

Required fields are shown with yellow backgrounds and asterisks.

Filing by The Nasdaq Stock Market LLC  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to amend, reorganize and enhance the Exchange membership, registration and qualification rules, and to make conforming changes to certain other rules.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Carla      Last Name \* Behnfeldt  
 Title \* Associate General Counsel  
 E-mail \* Carla.Behnfeldt@nasdaq.com  
 Telephone \* (215) 496-5208      Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)  
 Executive Vice President and General Counsel

Date 09/27/2018  
 By Edward S. Knight  
 (Name \*)

edward.knight@nasdaq.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), 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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend, reorganize and enhance its membership, registration and qualification rules, and to make conforming changes to certain other rules.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on July 23, 2018. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Carla Behnfeldt  
Associate General Counsel  
Nasdaq, Inc.  
(215) 496-5208

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

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

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

a. Purpose

**Overview**

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

In 2006 Nasdaq separated from the National Association of Securities Dealers, Inc. (formerly "NASD" and now the Financial Industry Regulatory Authority or "FINRA") and began to operate as a national securities exchange. At that time it adopted a rulebook with provisions respecting registration, qualification examinations and continuing education that were designed to parallel the NASD rulebook in many

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

<sup>4</sup> See Rule 1060, Persons Exempt from Registration.

<sup>5</sup> See Rule 1120, Continuing Education Requirements.

respects.<sup>6</sup> Recently, the Commission approved a FINRA proposed rule change consolidating and adopting NASD and Incorporated NYSE rules relating to qualification and registration requirements into the Consolidated FINRA Rulebook,<sup>7</sup> restructuring the FINRA representative-level qualification examinations, creating a general knowledge examination and specialized knowledge examinations, allowing permissive registration, establishing an examination waiver process for persons working for a financial services affiliate of a member, and amending certain continuing education (“CE”) requirements (collectively, the “FINRA Rule Changes”).<sup>8</sup> The FINRA Rule Changes will become effective on October 1, 2018.

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<sup>6</sup> See Securities Exchange Act Release No. 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006).

<sup>7</sup> The current FINRA rulebook consists of: (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from the New York Stock Exchange (“NYSE”) (the “Incorporated NYSE rules”). While the NASD rules generally apply to all FINRA members, the Incorporated NYSE rules apply only to those members of FINRA that are also members of the NYSE.

<sup>8</sup> See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (Order Approving File No. SR-FINRA-2017-007). See also FINRA Regulatory Notice 17-30 (SEC Approves Consolidated FINRA Registration Rules, Restructured Representative-Level Qualification Examinations and Changes to Continuing Education Requirements) (October 2017). FINRA articulated its belief that the proposed rule change would streamline, and bring consistency and uniformity to, its registration rules, which would, in turn, assist FINRA members and their associated persons in complying with the rules and improve regulatory efficiency. FINRA also determined to enhance the overall efficiency of its representative-level examinations program by eliminating redundancy of subject matter content across examinations, retiring several outdated representative-level registrations, and introducing a general knowledge examination that could be taken by all potential representative-level registrants and the general public. FINRA amended certain aspects of its continuing education rule, including by codifying existing guidance regarding the effect of failing to complete the Regulatory Element on a registered person’s activities and compensation.

The Exchange now proposes to amend, reorganize and enhance certain of its corresponding membership, registration and qualification requirements rules in part in response to the FINRA Rule Changes, and also in order to facilitate the adoption of similar membership, registration and qualification rules by Nasdaq's affiliated exchanges in the interest of uniformity and to facilitate compliance with membership, registration and qualification regulatory requirements by members of multiple Nasdaq-affiliated exchanges. At the same time, the Exchange is proposing to further amend or delete certain existing Exchange rules originally based upon FINRA rules but which are no longer appropriate for the business conducted by Nasdaq or its affiliated exchanges.<sup>9</sup> Last, the Exchange proposes to enhance its registration rules by adding a new registration requirement applicable to developers of algorithmic trading systems similar to a requirement adopted by FINRA pursuant to a 2016 FINRA proposed rule change.<sup>10</sup>

As part of this proposed rule change, current IM-1002-2, Status of Persons Serving in the Armed Forces of the United States; IM-1002-3, Failure to Register

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<sup>9</sup> For example, the Exchange is deleting the Limited Principal - Investment Company and Variable Contracts Products (current Nasdaq Rule 1022(d)), Limited Representative - Investment Company and Variable Contracts Products (current Nasdaq Rule 1032(b)) and Introducing Broker/Dealer Financial and Operations Principal (current Nasdaq Rule 1022(c)) registration categories from the array of registration categories recognized by the Exchange. Although FINRA is retaining these registration categories for its own purposes, the activities permitted by registration in those categories have little or no practical relevance to the Exchange.

<sup>10</sup> See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR-FINRA-2016-007). In its proposed rule change FINRA addressed the increasing significance of algorithmic trading strategies by amending its rules to require registration, as Securities Traders, of associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities.

Personnel; 1020, Registration of Principals; 1021, Registration Requirements; 1022, Categories of Principal Registration; IM-1022-1, Reserved; IM-1022-2, Limited Principal-General Securities Sales Supervisor; 1030, Registration of Representatives; 1031, Registration Requirements, Sections (a)-(e); 1032, Categories of Representative Registration; 1040, Registration of Assistant Representatives; 1041, Registration Requirements for Assistant Representatives; 1042, Restrictions for Assistant Representatives; 1043, Reserved; 1060, Persons Exempt from Registration<sup>11</sup>; 1070, Qualification Examinations and Waiver of Requirements; 1080, Confidentiality of Examinations; 1100, Reserved; 1110, Reserved; 1120, Continuing Education Requirements; and Chapter II, Section 2, Requirements for Options Participation, Subsections (g) and (h) and Commentary.01, are proposed to be deleted. Rule 1140, Electronic Filing Requirements for Uniform Forms, is proposed to be amended and relocated. A number of other rules are proposed to be amended with conforming changes, or relocated in view of the foregoing amendments.<sup>12</sup>

In place of the deleted rules and rule sections, the Exchange proposes to adopt a new 1200 Series of rules captioned Registration, Qualification and Continuing Education, generally conforming to and based upon FINRA's new 1200 Series of rules resulting

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<sup>11</sup> Provisions currently found in Rule 1060(b) are being amended and relocated to new Rule 2040, as discussed below.

<sup>12</sup> Conforming amendments are proposed to Rules 0120, Definitions; 1050, Research Analysts; 3010, Supervision; 7003, Registration and Processing Fees; IM-9216, Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2); and 9630, Appeal. In the Exchange's Options Rules, amendments are proposed to Chapter XI, Section 2, Registration of Options Principals and Section 3, Registration of Representatives.

from the FINRA Rule Changes, but with a number of Exchange-specific variations.<sup>13</sup>

The proposed new 1200 Series is also being proposed for adoption by Nasdaq's affiliated exchanges in order to facilitate compliance with membership, registration and qualification regulatory requirements by members of two or more of those affiliated exchanges.<sup>14</sup> In the new 1200 Series the Exchange would, among other things, recognize additional associated person registration categories, recognize a new general knowledge examination, permit the maintenance of permissive registrations, and require Securities Trader registration of developers of algorithmic trading strategies consistent with a comparable existing FINRA registration requirement.<sup>15</sup>

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<sup>13</sup> The proposed 1200 Series of Rules would consist of Rule 1210, Registration Requirements; Rule 1220, Registration Categories; Rule 1230, Associated Persons Exempt from Registration; Rule 1240, Continuing Education Requirements; and Rule 1250, Electronic Filing Requirements for Uniform Forms.

<sup>14</sup> The Exchange's five affiliated exchanges, Nasdaq BX, Inc. ("BX"), Nasdaq PHLX LLC ("PHLX"), Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), and Nasdaq MRX, LLC ("MRX") (together with Nasdaq, the "Nasdaq Affiliated Exchanges") are also submitting proposed rule changes to adopt the 1200 Series of rules. See SR-BX-2018-047, SR-Phlx-2018-61, SR-ISE-2018-82, SR-GEMX-2018-33, and SR-MRX-2018-31. The Exchange recently added a shell structure to its rulebook with the purpose of improving efficiency and readability and to align its rules more closely to those of the other Nasdaq Affiliated Exchanges. See Securities Exchange Act Release No. 82175 (November 29, 2017), 82 FR 57494 (December 5, 2017) (SR-NASDAQ-2017-125). Ultimately, the Exchange intends to submit another proposed rule change to transfer the 1200 Series of rules into the new shell structure. (The Exchange notes that the Phlx 1200 Series of rules would differ slightly from the 1200 Series of the other Nasdaq Affiliated Exchanges given Phlx's trading floor and its unique membership structure which features the concept of a "member organization.").

<sup>15</sup> See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (order approving SR-FINRA-2016-007). In its proposed rule change to adopt this registration requirement, FINRA addressed the increasing significance of algorithmic trading strategies by proposing to require registration, as Securities Traders, of associated persons primarily responsible for the design,



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

## **Proposed Rules**

### **A. Registration Requirements (Proposed Rule 1210)**

Exchange Rules 1021(a) and 1031(a) currently require that persons engaged, or to be engaged, in the investment banking or securities business of a member who are to function as representatives or principals register with the Exchange in the category of registration appropriate to their functions as specified in Exchange Rules 1022 and 1032.<sup>16</sup> The Exchange is proposing to consolidate and streamline provisions of Exchange Rules 1021(a) and 1031(a) and to adopt them as Exchange Rule 1210, subject to several changes.<sup>17</sup>

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development or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities.

<sup>16</sup> In addition, IM-1002-3 provides that the failure to register an individual as a registered representative may be deemed to be conduct inconsistent with just and equitable principles of trade and may be sufficient cause for appropriate disciplinary action. As explained below the Exchange proposes to delete IM-1002-3 as superfluous.

