliance meeting,<sup>16</sup> for purposes of satisfying Firm Element training.

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

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<sup>13</sup> The rule defines “covered registered persons” as any registered person who has direct contact with customers in the conduct of a member’s securities sales and trading activities, and the immediate supervisors of any such persons. See General 4, Rule 1240(b)(1) (Persons Subject to the Firm Element).

<sup>14</sup> See General 4, Rule 1240(b)(2) (Standards for the Firm Element).

<sup>15</sup> See supra note 14.

<sup>16</sup> See General 9, Sections 20 and 37.

if they obtain a waiver of such examination(s) (the “two-year qualification period”).<sup>17</sup> The two-year qualification period was adopted prior to the creation of the CE Program and was intended to ensure that individuals who reregister are relatively current on their regulatory and securities knowledge.

(ii) Proposed Rule Change

After extensive work with the Securities Industry/Regulatory Council on Continuing Education (“CE Council”) and discussions with stakeholders, including industry participants and the North American Securities Administrators Association (“NASAA”), FINRA adopted the following changes to the CE Program under its rules.<sup>18</sup> In order to promote uniform standards

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<sup>17</sup> See General 4, Rule 1210.08 (Lapse of Registration and Expiration of SIE). 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. For instance, it would not apply to an individual who maintains his registration as a General Securities Representative but who terminates his registration as an Investment Company and Variable Contracts Products Representative. 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 General 5, Rule 8310 (Sanctions for Violation of the Rules) 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 either on a case-by-case basis under General 4, Rule 1210.03 (Qualification Examinations and Waivers of Examinations) or as part of the waiver program under General 4, Rule 1210.09.

<sup>18</sup> See supra note 3. FINRA’s changes are based on the CE Council’s September 2019 recommendations to enhance the CE Program. See Recommended Enhancements for the Securities Industry Continuing Education Program, available at <http://cecouncil.org/media/266634/council-recommendations-final-.pdf>. The CE Council is composed of securities industry representatives and representatives of SROs. The CE

across the securities industry, the Exchange now proposes to adopt the same changes to its continuing education rules.

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.<sup>19</sup> Therefore, to provide registered persons with more timely and relevant training on significant regulatory developments, the Exchange proposes amending General 4, Rule 1240(a) to require registered persons to complete the Regulatory Element annually by December 31.<sup>20</sup> The proposed amendment would also require registered persons to complete Regulatory Element content for each representative or principal registration category that they hold, which would also further the goals of the Regulatory Element.<sup>21</sup>

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Council was formed in 1995 upon a recommendation from the Securities Industry Task Force on Continuing Education and was tasked with facilitating the development of uniform continuing education requirements for registered persons of broker-dealers.

<sup>19</sup> When the CE Program was 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 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).

<sup>20</sup> See proposed General 4, Rules 1240(a)(1) and (a)(4).

<sup>21</sup> See proposed General 4, Rules 1210.07 and 1240(a)(1).

Under the proposed rule change, firms would have the flexibility to require their registered persons to complete the Regulatory Element sooner than December 31, which would allow firms to coordinate the timing of the Regulatory Element with other training requirements, including the Firm Element.<sup>22</sup> For example, a firm 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.<sup>23</sup> 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.<sup>24</sup>

Consistent with current requirements, individuals who fail to complete their Regulatory Element within the prescribed period would be automatically designated as CE inactive.<sup>25</sup> 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.<sup>26</sup>

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<sup>22</sup> See proposed General 4, Rules 1240(a)(1) and (a)(4).

<sup>23</sup> See proposed General 4, Rule 1240(a)(1).

<sup>24</sup> See proposed General 4, Rule 1240(a)(4).

<sup>25</sup> See proposed General 4, Rule 1240(a)(2).

<sup>26</sup> See supra note 25. The proposed rule change clarifies that the request for an extension of time must be in writing and include supporting documentation, which is consistent with current practice.