<sup>17</sup> Rule 1031, Registration Requirements, contains certain sections that are not affected by this proposed rule change. However, due to the overall organizational restructuring of the registration rules, those sections (current Rules 1031(c), (d) and (e)) are being relocated with non-substantive amendments to new Supplementary Material .12, Application for Registration and Jurisdiction, to proposed Rule 1210, Registration Requirements. These relocated provisions govern the process for applying for registration and amending the registration application, as well as for notifying the Exchange of termination of a member's association with a person registered with the Exchange. The Exchange proposes to adopt Rule 1210, Supplemental Material .12, into the 1200 Series in order to have uniform processes and requirements in this area across the Nasdaq Affiliated Exchanges. This relocated language is unique to the Exchange - the FINRA Rule Changes do not contain a counterpart Rule 1210 Supplementary Material .12.

Proposed Rule 1210 provides that each person engaged in the securities business of a member must register with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in proposed Rule 1220, unless exempt from registration pursuant to proposed Rule 1230. Unlike current Rules 1021(a) and 1031(a), proposed Rule 1210 would not require persons engaged in the investment banking business of a member to register with the Exchange since a member's investment banking business is not the primary concern of the Exchange or the focus of its operations.<sup>18</sup> Proposed Exchange Rule 1210 also provides that such person is not qualified to function in any registered capacity other than that for which the person is registered, unless otherwise stated in the rules. This latter provision is a consolidation of similar provisions in the registration categories under the current Exchange rules.

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

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The Exchange anticipates amending Rule 1031(f) in a future proposed rule change.

<sup>18</sup> Miami International Securities Exchange LLC ("MIAX") Rule 203(a) and ISE Rule 313(a)(1) likewise require registration of associated persons of members engaged in the member's securities business, but do not require registration with the exchanges of associated persons of members who engage in the member's investment banking business. Because the Exchange's proposed registration rules focus solely on securities trading activity, the proposed rules differ from the FINRA Rule Changes by omitting references to investment banking in proposed Rules 1210, 1210.03, 1210.10, 1220(a)(1), 1220(a)(2)(B), 1220(b), and 1240(b)(1), and also by omitting as unnecessary from Rule 1220(a)(10) a limitation on the qualification of a General Securities Sales Supervisor to supervise the origination and structuring of an underwriting.

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

Rule 1021(e)(1) currently requires that a member, except a sole proprietorship, have a minimum of two registered principals with respect to each aspect of the member's investment banking and securities business pursuant to the applicable provisions of Rule 1022, provided however that a proprietary trading firm with 25 or fewer registered representatives shall only be required to have one registered principal. This requirement applies to applicants for membership and existing members. Exchange Rule 1021(e)(2) also provides that, pursuant to the Exchange's Rule 9600 Series, the Exchange may waive the principal requirements of Rule 1021(e)(1) in situations that indicate conclusively that only one person associated with an applicant for membership should be required to register as a principal. Rule 1021(e)(3) provides that an applicant for membership, if the nature of its business so requires, must also have at least one person qualified for registration under Rule 1022(b) and (c) as a Financial and Operations Principal (or an Introducing Broker/Dealer Financial and Operations Principal).<sup>19</sup>

The Exchange is proposing to adopt Rule 1021(e) as Rule 1210.01, subject to the following changes. The Exchange proposes to provide firms that limit the scope of their business with greater flexibility to satisfy the two-principal requirement. In particular, proposed Rule 1210.01 requires that a member have a minimum of two General Securities Principals, provided that a member that is limited in the scope of its activities

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<sup>19</sup> Exchange Rules 1022(b) and (c) as well as other Exchange rules currently refer to categories of limited principal registration as "Limited Principal – " followed by the name of the registration category. In this proposed rule change and in the proposed rules, the Exchange will no longer employ the term "Limited Principal – " in identifying various principal registration categories. No substantive change is intended; shortening the names of the various principals simply improves readability of the rules.

may instead have two officers or partners who are registered in a principal category that corresponds to the scope of the member's activities.<sup>20</sup> For instance, if a firm's business is limited to securities trading, the firm may have two Securities Trader Principals, instead of two General Securities Principals. Currently, a sole proprietor member (without any other associated persons) is not subject to the two-principal requirement because such member is operating as a one-person firm. Given that one-person firms may be organized in legal forms other than a sole proprietorship (such as a single-person limited liability company), proposed Exchange Rule 1210.01 provides that any member with only one associated person is excluded from the two principal requirement. In addition, proposed Rule 1210.01 clarifies that existing members as well as new applicants may request a waiver of the two-principal requirement. Finally, the Exchange is proposing to retain the existing rule's provision permitting a proprietary trading firm with 25 or fewer registered representatives to have just one registered principal. The FINRA Rule Changes do not include this provision.<sup>21</sup>

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<sup>20</sup> The principal registration categories are described in greater detail below.

<sup>21</sup> The Exchange is not proposing provisions conforming to the new FINRA Rule 1210.01 requirements that all FINRA members are required to have a Principal Financial Officer and a Principal Operations Officer, because it believes that its proposed Rule 1220(a)(4), Financial and Operations Principal, which requires member firms operating pursuant to certain provisions of SEC rules to designate at least one Financial and Operations Principal, is sufficient. Further, the Exchange is not adopting the FINRA Rule 1210.01 requirements that (1) a member engaged in investment banking activities have an Investment Banking Principal, (2) a member engaged in research activities have a Research Principal, or (3) a member engaged in options activities with the public have a Registered Options Principal. The Exchange does not recognize the Investment Banking Principal or the Research Principal registration categories, and the Registered Options Principal registration requirement is set forth in Rule 1210.08 and its inclusion is therefore unnecessary in Rule 1210.01.

**C. Permissive Registrations (Proposed Rule 1210.02)**

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

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

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

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

Individuals maintaining a permissive registration under the proposed rule change would be considered registered persons and subject to all Exchange rules, to the extent relevant to their activities. For instance, an individual working solely in an administrative capacity would be able to maintain a General Securities Representative registration and would be considered a registered person for purposes of rules relating to borrowing from or lending to customers, but the rule would have no practical application to his or her conduct because he or she would not have any customers.

Consistent with the Exchange's supervision rules, members would be required to have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned

functions.<sup>22</sup> With respect to an individual who solely maintains a permissive registration, such as an individual working exclusively in an administrative capacity, the individual's day-to-day supervisor may be a nonregistered person. Members would be required to assign a registered supervisor to this person who would be responsible for periodically contacting such individual's day-to-day supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor must be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor must be registered as a principal.<sup>23</sup>

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

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

In addition, as part of the FINRA Rule Changes FINRA has adopted a restructured representative-level qualification examination program whereby representative-level registrants would be required to take a general knowledge

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<sup>22</sup> The FINRA Proposed Rules at Rule 1210.02 cite FINRA's own supervision rule, by number. Because the 1200 Series of rules is intended to apply to the Exchange as well as to its affiliates which have different supervision rules, proposed Rule 1210.02 refers generally to the supervision rules rather than identifying them by number.

<sup>23</sup> In either case, the registered supervisor of an individual who solely maintains a permissive registration would not be required to be registered in the same representative or principal registration category as the permissively-registered individual.

examination (the Securities Industry Essentials Exam or “SIE”) and a specialized knowledge examination appropriate to their job functions at the firm with which they are associating. Therefore, proposed Rule 1210.03 provides that before the registration of a person as a representative can become effective under proposed Rule 1210, such person must pass the SIE and an appropriate representative-level qualification examination as specified in proposed Rule 1220. Proposed Rule 1210.03 also provides that before the registration of a person as a principal can become effective under proposed Rule 1210, such person must pass an appropriate principal-level qualification examination as specified in proposed Rule 1220.

Further, proposed 1210.03 provides that if the job functions of a registered representative, other than an individual registered as an Order Processing Assistant Representative, change and he or she needs to become registered in another representative-level category, he or she would not need to pass the SIE again. Rather, the registered person would need to pass only the appropriate representative-level qualification examination.<sup>24</sup> Thus under the proposed rule change, individuals seeking

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<sup>24</sup> The exception for Order Processing Assistant Representatives and Foreign Associates was adopted by FINRA in FINRA Rule 1210.03, and is included in proposed Exchange Rule 1210.03 without the reference to Foreign Associates which is a registration category the Nasdaq Affiliated Exchanges do not recognize. FINRA has stated that the SIE would assess basic product knowledge; the structure and function of the securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. Proposed Rule 1210.03 provides that all associated persons, such as associated persons whose functions are solely and exclusively clerical or ministerial, are eligible to take the SIE. Proposed Rule 1210.03 also provides that individuals who are not associated persons of firms, such as members of the general public, are eligible to take the SIE. FINRA has stated its belief that expanding the pool of individuals who are eligible to take the SIE would enable prospective securities industry professionals to demonstrate to prospective employers a basic level of knowledge prior to submitting a job application. Further, this approach would allow for more



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

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

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

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

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

the operative date of the proposed rule change, they could do so by taking only the appropriate specialized knowledge examination.<sup>25</sup> However, with respect to an individual who is not registered on the operative date of the proposed rule change but was registered within the past two years prior to the operative date of the proposed rule change, the individual's SIE status in the CRD system would be administratively terminated if such individual does not register within four years from the date of the individual's last registration.<sup>26</sup>

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

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<sup>25</sup> Under the proposed rule change, only individuals who have passed an appropriate representative-level examination would be considered to have passed the SIE. Registered principals who do not hold an appropriate representative-level registration would not be considered to have passed the SIE. For example, an individual who is registered solely as a Financial and Operations Principal (Series 27) today would have to take the Series 7 to become registered as a General Securities Representative. Under the proposed rule change, in the future, this individual would have to pass the SIE and the specialized Series 7 examination to obtain registration as a General Securities Representative.

<sup>26</sup> As discussed below, the Exchange is proposing a four-year expiration period for the SIE.

registrations for representatives. An individual would be able to schedule both the SIE and specialized knowledge examinations for the same day, provided the individual is able to reserve space at one of FINRA's designated testing centers.

Finally, paragraph (d) of Rule 1070 currently permits the Exchange, in exceptional cases and where good cause is shown, to waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications for registration. The Exchange is proposing to transfer the provisions of Rule 1070(d) into proposed Rule 1210.03 with changes which track FINRA Rule 1210.03.<sup>27</sup> The proposed rule provides that the Exchange will only consider examination waiver requests submitted by a firm for individuals associated with the firm who are seeking registration in a representative- or principal-level registration category. Moreover, proposed Rule 1210.03 states that the Exchange will consider waivers of the SIE alone or the SIE and the representative- and principal-level examination(s) for such individuals.

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

Exchange Rule 1021(d) provides that a person who is currently registered with a member as a representative and whose duties are changed by the member so as to require registration as a principal may function as a principal for up to 90 calendar days before he or she is required to pass the appropriate qualification examination for principal. In addition, it allows a formerly registered representative who is required to register as a principal to function as a principal without passing the appropriate principal qualification

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<sup>27</sup> Rules 1070(a), (b) and (c) provide general information relating to the examination process. The Exchange is proposing to delete these provisions given that they relate to the administration of the examination program rather than rule requirements.

examination for up to 90 calendar days, provided the person first satisfies all applicable prerequisite requirements. A person who has never been registered does not qualify for this exception. This provision applies to a person associated with a member of another registered national securities exchange or association who is required to register in a principal classification under Nasdaq rules but who is not required to be so registered under the rules of the other exchange or association.

The Exchange is proposing to adopt Rule 1021(d) as Rule 1210.04, subject to the following changes. Proposed Rule 1210.04 states that a member may designate any person currently registered, or who becomes registered, with the member as a representative to function as a principal for a limited period, provided that such person has at least 18 months of experience functioning as a registered representative within the five-year period immediately preceding the designation. This change is intended to ensure that representatives designated to function as principals for the limited period under the proposed rule have an appropriate level of registered representative experience. The proposed rule clarifies that the requirements of the rule apply to any principal category, including those categories that are not subject to a prerequisite representative-level registration requirement, such as the Financial and Operations Principal registration category.<sup>28</sup> The Exchange is not conserving in Rule 1210.04 the language that this provision applies to a person associated with a member of another registered national securities exchange or association who is required to register in a principal classification under the Nasdaq rules but who is not required to be so registered under the rules of the

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<sup>28</sup> In this regard, the Exchange notes that qualifying as a registered representative is currently a prerequisite to qualifying as a principal on the Exchange except with respect to the Financial and Operations Principal and the Introducing Broker/Dealer Financial and Operations Principal.

other exchange or association. The Exchange believes this language is superfluous as the applicability to various individuals of proposed Rule 1210.04 speaks for itself and requires no elaboration.<sup>29</sup> Proposed Rule 1210.04 would increase the Rule 1021(d)'s 90 day period to 120 days, to provide additional flexibility for representatives functioning as principals for a limited period of time.

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

Before taking an examination, FINRA currently requires each candidate to agree to the Rules of Conduct for taking a qualification examination. Among other things, the examination Rules of Conduct require each candidate to attest that he or she is in fact the person who is taking the examination. These Rules of Conduct also require that each candidate agree that the examination content is the intellectual property of FINRA and that the content cannot be copied or redistributed by any means. If FINRA discovers that a candidate has violated the Rules of Conduct for taking a qualification examination, the candidate may forfeit the results of the examination and may be subject to disciplinary action by FINRA. For instance, for cheating on a qualifications examination, FINRA's Sanction Guidelines recommend a bar.<sup>30</sup>

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

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<sup>29</sup> Proposed Rule 1210.04 omits FINRA Rule 1210.04's reference to Foreign Associates, which is a registration category not recognized by the Nasdaq Affiliated Exchanges, but otherwise tracks the language of FINRA Rule 1210.04.

<sup>30</sup> See SR-FINRA-2017-007, pp. 26 – 27.

The Exchange proposes to adopt its own version of Rule 1210.05, which would provide that associated persons taking the SIE are subject to the SIE Rules of Conduct, and that associated persons taking any representative or principal examination are subject to the Rules of Conduct for representative and principal examinations. Under the proposed rule, a violation of the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations by an associated person would be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade, such as Exchange Rule 2010A.<sup>31</sup> Further, if the Exchange determines that an associated person has violated the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations, the associated person may forfeit the results of the examination and may be subject to disciplinary action by the Exchange.

Proposed Rule 1210.05 states that the Exchange considers all of the qualification examinations content to be highly confidential. The removal of examination content from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such qualification examination or any other use that would compromise the effectiveness of the examinations and the use in any manner and at any time of the questions or answers to the examinations would be prohibited and would be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade. Finally, proposed Rule 1210.05 would prohibit an applicant from receiving assistance while

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<sup>31</sup> Pursuant to Exchange Rule 2010A, a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade. FINRA Rule 1210.05 cites FINRA Rule 2010, which is a comparable rule.

taking the examination, and require the applicant to certify that no assistance was given to or received by him or her during the examination.<sup>32</sup>

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

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

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

Proposed Rule 1210.06 further provides that if a person fails an examination three or more times in succession within a two-year period, the person is prohibited from

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<sup>32</sup> In view of proposed Rule 1210.05, the Exchange is proposing to delete Rule 1080, Confidentiality of Examinations, which is largely duplicative. The Exchange is not adopting portions of FINRA's Rule 1210.05 which apply to non-associated persons, over whom the Exchange would in any event have no jurisdiction.

retaking that examination until 180 calendar days from the date of the person's last attempt to pass it. These waiting periods would apply to the SIE and the representative- and principal-level examinations.<sup>33</sup>

#### **H. CE Requirements (Proposed Rule 1210.07)**

Pursuant to current Rule 1120, the CE requirements applicable to registered persons consist of a Regulatory Element<sup>34</sup> and a Firm Element.<sup>35</sup> The Regulatory Element applies to registered persons and must be completed within prescribed time frames.<sup>36</sup> For purposes of the Regulatory Element, a "registered person" is defined in the current rule as any person registered with the Exchange as a representative, principal, or

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<sup>33</sup> FINRA Rule 1210.06 requires individuals taking the SIE who are not associated persons to agree to be subject to the same waiting periods for retaking the SIE. The Exchange is not including this language in proposed Rule 1210.06, as the Exchange will not apply the 1200 Series of rules in any event to individuals who are not associated persons of members.

<sup>34</sup> See Rule 1120(a).

<sup>35</sup> See Rule 1120(b).

<sup>36</sup> Pursuant to Rule 1120(a), each registered person is required to complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date. Unless otherwise determined by the Exchange, a registered person who has not completed the Regulatory Element program within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under Rule 1120(a) must cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. A registration that is inactive for a period of two years will be administratively terminated. A person whose registration is so terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Exchange's rules. The Exchange may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.



assistant representative.<sup>37</sup> The Firm Element consists of annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the member. For purposes of the Firm Element, the term “covered registered persons” is defined as any registered person who has direct contact with customers in the conduct of the member’s securities sales, trading and investment banking activities, and the immediate supervisors of such persons.<sup>38</sup>

The Exchange proposes to delete Rule 1120 and to replace it with Rule 1240, Continuing Education Requirements. The Exchange believes that all registered persons, regardless of their activities, should be subject to the Regulatory Element of the CE requirements so that they can keep their knowledge of the securities industry current. Therefore, the Exchange is proposing Rule 1210.07, to clarify that all registered persons, including those who solely maintain a permissive registration, are required to satisfy the Regulatory Element, as specified in proposed Rule 1240. Individuals who have passed the SIE but not a representative or principal-level examination and do not hold a registered position would not be subject to any CE requirements.

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

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<sup>37</sup> See Rule 1120(a)(5).

<sup>38</sup> See Rule 1120(b)(1).

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

Rule 1021(c) currently states that any person whose registration has been revoked pursuant to Rule 8310<sup>39</sup> or whose most recent registration as a principal has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application is required to pass a qualification examination for principals appropriate to the category of registration as specified in Rule 1022. Pursuant to Rule 1031(b), any person whose registration has been revoked pursuant to Rule 8310 or whose most recent registration as a representative or principal has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application is required to pass a qualification examination for representatives appropriate to the category of registration as specified in Rule 1032.<sup>40</sup> The two years are calculated from the termination date stated on the individual's Form U5 (Uniform Termination Notice for Securities Industry Registration) and the date the Exchange receives a new application for registration.

The Exchange is proposing to consolidate the requirements of Rules 1021(c) and 1031(b) and adopt them as Rule 1210.08. Proposed Rule 1210.08 clarifies that, for

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<sup>39</sup> Under Rule 8310(a)(3), the Exchange may impose one or more sanctions on a member or person associated with a member for each violation of the federal securities laws, rules or regulations thereunder, or Exchange rules, including suspending the membership of a member or suspending the registration of a person associated with a member for a definite period or a period contingent on the performance of a particular act.

<sup>40</sup> In addition, Exchange Rule 1041(c) provides that if any person whose most recent registration as an Assistant Representative - Order Processing has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application is required to pass a qualification examination for Assistant Representative - Order Processing. As discussed below, the Exchange is proposing to eliminate Rule 1041(c) as part of the elimination of the Assistant Representative - Order Processing registration category on the Exchange.

purposes of the proposed rule, an application would not be considered to have been received by the Exchange if that application does not result in a registration.

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

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

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

The Exchange is proposing Rule 1210.09 to provide a process whereby individuals who would be working for a financial services industry affiliate of a

member<sup>41</sup> would terminate their registrations with the member and would be granted a waiver of their requalification requirements upon re-registering with a member, provided the firm that is requesting the waiver and the individual satisfy the criteria for a Financial Services Affiliate (“FSA”) waiver.<sup>42</sup> The purpose of the FSA waiver is to provide a firm greater flexibility to move personnel, including senior and middle management, between the firm and its financial services affiliate(s) so that they may gain organizational skills and better knowledge of products developed by the affiliate(s) without the individuals having to requalify by examination each time they returned to the firm.