The Exchange also proposes amending General 4, Rule 1240(a) to clarify 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;<sup>27</sup> (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;<sup>28</sup> (3) individuals who become subject to a significant disciplinary action may be required to complete assigned continuing education content as prescribed by the Exchange;<sup>29</sup> (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;<sup>30</sup> and (5) the Regulatory Element requirements apply to individuals who are registered, or in the process of registering, as a representative or principal.<sup>31</sup> In addition, the Exchange proposes making conforming amendments to General 4, Rule 1210.07.

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

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<sup>27</sup> See supra note 25.

<sup>28</sup> See supra note 25.

<sup>29</sup> See proposed General 4, Rule 1240(a)(3). As previously noted, General 4, Rule 1240(a)(3) currently provides that such individuals may be required to retake the Regulatory Element. See supra note 7.

<sup>30</sup> See proposed General 4, Rule 1240(a)(4).

<sup>31</sup> See proposed General 4, Rule 1240(a)(5).

expected to 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.<sup>32</sup> 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. Recognition of Other Training Requirements for Firm Element and Extension of Firm Element to All Registered Persons

To better align the Exchange's rulebook with FINRA's rulebook, and, in addition, to better align the Firm Element requirement with other required training, the Exchange proposes amending General 4, Rule 1240(b) to expressly allow firms to consider training relating to the AML compliance program and the annual compliance meeting toward satisfying an individual's annual Firm Element requirement.<sup>33</sup> The Exchange also proposes amending the rule to extend

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<sup>32</sup> As discussed in the economic impact assessment in the FINRA Rule Change, individuals with multiple registrations represent a smaller percentage of the population of registered persons.

<sup>33</sup> See proposed General 4, Rule 1240(b)(2)(D).

the Firm Element requirement to all registered persons, including individuals who maintain solely a permissive registration consistent with General 4, Rule 1210.02 (Permissive Registrations), thereby further aligning the Firm Element requirement with other broadly-based training requirements.<sup>34</sup> In conjunction with this proposed change, the Exchange proposes modifying the current minimum training criteria under General 4, Rule 1240(b) to instead provide that the training must cover topics related to the role, activities or responsibilities of the registered person and to professional responsibility.<sup>35</sup>

c. Maintenance of Qualification After Termination of Registration

The Exchange proposes adopting paragraph (c) under General 4, Rule 1240 and Supplementary Material .01 and .02 to General 4, Rule 1240 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.<sup>36</sup> The proposed rule change would not eliminate the two-year qualification period. Rather, it would provide such individuals an alternative means of staying current on their regulatory and

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<sup>34</sup> See proposed General 4, Rule 1240(b)(1). As noted earlier, the current requirement only applies to “covered registered persons” and not all registered persons.

<sup>35</sup> See proposed General 4, Rule 1240(b)(2)(B).

<sup>36</sup> The proposed option would also be available to individuals who terminate any permissive registrations as provided under General 4, Rule 1210.02. However, the proposed option would not be available to individuals who terminate a limited registration category that is a subset of a broader registration category for which they remain qualified. As previously noted, such individuals currently 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. In addition, the proposed option would not be available to individuals who are maintaining an eliminated registration category, such as the category for Corporate Securities Representative, or individuals who have solely passed the Securities Industry Essentials examination, which does not, in and of itself, confer registration.

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;<sup>37</sup>
- individuals could elect to participate when they terminate a registration or within two years from the termination of a registration;<sup>38</sup>
- individuals would be required to complete annually all prescribed continuing education;<sup>39</sup>

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<sup>37</sup> See proposed General 4, Rule 1240(c)(1).

<sup>38</sup> See proposed General 4, Rule 1240(c)(2). Individuals who elect to participate at the later date would be required to complete, within two years from the termination of their registration, any continuing education that becomes due between the time of their Form U5 (Uniform Termination Notice for Securities Industry Registration) submission and the date that they commence their participation. In addition, FINRA would enhance its systems to notify individuals of their eligibility to participate, enable them to affirmatively opt in, and notify them of their annual continuing education requirement if they opt in.

<sup>39</sup> See proposed General 4, Rule 1240(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. The continuing education content for participants would

- individuals would have a maximum of five years in which to reregister;<sup>40</sup>
- 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;<sup>41</sup> 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.<sup>42</sup>

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consist of a combination of Regulatory Element content and content selected by FINRA and the CE Council from the Firm Element content catalog discussed below. The content would correspond to the registration category for which individuals wish to maintain their qualifications. Participants who are maintaining their qualification status for a principal registration category that includes one or more corequisite representative registrations must also complete required annual continuing education for the corequisite registrations in order to maintain their qualification status for the principal registration category. The proposed rule change clarifies that the prescribed continuing education must be completed by December 31 of the calendar year, which is consistent with the timing for the proposed annual Regulatory Element.

<sup>40</sup> See proposed General 4, Rule 1240(c). In addition, individuals applying for reregistration must satisfy all other requirements relating to the registration process (e.g., submit a Form U4 (Uniform Application for Securities Industry Registration or Transfer) and undergo a background check).

<sup>41</sup> See proposed General 4, Rules 1240(c)(4) and (c)(5).

<sup>42</sup> See proposed General 4, Rules 1240(c)(1) and (c)(6). Further, any content completed by 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 proposed rule change also includes a look-back provision that would, subject to specified conditions, extend the proposed option to individuals who have been registered as a representative or principal within two years immediately prior to the implementation date of the proposed rule change and individuals who have been FSAWP participants immediately prior to the implementation date of the proposed rule change.<sup>43</sup>

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 firm for a period of at least one year and subsequently terminate their registration, provided that they satisfy the other

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the eligibility conditions for association with an Exchange member firm. See Exchange Act Sections 3(a)(39) and 15(b)(4) and General 3, Rule 1002.

<sup>43</sup> See proposed Supplementary Material .01 to General 4, Rule 1240. Such individuals would be required to elect whether to participate by the 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 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. The current waiver program for FSAWP participants would not be available to new participants upon implementation of the proposed rule change. See proposed General 4, Rule 1210.09. However, individuals who are FSAWP participants immediately prior to the implementation date of the proposed rule change could elect to continue in that waiver program until the program has been retired. As noted above, FSAWP participants may participate for up to seven years in that waiver program, subject to specified conditions. See supra note 7. As discussed above, the proposed rule change provides a five-year participation period for participants in the proposed continuing education program. So as not to disadvantage FSAWP participants, the Exchange has determined to preserve that waiver program for individuals who are participating in the FSAWP immediately prior to the implementation date of the proposed rule change. Because the proposed rule change transitions the Regulatory Element to an annual cycle, FSAWP participants who remain in that waiver program following the implementation of the proposed rule change would be subject to an annual Regulatory Element requirement. See proposed General 4, Rule 1240(a)(1). Finally, the proposed rule change preserves the Exchange's ability to extend the time by which FSAWP participants must complete the Regulatory Element for good cause shown. See proposed General 4, Rule 1240(a)(2).

participation conditions and limitations.<sup>44</sup> Finally, the Exchange proposes making conforming amendments to General 4, Rule 1210, including adding references to proposed Rule 1240(c) under General 4, Rule 1210.08.

The proposed rule change will have several important 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.<sup>45</sup> 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.<sup>46</sup>

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<sup>44</sup> See proposed Supplementary Material .02 to General 4, Rule 1240.

<sup>45</sup> See The Female Face of Family Caregiving (November 2018), available at <https://www.nationalpartnership.org/our-work/resources/economic-justice/female-face-family-caregiving.pdf>.