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

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

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<sup>41</sup> Proposed Rule 1210.09 defines a “financial services industry affiliate of a member” as a legal entity that controls, is controlled by or is under common control with a member and is regulated by the SEC, Commodity Futures Trading Commission (“CFTC”), state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

<sup>42</sup> There is no counterpart to proposed Rule 1210.09 in the Exchange’s existing rules. FINRA Rule 1210.09 was recently adopted as a new waiver process for FINRA registrants, as part of the FINRA Rule Changes.

member.<sup>43</sup> An individual would have to satisfy these preconditions only for purposes of his or her initial designation as an FSA-eligible person, and not for any subsequent FSA designation(s). Thereafter, the individual would be eligible for a waiver for up to seven years from the date of initial designation<sup>44</sup> provided that the other conditions of the waiver, as described below, have been satisfied. Consequently, a member other than the member that initially designated an individual as an FSA-eligible person may request a waiver for the individual and more than one member may request a waiver for the individual during the seven-year period.<sup>45</sup>

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<sup>43</sup> For purposes of this requirement, a five year period of registration with the Exchange, with FINRA or with another self-regulatory organization would be sufficient.

<sup>44</sup> Individuals would be eligible for a single, fixed seven-year period from the date of initial designation, and the period would not be tolled or renewed.

<sup>45</sup> The following examples illustrate this point:

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

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

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

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

Upon registering an FSA-eligible person, a firm would file a Form U4 and request the appropriate registration(s) for the individual. The firm would also submit an examination waiver request to the Exchange,<sup>46</sup> similar to the process used today for waiver requests, and it would represent that the individual is eligible for an FSA waiver based on the conditions set forth below. The Exchange would review the waiver request and make a determination of whether to grant the request within 30 calendar days of receiving the request. The Exchange would summarily grant the request if the following conditions are met:

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

<sup>46</sup> The Exchange would consider a waiver of the representative-level qualification examination(s), the principal-level qualification examination(s) and the SIE, as applicable.

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

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

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

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

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

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

Following the Form U5 filing, an individual could move between the financial services affiliates of a member so long as the individual is continuously working for an affiliate. Further, a member could submit multiple waiver requests for the individual, provided that the waiver requests are made during the course of the seven-year period.<sup>47</sup>

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<sup>47</sup> For example, if a member submits a waiver request for an FSA-eligible person who has been working for a financial services affiliate of the member for three years and re-registers the individual, the member could subsequently file a Form U5 and re-designate the individual as an FSA-eligible person. Moreover, if the individual works with a financial services affiliate of the member for another three years, the member could submit a second waiver request and re-register the individual upon returning to the member.

An individual who has been designated as an FSA-eligible person by a member would not be able to take additional examinations to gain additional registrations while working for a financial services affiliate of a member.

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

IM-1002-2(a) and (b) currently provide specific relief to registered persons serving in the Armed Forces of the United States. Among other things, these rules permit a registered person of a member who volunteers for or is called into active duty in the Armed Forces of the United States to be registered in an inactive status and remain eligible to receive ongoing transaction-related compensation. IM-1002-2(c) also includes specific provisions regarding the deferment of the lapse of registration requirements in Exchange Rules 1021(c), 1031(b) and 1041(c) for formerly registered persons serving in the Armed Forces of the United States.

The Exchange is proposing to adopt IM-1002-2 as Rule 1210.10 with the following changes. To enhance the efficiency of the current notification process for registered persons serving in the Armed Forces, proposed Rule 1210.10 requires that the member with which such person is registered promptly notify the Exchange of such person's return to employment with the member. A sole proprietor must similarly notify the Exchange of his or her return to participation in the securities business. Further, proposed Rule 1210.10 provides that the Exchange would also defer the lapse of the SIE for formerly registered persons serving in the Armed Forces of the United States.<sup>48</sup>

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<sup>48</sup> Proposed Rule 1210.10 tracks FINRA Rule 1210.10 except for the statement that inactive registered persons are not to be included within the definition of "Personnel" for purposes of dues or assessments as provided in Article VI of the FINRA By-Laws. Instead, proposed Rule 1210.10 conserves language from existing IM-1002-2 stating that inactive persons under the rule are not included



**L. Impermissible Registrations (Proposed Rule 1210.11)**

Rules 1021(a) and 1031(a) currently prohibit a member from maintaining a representative or principal registration with the Exchange for any person who is no longer active in the member's investment banking or securities business, who is no longer functioning as a representative or principal as defined under the rules or where the sole purpose is to avoid the requalification requirement applicable to persons who have not been registered for two or more years. These rules also prohibit a member from applying for the registration of a person as representative or principal where the member does not intend to employ the person in its investment banking or securities business. These prohibitions do not apply to the current permissive registration categories.

In light of proposed Rule 1210.02, the Exchange is proposing to delete these provisions and instead adopt Rule 1210.11 prohibiting a member from registering or maintaining the registration of a person unless the registration is consistent with the requirements of proposed Rule 1210.<sup>49</sup>

**M. Registration Categories (Proposed Rule 1220)**

The Exchange is proposing to integrate the various registration categories and related definitions under the Exchange's rules into a single rule, Rule 1220, subject to the changes described below.<sup>50</sup>

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within the scope of fees, if any, charged by the Exchange with respect to registered persons.

<sup>49</sup> As discussed above, the Exchange is also proposing Rule 1210, Supplementary Material .12, Application for Registration and Jurisdiction, which is not included in FINRA Rule 1210. Proposed Exchange Rule 1210, Supplementary Material .12, is based upon portions of existing Exchange Rule 1031.

<sup>50</sup> For ease of reference, the Exchange proposes to adopt as Rule 1220, Supplementary Material .07, in chart form, a Summary of Qualification

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

Rule 1021(b) currently defines the term “principal” to include sole proprietors, officers, partners, managers of offices of supervisory jurisdiction and directors who are actively engaged in the management of the member’s investment banking or securities business, such as supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions. The Exchange is proposing to streamline and adopt Rule 1021(b) as Rule 1220(a)(1).

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

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Requirements in chart form for each of the Exchange’s permitted registration categories discussed below.

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

Rule 1022(a)(1) currently requires that an associated person who meets the definition of “principal” under Rule 1021 and each person designated as Chief Compliance Officer (“CCO”) on Schedule A of the member’s Form BD (Uniform Application for Broker-Dealer Registration) register as a General Securities Principal. A person registering as a General Securities Principal must pass the General Securities Principal examination. The rule, however, provides that such person is not required to register as a General Securities Principal if the person’s activities are so limited as to qualify such person for one or more of the limited principal categories specified in Rule 1022. Further, the rule does not preclude individuals registered in a limited principal category from registering as General Securities Principals. Rule 1022(a)(1) also includes transitioning and grandfathering provisions for CCO’s.

Rule 1022(a) provides that a person seeking to register as a General Securities Principal must satisfy the General Securities Representative or Corporate Securities Representative prerequisite registration. Rule 1022(a)(2) qualifies this provision by providing that the Corporate Securities Representative prerequisite registration gives a General Securities Principal only limited supervisory authority.

Rule 1022(a)(3) includes a grandfathering provision for persons who were registered as principals before the adoption of the General Securities Principal registration category.

Rule 1022(a)(4) provides that an associated person registered solely as a General Securities Principal is not qualified to function as a Financial and Operations Principal (or an Introducing Broker-Dealer Financial and Operations Principal, as applicable), or

Limited Principal - General Securities Sales Supervisor, unless the General Securities Principal is also registered in these other categories.

Exchange Rule 1022(a)(5) currently requires that each associated person who is included within the definition of “principal” in Rule 1021 with supervisory responsibility over the securities trading activities described in Rule 1032(f)(1)<sup>51</sup> register as a Securities Trader Principal. To qualify for registration as a Securities Trader Principal, an individual must be registered as a Securities Trader and pass the General Securities Principal qualification examination. The rule provides that a person qualified and registered as a Securities Trader Principal may only have supervisory responsibility over the activities specified in Rule 1032(f)(1), unless such person is separately registered in another appropriate principal registration category, such as the General Securities Principal registration category. The rule further provides that a person registered as a General Securities Principal is not qualified to supervise the trading activities described in Rule 1032(f)(1), unless he or she qualifies and registers as a Securities Trader (by passing the Series 57 Securities Trader examination) and affirmatively registers as a Securities Trader Principal.

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

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<sup>51</sup> Current Rule 1032(f)(1) provides for the registration as a Securities Trader of an associated person if, with respect to transactions in equity, preferred or convertible debt securities or foreign currency options on Nasdaq, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, other than any person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by or is under common control, with the member.

The Exchange is proposing to more clearly set forth the obligation to register as a General Securities Principal. Specifically, proposed Rule 1220(a)(2)(A) states that each principal as defined in proposed Rule 1220(a)(1) is required to register with the Exchange as a General Securities Principal, subject to the following exceptions. The proposed rule provides that if a principal's activities are limited to the functions of a Compliance Official, a Financial and Operations Principal, a Securities Trader Principal, a Securities Trader Compliance Officer, or a Registered Options Principal, then the principal shall appropriately register in one or more of these categories.<sup>52</sup> Proposed Rule 1220(a)(2)(A) further provides that if a principal's activities are limited solely to the functions of a General Securities Sales Supervisor, then the principal may appropriately register in that category in lieu of registering as a General Securities Principal, provided that if the principal is engaged in options sales activities he or she shall be required to register as a General Securities Sales Supervisor or as a Registered Options Principal.<sup>53</sup>

Proposed Rule 1220(a)(2)(B) requires that an individual registering as a General Securities Principal satisfy the General Securities Representative prerequisite registration and pass the General Securities Principal qualification examination. In conjunction with the elimination of the Corporate Securities Representative registration category, the Exchange is proposing in Rule 1220(a)(2) to delete the provision in Rule 1022(a)(1)(A) permitting the Corporate Securities Representative prerequisite registration. However,

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<sup>52</sup> The Exchange is proposing to recognize the Compliance Official and Securities Trader Compliance Officer registration categories for the first time as a result of this proposed rule change.

<sup>53</sup> The Exchange's proposed Rule 1220(a)(2)(A) deviates somewhat from the counterpart FINRA rule in that it does not offer various limited registration categories provided for in FINRA's new Rule 1220(a)(2)(A).

proposed Rule 1220(a)(2)(B) provides that, subject to the lapse of registration provisions in proposed Rule 1210.08, General Securities Principals who obtained the Corporate Securities Representative prerequisite registration on the Exchange in lieu of the General Securities Representative prerequisite registration and individuals who had been registered as such within the past two years prior to the operative date of the proposed rule change, may continue to supervise corporate securities activities as currently permitted. Proposed Rule 1220(a)(2)(B) requires all other individuals registering as General Securities Principal after October 1, 2018, to first become registered as a General Securities Representative pursuant to Rule 1220(b)(2).<sup>54</sup>

Moreover, as described in greater detail below, the Exchange is proposing to adopt with some changes the requirements of Rule 1022(a)(1) relating to the registration of CCOs, and Rule 1022(a)(5) relating to the supervision of securities trading activities as Rule 1220(a)(3).

The Exchange is also proposing to eliminate the grandfathering provision for individuals who were registered as principals prior to the adoption of the General Securities Principal registration category because it no longer has any practical application. Finally, the Exchange is proposing to delete the provision that persons

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<sup>54</sup> The Exchange is not adopting the FINRA Rule 1220(a)(2)(B) language permitting an individual registering as a General Securities Principal after October 1, 2018 to register as a General Securities Sales Supervisor and to pass the General Securities Principal Sales Supervisor Module qualification examination. The Exchange believes that individuals registering as General Securities Principals should be required to demonstrate their competence for that role by passing the General Securities Principal qualification examination.

eligible for registration in other principal categories are not precluded from registering as General Securities Principals because it is superfluous.<sup>55</sup>

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

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

Specifically, proposed Rule 1220(a)(3) provides that each person designated as a Chief Compliance Officer on Schedule A of Form BD shall be required to register with the Exchange as a General Securities Principal, provided that such person may instead register as a Compliance Official if his or her duties do not include supervision of trading. All individuals registering as Compliance Official shall, prior to or concurrent with such registration, pass the Compliance Official qualification examination. An individual designated as a Chief Compliance Officer on Schedule A of Form BD of a member that is engaged in limited securities business could also be registered in a principal category under Rule 1220(a) that corresponds to the limited scope of the member's business.

Additionally, proposed Rule 1220(a)(3) provides that an individual designated as a Chief Compliance Officer on Schedule A of Form BD may register and qualify as a

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<sup>55</sup> Proposed Rule 1220(a)(2) generally tracks FINRA Rule 1220(a)(2), except that it omits references to a number of registration categories which FINRA recognizes but that the Exchange does not, and it includes a reference to the Securities Trader Compliance Officer category which the Exchange proposes to recognize, but which FINRA does not. Additionally, proposed Rule 1220(a)(2)(A)(i) extends that provision's exception to the General Securities Principal registration requirement to certain principals whose activities are "limited to" (rather than "include") the functions of a more limited principal. The Exchange believes that activities "limited to" expresses the intent of that exception more accurately than activities that "include." Finally, proposed Rule 1220(a)(2)(B) specifies that registration as a Corporate Securities Representative must be with the Exchange in order to fulfill the Corporate Securities Representative registration prerequisite for General Securities Principal registration pursuant to that rule.

Securities Trader Compliance Officer if, with respect to transactions in equity, preferred or convertible debt securities, or options such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with a member. All individuals registering as Securities Trader Compliance Officers would be required to first become registered pursuant to paragraph (b)(4) as a Securities Trader, and to pass the Compliance Official qualification exam.<sup>56</sup>

#### **4. Financial and Operations Principal, (Proposed Rule 1220(a)(4))**

Rule 1022(b)(1) currently provides that every member operating pursuant to the provisions of SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), shall designate as Limited Principal—Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who performs the duties described in Rule 1022(b)(2).<sup>57</sup> Each person associated with a member who performs such duties is

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<sup>56</sup> Proposed Rule 1220(a)(3) differs from FINRA Rule 1220(a)(3), Compliance Officer. The Exchange does not recognize the Compliance Officer registration category. Similarly, FINRA does not recognize the Compliance Official or the Securities Trader Compliance Officer registration categories which the Exchange proposes to recognize. However, FINRA Rule 1220(a)(3), like proposed Rule 1220(a)(3), offers an exception pursuant to which a Chief Compliance Officer designated on Schedule A of Form BD may register in a principal category that corresponds to the limited scope of the member's business.

<sup>57</sup> These duties include (A) final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; (B) final preparation of such reports; (C) supervision of individuals who assist in the preparation of such reports; (D) supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived; (E) supervision and/or performance of the member's responsibilities under all financial responsibility



required to register as a Limited Principal—Financial and Operations with the Exchange and pass an appropriate qualification examination before such registration may become effective. A person registered solely as a Limited Principal—Financial and Operations is not qualified to function in a principal capacity with responsibility over any area of business activity not described in 1022(b)(2).

Rule 1022(c) currently provides that every member subject to the requirements of SEC Rule 15c3-1, other than a member operating pursuant to SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8) in which case Rule 1022(b) shall apply, shall designate as Limited Principal—Introducing Broker/Dealer Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who perform the duties described in 1022(c)(2).<sup>58</sup> Each person associated with a member who performs such duties is required to register as a Limited Principal—Introducing Broker/Dealer Financial and Operations with the Exchange and pass an appropriate Qualification Examination before such registration may become effective.

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rules promulgated pursuant to the provisions of the Act; (F) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; or (G) any other matter involving the financial and operational management of the member.

<sup>58</sup> These duties include (A) final approval and responsibilities for the accuracy of financial reports submitted to any duly established securities industry regulatory body; (B) final preparation of such reports; (C) supervision of individuals who assist in the preparation of such reports; (D) supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived; (E) supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; (F) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; or (G) any other matter involving the financial and operational management of the member.

Financial and Operations Principals and Introducing Broker-Dealer Financial and Operations Principals are not subject to a prerequisite representative registration, but they must pass the Financial and Operations Principal or Introducing Broker-Dealer Financial and Operations Principal examination, as applicable.

The Exchange is proposing to move the provisions in Rules 1022(b) regarding Financial and Operations Principals to Rule 1220(a)(4)(A), substituting the word “and” for the current word “or” found in Rule 1022(b)(2)(F) in order to conform to FINRA Rule 1220(a)(4)(A) in describing the duties of a Financial and Operations Principal. In addition, the Exchange proposes to delete the Introducing Broker-Dealer Financial and Operations Principals Rule 1022(c), as the Exchange has determined it no longer requires this registration category as it is relatively little used.<sup>59</sup>

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

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

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<sup>59</sup> FINRA Rule 1220(a)(4) differs from proposed Rule 1220(a)(4) in that it includes an Introducing Broker-Dealer Financial and Operations Principal registration requirement. Additionally, proposed Rule 1220(a)(4) contains a requirement, which the FINRA rule does not, that each person associated with a member who performs the duties of a Financial and Operations Principal must register as such with the Exchange. Further, as discussed above, the Exchange is not adopting a Principal Financial Officer or Principal Operations Officer requirement like FINRA Rule 1220(a)(4)(B), as it believes the Financial and Operations Principal requirement is sufficient. Finally, proposed Rule 1220(a)(4)(B)(v) and (vi) contain minor wording variations from the FINRA rule which are carried over from existing Nasdaq Rule 1022.

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

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

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

The Exchange is proposing to adopt Rule 1022(a)(5) relating to Securities Trader Principal registration as Rule 1220(a)(7). Similar to the current rule, proposed Rule 1220(a)(7) requires that a principal responsible for supervising the securities trading activities specified in proposed Rule 1220(b)(4)<sup>60</sup> register as a Securities Trader Principal. The proposed rule requires individuals registering as Securities Trader Principals to be registered as Securities Traders and to pass the General Securities Principal qualification examination.

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

Chapter II, Section 2(g) of the rulebook currently requires that members engaged in security futures or options transactions with public customers have at least one Registered Options and Security Futures Principal. It also provides that every person engaged in the supervision of options and security futures sales practices shall be registered as a Registered Options and Security Futures Principal and pass the appropriate qualification examination for Registered Options and Security Futures Principal, or an equivalent examination acceptable to the Exchange. Further, each person required to register and qualify as a Registered Options and Security Futures Principal must, prior to or concurrent with such registration, be or become qualified pursuant to the Rule 1030

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<sup>60</sup> Proposed Rule 1220(b)(4), discussed below, provides for representative-level registration in the "Securities Trader" category.

Series, as either a General Securities Representative or a Limited Representative—  
Corporate Securities and a Registered Options and Security Futures Representative.  
The rule provides that a person registered solely as a Registered Options and Security  
Futures Principal is not qualified to function in a principal capacity with responsibility  
over any area of business activity not prescribed in Chapter II, Section 2(g). Chapter II,  
Section 2(g)(5) provides that any person who is registered as a Registered Options and  
Security Futures Principal, or who becomes registered as a Registered Options and  
Security Futures Principal before a revised examination that includes security futures  
products is offered, must complete a firm-element continuing education program that  
addresses security futures and a principal's responsibilities for security futures before  
such person can supervise security futures activities. Finally, Chapter II, Section 2 of the  
Exchange's options rules further requires in Commentary .01 that members that have one  
Registered Options Principal promptly notify the Exchange and agree to specified  
conditions if such person is terminated, resigns, becomes incapacitated or is otherwise  
unable to perform his or her duties.