<sup>46</sup> 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-recession-equality/> and Unemployment's Toll on Older Workers Is Worst in Half a Century (October 21,

d. CE Program Implementation

As stated in the FINRA Rule Change, FINRA and the CE Council also plan to enhance the CE Program in other ways, and these additional enhancements do not require any changes to the FINRA rules.<sup>47</sup> As it relates to the rule changes themselves, the changes relating to the Maintaining Qualifications Program (paragraph (c) of General 4, Rule 1240) and the Financial Services Affiliate Waiver Program (FSAWP) (Supplementary Material .09 to General 4, Rule 1210) will become effective March 15, 2022. All other changes related to the FINRA Rule Change, including the changes relating to the Regulatory Element, Firm Element and the two-year qualification period, will become effective January 1, 2023.<sup>48</sup>

**Manual Signature**

General 4, Rule 1250(c) currently provides that every initial and transfer electronic Form U4 filing and any amendments to the disclosure information on Form U4 must be based on a manually signed Form U4 provided to the member or applicant for membership by the person on whose behalf the Form U4 is being filed, consistent with FINRA Rule 1010(c). Similarly, the Exchange's Supplementary Material .03 currently provides that in the event a member is not able to obtain an associated person's manual signature or written acknowledgement of amended disclosure information on that person's Form U4 prior to filing of such amendment reflecting the

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2020), available at <https://www.aarp.org/work/working-at-50-plus/info-2020/pandemic-unemployment-older-workers>.

<sup>47</sup> See *supra* note 3. As described in more detail in the FINRA Rule Change, FINRA will work with the CE Council to develop and incorporate additional resources in connection with the Regulatory and Firm Elements. Similar to FINRA, these additional enhancements do not require any changes to the Exchange rules.

<sup>48</sup> See FINRA Regulatory Notice 21-41 at <https://www.finra.org/rules-guidance/notices/21-41>.

information pursuant to Rule 1250(c)(3), the member must enter "Representative Refused to Sign/Acknowledge" or "Representative Not Available" or a substantially similar entry in the electronic Form U4 field for the associated person's signature. However, FINRA has since amended their Rule 1010(c) to permit firms to choose to rely on electronic signatures to satisfy the signature requirements when filing Form U4.<sup>49</sup> Cboe Exchange, Inc. ("CBOE") has also updated its Rule 3.34 to reflect FINRA's updated Rule 1010(c).<sup>50</sup>

The Exchange proposes to amend Rule 1250(c) and Supplementary Material .03 to similarly allow firms to rely on electronic signatures when filing Form U4, consistent with FINRA Rule 1010(c). Specifically, the Exchange proposes to remove the term "manual" from "manual signature" and the term "manually" from "manually signed". The proposed rule change provides members, and applicants for membership, with an opportunity to better manage operational challenges. Particularly, the COVID-19 pandemic amplified the need to better manage operational challenges like those that arose during the pandemic and that may continue to arise in the future. Additionally, the proposed rule change would not require the use of a particular type of technology to obtain a valid electronic signature from the associated person. The Exchange believes that some firms may be unable to obtain the manual signature of applicants for registration resulting in a significant operational backlog. By permitting these firms to rely on electronic signatures to satisfy the signature requirements of Exchange Rule 1250 and Supplementary Material .03, the proposed rule change may reduce or eliminate this backlog. For purposes of the proposed rule change, a valid electronic signature would be any

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<sup>49</sup> See Securities Exchange Release No. 91262 (March 5, 2021), 86 FR 13935 (March 11, 2021) (SR-FINRA-2021-003).

<sup>50</sup> See Securities Exchange Release No. 92562 (August 4, 2021), 86 FR 143701 (August 10, 2021) (SR-CBOE-2021-043).

electronic mark that clearly identifies the signatory and is otherwise in compliance with the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”) and the guidance issued by the SEC relating to the E-Sign Act.<sup>51</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>52</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>53</sup> 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 changes to the Regulatory Element and Firm Element 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 impediments to requalification and promote greater diversity and inclusion in the securities industry without diminishing investor protection.