The Exchange is proposing to adopt Chapter II, Section (2)(g) as Rule 1220(a)(8),  
Registered Options Principal, with certain changes. The registration category would now  
be titled Registered Options Principal, rather than Registered Options and Security  
Futures Principal.<sup>61</sup> All references to a revised examination that includes security futures  
products would be deleted. Instead, Rule 1220(b), Supplementary Material .02 will  
simply provide that each person who is registered with the Exchange as a Registered

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<sup>61</sup> FINRA has also shortened references to "Registered Options and Security Futures  
Principal" in its rulebook to "Registered Options Principal". See Securities  
Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November  
19, 2008) (SR-FINRA-2008-032).

Options Principal (or as a General Securities Representative, Options Representative, or General Securities Sales Supervisor) shall be eligible to engage in security futures activities as a principal, as applicable, provided that such individual completes a Firm Element program as set forth in proposed Rule 1240 that addresses security futures products before such person engages in security futures activities.<sup>62</sup>

Proposed Rule 1220(a)(8) provides that a General Securities Sales Supervisor may also supervise options activities. Rule 1220(b), Supplementary Material .02 regarding security futures activities will apply to General Securities Sales Supervisors as well as to Registered Options Principals.<sup>63</sup>

Further, as discussed below, the Exchange is proposing to eliminate the Options Representative and Corporate Securities Representative registration categories. In conjunction with these changes, the Exchange is proposing to eliminate registration as an Options Representative and a Corporate Securities Representative from the prerequisite choices in the current rule. Consequently, a person registering as a Registered Options Principal under proposed Rule 1220(a)(8) would be required to satisfy the General Securities Representative prerequisite registration.<sup>64</sup>

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<sup>62</sup> Unlike FINRA Rule 1220.02, proposed Exchange Rule 1220.02 omits references to United Kingdom Securities Representatives and Canada Securities Representatives, which are registration categories the Exchange does not recognize. In any case, the Exchange does not currently offer security futures products for trading.

<sup>63</sup> Rule 1220(b), Supplementary Material .02 regarding security futures activities will also apply to General Securities Representatives and to Options Representatives.

<sup>64</sup> Proposed Rule 1220(a)(8) differs from FINRA Rule 1220(a)(8) in that it omits certain references to other specific FINRA rules.

Finally, the Exchange is proposing to adopt Chapter II, Section 2 Commentary .01 with non-substantive changes as Supplementary Material .03 of Rule 1220.<sup>65</sup>

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

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

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

Pursuant to Exchange Rule 1022(g), each associated person of a member who is included within the definition of "principal" in Rule 1021 may register as a Limited

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<sup>65</sup> Chapter XI, Doing Business with the Public, at Section 2(a) provides that no order entry firm ("OEF") shall be approved to transact options business with the public until those associated persons who are designated as Options Principals have been approved by and registered with the Exchange. Persons engaged in the management and supervision of the OEF's business pertaining to options contracts must be designated as Options Principals and shall have responsibility for the overall oversight of the OEF's options related activities on the Exchange. Similarly, Chapter XI, Sections 3(a) and (b) provide that no OEF shall be approved to transact business with the public until those persons associated with it who are designated representatives have been approved by and registered with the Exchange, and also that persons who perform duties for the OEF which are customarily performed by sales representatives or branch office managers shall be designated as representatives of the OEF. The foregoing provisions of Chapter XI are specific to conducting an options business with the public and are not proposed to be amended in this proposed rule change, other than to add a customer protection requirement, similar to existing Phlx Rule 1024.08 and existing ISE Rule 602(d), that a person accepting orders from non-member customers (unless such customer is a broker-dealer registered with the Commission) is required to register with the Exchange and to be qualified by passing the General Securities Registered Representative Examination (Series 7). However, Chapter XI, Sections 2(b) and (c) and Section 3(c) also contain provisions regarding submission of Forms U4 and U5 to WebCRD that are duplicative of the proposed 1200 Series of rules, in particular proposed Rules 1210.12, Application for Registration and Jurisdiction, and 1250, Electronic Filing Requirements for Electronic Forms, and are therefore proposed to be deleted.

Principal - General Securities Sales Supervisor, instead of separately registering in multiple principal registration categories,<sup>66</sup> if the individual's supervisory responsibilities are limited solely to securities sales activities. A person registering as a Limited Principal - General Securities Sales Supervisor must satisfy the General Securities Representative prerequisite registration and pass the General Securities Sales Supervisor examinations.<sup>67</sup> Moreover, a General Securities Sales Supervisor is precluded from performing any of the following activities: (1) supervision of the origination and structuring of underwritings; (2) supervision of market-making commitments; (3) final approval of advertisements as these are defined in Exchange Rule 2210; (4) supervision of the custody of firm or customer funds or securities for purposes of SEC Rule 15c3-3; or (5) supervision of overall compliance with financial responsibility rules. Current IM-1022-2 explains the purpose of the General Securities Sales Supervisor registration category.

The Exchange is proposing to adopt Rule 1022(g) and IM-1022-2 as Rules 1220(a)(10) and 1220.04, respectively.<sup>68</sup> Rule 1220(a)(10), however, omits the current

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<sup>66</sup> For instance, a principal supervising the sale of corporate securities and options must be registered as a General Securities Principal and a Registered Options Principal, unless the principal is registered as a General Securities Sales Supervisor.

<sup>67</sup> An individual may also register as a General Securities Sales Supervisor by passing a combination of other principal-level examinations.

<sup>68</sup> The Exchange is not proposing to carry over into proposed Rule 1220(a)(10) the current Rule 1022(g)(2)(C)(iii) prohibition against final approval of advertisements by General Securities Sales Supervisors. The Exchange notes that FINRA removed this prohibition several years ago from NASD Rule 1022(g) (Limited Principal— General Securities Sales Supervisor) and NASD IM-1022-2 (Limited Principal— General Securities Sales Supervisor). See Securities Exchange Act Release No. 68918 (February 13, 2013), 78 FR 11925 (February 20, 2013) (SR-FINRA-2013-014). Also, unlike FINRA Rule 1220.04, proposed Exchange Rule 1220.04 refers to “multiple exchanges” rather than listing the various exchanges where a sales principal might be required to qualify in the

Rule 1022(g) prohibition against supervision of the origination and structuring of underwritings, as that activity does not fall within the new, more limited scope of “securities trading” covered by the new 1200 Series of rules.

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

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

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

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

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

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

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

Rule 1011(k) currently defines the term “representative” as an associated person of a registered broker or dealer, including assistant officers other than principals, who is engaged in the investment banking or securities business for the member including the

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absence of the General Securities Sales Supervisor registration category. It also omits FINRA internal cross-references.



functions of supervision, solicitation or conduct of business in securities or who is engaged in the training of persons associated with a broker or dealer for any of these functions. Rule 1011(k) further states that, as provided in Rule 1031, all representatives of members are required to be registered with the Exchange, and that representatives that are so registered are referred to as registered representatives.

The Exchange now proposes to adopt a definition of “representative” in proposed Rule 1220(b)(1). Current Rule 1011, Definitions, Section (k) would be amended by deleting the existing definition of representative, and replacing it with a cross reference to the new definition of representative in Rule 1220(b)(1). Proposed 1220(b)(1) would define the term representative as any person associated with a member, including assistant officers other than principals, who is engaged in the member’s securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a member for any of these functions. Unlike the current Rule 1011(k) “representative” definition, the new Rule 1220(b)(1) definition would be confined to associated persons of Exchange members (rather than to associated persons of broker dealers generally) who are engaged in the member’s securities business (and not also in the member’s investment banking business).

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

Rule 1032(a) currently requires that an associated person who meets the definition of “representative” under Rule 1011 register as a General Securities Representative. A person registering as a General Securities Representative must pass the General Securities Representative examination. The rule, however, provides that a representative is not required to register as a General Securities Representative if the person’s activities are so limited as to qualify such person for one or more of the limited representative

categories specified in Rule 1032, such as an Investment Company and Variable Contracts Products Representative, a Corporate Securities Representative, or a Securities Trader. Further, the rule does not preclude individuals registered in a limited representative category from registering as General Securities Representatives.

Rule 1032(a)(2) provides that if a representative does not engage in municipal securities activities, registration as a United Kingdom Securities Representative or Canada Securities Representative is equivalent to registration as a General Securities Representative. These foreign registration categories were created in the 1990s as an alternative to General Securities Representative registration for individuals who do not engage in municipal securities activities and who are in good standing as a representative with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator. To qualify for registration as a United Kingdom Securities Representative or Canada Securities Representative, an individual must pass the United Kingdom Securities Representative examination or Canada Securities Representative examinations, respectively. Rule 1032(a)(2) also permits a person registered and in good standing as a representative with the Japanese securities regulators to become qualified to function as a General Securities Representative by passing the Japan Module of the General Securities Representative examination. The Japan Module, however, was never implemented.

The Exchange is proposing to streamline the provisions of Rule 1032(a) and adopt them as Rule 1220(b)(2) with the following changes.

Similar to the proposed changes to the General Securities Principal registration category, the Exchange is proposing to more clearly set forth the obligation to register as

a General Securities Representative. Specifically, proposed Rule 1220(b)(2)(A) states that each representative as defined in proposed Rule 1220(b)(1) is required to register with the Exchange as a General Securities Representative, except that if a representative's activities include the functions of a Securities Trader, as specified in this Rule, then such person shall appropriately register as a Securities Trader.

Further, consistent with the proposed restructuring of the representative-level examinations, proposed Rule 1220(b)(2)(B) would require that individuals registering as General Securities Representatives pass the SIE and the General Securities Representative examination.<sup>69</sup>

In addition, the Exchange is proposing to adopt Rule 1220.01 to provide individuals who are associated persons of firms and who hold foreign registrations an alternative, more flexible, process to obtain an Exchange representative-level registration. The Exchange believes that there is sufficient overlap between the SIE and these foreign qualification requirements to permit them to act as exemptions to the SIE. Under proposed Rule 1220.01, individuals who are in good standing as representatives with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator would be exempt from the requirement to pass the SIE, and thus would be required only to pass a specialized knowledge examination to register with the Exchange as a representative. The proposed approach would provide individuals with a United Kingdom or Canadian qualification more flexibility to obtain an Exchange representative-level registration. Finally, the Exchange is proposing to delete the

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<sup>69</sup> Proposed Rule 1220(b)(2)(B) differs from FINRA Rule 1220(b)(2)(B) in that it omits references to various registration categories which FINRA recognizes but which the Exchange does not propose to recognize.

provision that persons eligible for registration in other representative categories are not precluded from registering as General Securities Representatives because it is superfluous.

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

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

*Securities Trader – Proposed Rule 1220(b)(4).* Pursuant to current Exchange Rule 1032(f), each associated person of a member who is included within the definition of “representative” in Rule 1101 is required to register as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities or foreign currency options on the Exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis or the direct supervision of such activities. The rule provides an exception from the registration requirement for any associated person of a member whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company

Act and that controls, is controlled by, or is under common control with the member. Individuals registering as Securities Traders must pass the Securities Trader examination. Finally, the rule provides that registered Securities Traders are not qualified to function in any other registration category, unless he or she is also qualified and registered in such other registration category.

The Exchange now proposes to amend the rule, and adopt it as proposed Rule 1220(b)(4).<sup>70</sup> As amended, the Rule would require individuals registering as Securities Traders to pass the SIE as well as the Securities Trader qualification exam, and it would be expanded to refer not just to foreign currency options, but to the trading of options generally.

Additionally, proposed Rule 1220(b)(4)(A) would require each person associated with a member who is: (i) primarily responsible for the design, development or significant modification of an algorithmic trading strategy relating to equity, preferred or convertible debt securities or options; or (ii) responsible for the day-to-day supervision or direction of such activities to register with the Exchange as a Securities Trader.<sup>71</sup>

For purposes of this proposed new registration requirement an “algorithmic trading strategy” is an automated system that generates or routes orders (or order-related messages) but does not include an automated system that solely routes orders received in

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<sup>70</sup> Proposed Rule 1220(b)(4)(A) differs from FINRA Rule 1220(b)(4)(A) in that it applies to trading on the Exchange while the FINRA rule is limited to the specified trading which is “effected otherwise than on a securities exchange.” Additionally, the FINRA rule does not specifically extend to options trading.

<sup>71</sup> As noted above, this new registration requirement was recently added to the FINRA rulebook. The Exchange has determined to add a parallel requirement to its own rules, but also to add options to the scope of products within the proposed rule’s coverage. See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR-FINRA-2016-007).

their entirety to a market center. The proposed registration requirement applies to orders and order related messages whether ultimately routed or sent to be routed to an exchange or over the counter. An order router alone would not constitute an algorithmic trading strategy. However, an order router that performs any additional functions would be considered an algorithmic trading strategy. An algorithm that solely generates trading ideas or investment allocations—including an automated investment service that constructs portfolio recommendations—but that is not equipped to automatically generate orders and order-related messages to effectuate such trading ideas into the market—whether independently or via a linked router—would not constitute an algorithmic trading strategy.<sup>72</sup>

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

The proposal is intended to ensure the registration of one or more associated persons that possesses knowledge of, and responsibility for, both the design of the intended trading strategy and the technological implementation of the strategy, sufficient

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<sup>72</sup> See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR-FINRA-2016-007).

to evaluate whether the resulting product is designed to achieve regulatory compliance in addition to business objectives. For example, a lead developer who liaises with a head trader regarding the head trader's desired algorithmic trading strategy and is primarily responsible for the supervision of the development of the algorithm to meet such objectives must be registered under the proposal as the associated person primarily responsible for the development of the algorithmic trading strategy and supervising or directing the team of developers. Individuals under the lead developer's supervision would not be required to register under the proposal if they are not primarily responsible for the development of the algorithmic trading strategy or are not responsible for the day-to-day supervision or direction of others on the team. Under this scenario, the person on the business side that is primarily responsible for the design of the algorithmic trading strategy, as communicated to the lead developer, also would be required to register. In the event of a significant modification to the algorithm, members, likewise, would be required to ensure that the associated person primarily responsible for the significant modification (or the associated person supervising or directing such activity), is registered as a Securities Trader.

A member employing an algorithm is responsible for the algorithm's activities whether the algorithm is designed or developed in house or by a third-party. Thus, in all cases, robust supervisory procedures, both before and after deployment of an algorithmic trading strategy, are a key component in protecting against problematic behavior stemming from algorithmic trading. In addition, associated persons responsible for monitoring or reviewing the performance of an algorithmic trading strategy must be registered, and a member's trading activity must always be supervised by an

appropriately registered person. Therefore, even where a firm purchases an algorithm off-the-shelf and does not significantly modify the algorithm, the associated person responsible for monitoring or reviewing the performance of the algorithm would be required to be registered.

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

*Investment Company and Variable Contracts Products Representative – Proposed Rule 1220(b)(7).* Pursuant to current Rule 1032(b), each associated person of a member who is included within the definition of “representative” in Rule 1031 may register as an Investment Company and Variable Contracts Products Representative, instead of registering as a General Securities Representative, if the individual’s activities are limited solely to redeemable securities of companies registered under the Investment Company Act, securities of closed-end companies registered under the Investment Company Act during the period of original distribution and specified insurance contracts, such as variable contracts. Individuals registering as Investment Company and Variable Contracts Products Representatives must pass the Investment Company and Variable Contracts Products Representative examination. The Exchange has experienced little demand for registration in this category. Therefore, it now proposes to eliminate the Investment



Company and Variable Contracts Products Representative category as an acceptable category for Exchange representative registration. The Exchange is reserving proposed Rule 1220(b)(7), retaining the caption solely to facilitate comparison with FINRA's rule.

**17. Additional Eliminated Registration Categories (Proposed Rule 1220.06)**

As noted above, the Exchange is proposing to eliminate the Investment Company and Variable Products Representative category, reserving proposed Rule 1220(b)(7), and retaining the caption solely to facilitate comparison with FINRA's rule. Similarly, it is eliminating the Investment Company and Variable Contracts Products Principal category, reserving proposed Rule 1220(a)(11), and retaining the caption solely to facilitate comparison with FINRA's rule.

Consistent with the FINRA Rule Changes, the Exchange is also proposing to eliminate from its rules the Order Processing Assistant Representative, Options Representative, and Corporate Securities Representative categories that FINRA is eliminating effective October 1, 2018, as discussed below.

*Order Processing Assistant Representative.* Pursuant to current Rule 1041, an associated person is not required to register as a General Securities Representative or in one or more of the limited categories of representative registration if the person's activities are so limited as to qualify such person for registration as an Order Processing Assistant Representative. An Order Processing Assistant Representative is an associated person whose only function is to accept unsolicited customer orders from existing customers for submission for execution by the member. Pursuant to Rule 1042, Order Processing Assistant Representatives are subject to specified restrictions regarding their

activities and compensation and are subject to particular supervisory requirements. In addition, they may not be registered concurrently in any other capacity.

*Options Representative.* Chapter II, Section 2(h) of the Exchange’s rulebook provides that each person associated with a member who is included within the definition of a representative as defined in Rule 1031 may register with the Exchange as a Limited Representative—Options and Security Futures if: (A) such person's activities in the investment banking or securities business of the member involve the solicitation or sale of option or security futures contracts, including option contracts on government securities as that term is defined in Section 3(a)(42)(D) of the Act, for the account of a broker, dealer or public customer; and (B) such person passes an appropriate qualification examination for Limited Representative—Options and Security Futures. It also provides that each person seeking to register and qualify as a Limited Representative—Options and Security Futures must, concurrent with or before such registration may become effective, become registered with the Exchange or another SRO as either as a Limited Representative—Corporate Securities or Limited Representative—Government Securities. The Limited Representative—Options and Security Futures registration category is the same as the Options Representative category.

*Corporate Securities Representative.* Rule 1032(e) currently provides that each associated person of a member who is included within the definition of “representative” in Rule 1031 may register as a Corporate Securities Representative, instead of a General Securities Representative, if the individual’s activities are limited solely to securities as defined under Section 3(a)(10) of the Act, other than municipal securities, options, mutual funds (except for money market funds), variable contracts and direct participation

program securities. Individuals registering as Corporate Securities Representatives must pass the Corporate Securities Representative examination.

The Exchange is proposing to eliminate the current registration categories of Order Processing Assistant Representative, Options Representative, and Corporate Securities, as FINRA has done in the FINRA Rule Changes. The Exchange believes that the utility of the Order Processing Assistant Representative registration category has diminished as technological advances and changes in industry practice have reduced the need for such representatives. As a result, the volume of candidates taking the Order Processing Assistant Representative examination has diminished. The Options Representative and Corporate Securities Representative registration categories were created over the years as subcategories of the General Securities Representative category. These subcategories currently allow an individual to sell a subset of the products (e.g., options, common stocks and corporate bonds) permitted to be sold by a General Securities Representative. In recent years, however, the utility of these subcategories has also diminished as a result of technological, regulatory and business practice changes. This is evidenced by the low annual volume for each of these examinations and the relatively low number of individuals who currently hold these registrations.