As it relates to the proposed changes to General 4, Rule 1250(c), the Exchange believes the proposed rule change provides firms with the flexibility to rely on electronic signatures to satisfy the signature requirements of Rule 1250(c). Specifically, the Exchange proposes to amend Exchange Rule 1250(c) and Supplementary Material .03, similar to the amendments made

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<sup>51</sup> See accord Securities Exchange Act Release No. 85282 (March 11, 2019), 84 FR 9573 (March 15, 2019) (Order Approving File No. SR-FINRA-2018-040) (discussing valid electronic signatures under existing guidance).

<sup>52</sup> 15 U.S.C. 78f(b).

<sup>53</sup> 15 U.S.C. 78f(b)(5).

by FINRA and CBOE, to provide the option of filing an initial or a transfer Form U4 based on a manually or an electronically signed copy of the form provided to the member, or applicant for membership, by the individual on whose behalf the form is being filed. Considering the technological advancements that provide for enhanced authentication and security of electronic signatures, the Exchange believes that it is appropriate to amend Rule 1250(c) and Supplementary Material .03 to provide such flexibility. The proposed rule change also addresses the ongoing public health risks stemming from the outbreak of COVID-19 and the operational challenges that firms continue to face as a result of pandemic repercussions. By permitting these firms to rely on electronic signatures to satisfy the signature requirements of Rule 1250(c) and Supplementary Material .03, the proposed rule change may reduce or eliminate an operational backlog due to the difficulty firms may have faced in obtaining the manual signature of applicants for registration as a result of the impact of the pandemic on daily work environments.

The Exchange believes the proposal is consistent with the Act for the reasons described above and for the reasons outlined in the approval order for SR-FINRA-2021-015 and as noticed in SR-FINRA-2021-003.<sup>54</sup>

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. All members would be subject to the proposed rule change. The proposed rule change relating to the Exchange's CE Program, which is materially identical to the FINRA Rule Change, is designed to result in a more efficient CE Program that addresses relevant regulatory requirements and provides individuals with improved tools and resources to understand and comply with such

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<sup>54</sup> See supra notes 3 and 4.

requirements, enhancing investor protection. Moreover, the proposed rule change would provide new channels for individuals to maintain their qualification status for a terminated registration category and, in so doing, could increase the likelihood that professionals who need to step away from the industry for a period could return, subject to satisfying all other requirements relating to the registration process.

As it relates to the proposed amendments to General 4, Rule 1250, the proposed rule change relating to manual signatures is, in all material respects, substantively identical to recent rule changes adopted by FINRA and CBOE. The Exchange believes the proposed change will reduce a regulatory filing burden for members by allowing them to rely on Form U4 copies with an electronic signature. All members will have the option to rely on such forms with an electronic signature (or continue to rely on forms with a manual signature).

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 Act<sup>55</sup> and Rule 19b-4(f)(6) thereunder.<sup>56</sup>

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

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<sup>55</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>56</sup> 17 CFR 240.19b-4(f)(6).

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. Rule 19b-4(f)(6)(iii)<sup>57</sup> 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 the Maintaining Qualifications Program and the FSAWP by March 15, 2022 to coincide with FINRA's announced implementation date, thereby eliminating the possibility of a significant regulatory gap between the FINRA and Nasdaq rules and providing more uniform standards across the securities industry. For the proposal related to the manual signature requirement, waiver of the 30-day operative delay would provide immediate relief to firms currently experiencing a significant operational backlog because of the requirement to obtain manual signatures, ultimately benefitting the investing public. The proposed rule change to Rule 1250(c) and Supplementary Material .03 will provide immediate relief to these firms by allowing them to rely on electronic signatures to clear the backlog. Moreover, as noted above, the proposed manual signature rule change is based on a similar rule change by FINRA that has already taken effect. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public

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<sup>57</sup> 17 CFR 240.19b-4(f)(6)(iii).

interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>58</sup>

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2022-021 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-NASDAQ-2022-021. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>58</sup> 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).

your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. 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-NASDAQ-2022-021 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.<sup>59</sup>

Eduardo Aleman  
Assistant Secretary

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<sup>59</sup> 17 CFR 200.30-3(a)(12).