Investment Company and Variable Products Representatives, Investment Company and Variable Contracts Products Principals, Order Processing Assistant Representatives, Options Representatives, and Corporate Securities Representatives would be eligible to maintain their registrations with the Exchange. Specifically, proposed Rule 1220.06 provides that, subject to the lapse of registration provisions in proposed Rule 1210.08, individuals who are registered with the Exchange in any capacity

recognized by the Exchange immediately prior to October 1, 2018, and each person who was registered with the Exchange in such categories within two years prior to October 1, 2018, shall be eligible to maintain such registrations with the Exchange. However, if individuals registered in these categories terminate their registration with the Exchange and the registration remains terminated for two or more years, they would not be able to re-register in that category. In addition, proposed Rule 1220.06 would include the current restrictions to which Order Processing Assistant Representatives are subject under Rule 1042.<sup>73</sup>

### **18. Grandfathering Provisions**

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

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<sup>73</sup> Proposed Exchange Rule 1220.06 omits references to a number of registration categories it does not propose to recognize, but which FINRA refers to in its own Rule 1220.06.

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

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

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

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

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

The Exchange is proposing to adopt Rule 1060(a) as Rule 1230 subject to the following changes. As noted above, Rule 1060(a) exempts from registration those associated persons who are not actively engaged in the investment banking or securities business. Rule 1060(a) also exempts from registration those associated persons whose functions are related solely and exclusively to a member's need for nominal corporate officers or for capital participation.<sup>74</sup> The Exchange believes that the determination of whether an associated person is required to register must be based on an analysis of the person's activities and functions in the context of the various registration categories. The Exchange does not believe that categorical exemptions for associated persons who are not "actively engaged" in a member's investment banking or securities business, associated persons whose functions are related only to a member's need for nominal corporate officers or associated persons whose functions are related only to a member's need for capital participation is consistent with this analytical framework. The Exchange therefore

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<sup>74</sup> These exemptions generally apply to associated persons who are corporate officers of a member in name only to meet specific corporate legal obligations or who only provide capital for a member, but have no other role in a member's business.

is proposing to delete these exemptions. Rule 1060(a) further exempts from registration associated persons whose functions are related solely and exclusively to effecting transactions on the floor of another national securities exchange as long as they are registered as floor members with such exchange. Because exchanges have registration categories other than the floor member category, proposed Rule 1230 clarifies that the exemption applies to associated persons solely and exclusively effecting transactions on the floor of another national securities exchange, provided they are appropriately registered with such exchange.<sup>75</sup> Additionally, the Exchange proposes to add Section 3 of Rule 1230, pursuant to which persons associated with a member that are not citizens, nationals, or residents of the United States or any of its territories or possessions, that will conduct all of their securities activities in areas outside the jurisdiction of the United States, and that will not engage in any securities activities with or for any citizen, national or resident of the United States need not register with the Exchange.<sup>76</sup>

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

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<sup>75</sup> Proposed Rule 1230 differs from FINRA Rule 1230 in that it contains a number of additional exemptions, based upon current Nasdaq Rule 1060(a), which are not included in FINRA Rule 1230.

<sup>76</sup> Individuals described by Section 3 of Rule 1230 who are associated with FINRA members may be registered with FINRA as Foreign Associates pursuant to FINRA Rule 1220.06. FINRA is eliminating this registration category effective October 1, 2018, and the Exchange has never recognized it.

the registered person contacts the customer to confirm the order details before entering the order.

### **O. Changes to CE Requirements (Proposed Rule 1240)**

As described above, current Rule 1120 includes a Regulatory Element and a Firm Element. The Regulatory Element applies to registered persons and consists of periodic computer-based training on regulatory, compliance, ethical, supervisory subjects and sales practice standards. The Firm Element consists of at least annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the member. The Exchange is proposing to delete Rule 1120 and replace it with Rule 1240. Proposed Rule 1240 would differ from current Rule 1120 in a number of respects, discussed below.<sup>77</sup>

#### **1. Regulatory Element**

The Exchange is proposing to replace the term “registered person” under current Rule 1120(a) with the term “covered person” and make conforming changes to proposed Rule 1240(a). For purposes of the Regulatory Element, the Exchange is proposing to define the term “covered person” in Rule 1240(a)(5) as any person registered pursuant to proposed Rule 1210, including any person who is permissively registered pursuant to proposed Rule 1210.02, and any person who is designated as eligible for an FSA waiver pursuant to proposed Rule 1210.09. The purpose of this change is to ensure that all registered persons, including those with permissive registrations, keep their knowledge of the securities industry current. The inclusion of persons designated as eligible for an FSA

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<sup>77</sup> Proposed Rule 1240 also differs slightly from FINRA Rule 1240 in that it omits references to certain registration categories which the Exchange does not recognize as well as an internal cross reference to FINRA Rule 4517.



waiver under the term “covered persons” corresponds to the requirements of proposed Rule 1210.09. In addition, consistent with proposed Rule 1210.09, proposed Rule 1240(a) provides that an FSA-eligible person would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. The proposed rule also provides that if an FSA-eligible person fails to complete the Regulatory Element during the prescribed time frames, he or she would lose FSA eligibility.

Further, the Exchange is proposing to add a rule to address the impact of failing to complete the Regulatory Element on a registered person’s activities and compensation. Specifically, proposed Rule 1240(a)(2) provides that any person whose registration has been deemed inactive under the rule may not accept or solicit business or receive any compensation for the purchase or sale of securities. However, like the FINRA rule, the proposed rule provides that such person may receive trail or residual commissions resulting from transactions completed before the inactive status, unless the member with which the person is associated has a policy prohibiting such trail or residual commissions.

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

## **2. Firm Element**

The Exchange believes that training in ethics and professional responsibility should apply to all covered registered persons. Therefore, proposed Rule 1240(b)(2)(B),

which provides that the Firm Element training programs must cover applicable regulatory requirements, would also require that a firm's training program cover training in ethics and professional responsibility.

#### **P. Electronic Filing Rules**

Existing Rule 1140, Electronic Filing Requirements for Uniform Forms, is proposed to be relocated as Rule 1250, Electronic Requirements for Uniform Forms, with non-substantive conforming changes. As revised the rule provides that all forms required to be filed under the Exchange's registration rules including the Rule 1200 series shall be filed through an electronic process or such other process as the Exchange may prescribe to the Central Registration Depository. Rule 1250, as part of the uniform 1200 Series, will consolidate Form U4 and U5 electronic filing requirements in a single location, across the Nasdaq Affiliated Exchanges.

#### **Q. Other Rules**

The Exchange is deleting Rule 1060, Persons Exempt from Registration, as explained above. Rule 1060(b) however, contains provisions dealing with Nonregistered Foreign "Finders" and is simply being relocated with non-substantive changes to new Rule 2040.<sup>78</sup> The remaining rules identified above under "Overview" which are to be amended in this proposed rule change but are not further discussed herein simply update citations and/or make technical or non-substantive changes to the proposed new rules.

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<sup>78</sup> The FINRA counterpart to current Rule 1060(b) occupies a similar location in the FINRA rulebook. See FINRA Rule 2040(c), Nonregistered Foreign Finders.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>79</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>80</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 rule change will streamline, and bring consistency and uniformity to, the registration rules, which will, in turn, assist members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule change will also improve the efficiency of the examination program, without compromising the qualification standards, by eliminating duplicative testing of general securities knowledge on examinations and by removing examinations that currently have limited utility. In addition, the proposed rule change will expand the scope of permissive registrations, which, among other things, will allow members to develop a depth of associated persons with registrations to respond to unanticipated personnel changes and will encourage greater regulatory understanding. Further, the proposed rule change will provide a more streamlined and effective waiver process for individuals working for a financial services industry affiliate of a member, and it will require such individuals to maintain specified levels of competence and knowledge while working in areas ancillary to the securities business. The proposed rule change will improve the supervisory structure of firms by imposing an experience requirement for

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<sup>79</sup> 15 U.S.C. 78f(b).

<sup>80</sup> 15 U.S.C. 78f(b)(5).

representatives that are designated by firms to function as principals for a 120-day period before having to pass an appropriate principal qualification examination. The proposed rule change will also prohibit unregistered persons from accepting customer orders under any circumstances, which will enhance investor protection.

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

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

Finally, the proposed rule change makes organizational changes to Exchange rules to maintain appropriate parallelism with corresponding Exchange rules, in order to prevent unnecessary regulatory burdens and promote efficient administration of the rules.

The change also makes minor updates and corrections to the Exchange's rules which improve readability.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that all associated persons of members engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions, will be supervised, and can be identified by regulators. The proposed new 1200 Series of rules, which are similar in many respects to the registration-related requirements adopted by FINRA effective October 1, 2018, should enhance the ability of member firms to comply with the Exchange's rules as well as with the Federal securities laws. Additionally, as described above, the Exchange intends the amendments described herein to eliminate inconsistent registration-related requirements across the Nasdaq Affiliated Exchanges, thereby promoting uniformity of regulation across markets. The new 1200 Series should in fact remove administrative burdens that currently exist for members seeking to register associated persons on multiple Nasdaq Affiliated Exchanges featuring varying registration-related requirements. Additionally, all similarly-situated associated persons of members will be treated similarly under the new 1200 Series in terms of standards of training, experience and competence for persons associated with Exchange members.

With respect to registration of developers of algorithmic trading strategies in particular, the Exchange recognizes that the proposal would impose costs on member firms employing associated persons engaged in the activity subject to the registration requirement. Specifically, among other things, additional associated persons would be

required to become registered under the proposal, and the firm would need to establish policies and procedures to monitor compliance with the proposed requirement on an ongoing basis. However, given the prevalence and importance of algorithmic trading strategies in today's markets, the Exchange believes that associated persons engaged in the activities covered by this proposal must meet a minimum standard of knowledge regarding the applicable securities rules and regulations. To mitigate the costs imposed on member firms, the proposed rule change limits the scope of registration requirement by excluding technological or development support personnel who are not primarily responsible for the covered activities. It also excludes supervisors who are not responsible for the "day-to-day" supervision or direction of the covered activities.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>81</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>82</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the

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<sup>81</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>82</sup> 17 CFR 240.19b-4(f)(6).

Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that this proposal does not significantly affect the protection of investors or the public interest because clear rules relating to registration, qualification examinations and continuing education of associated persons of members which, among other things, take into consideration and align with the upcoming FINRA Rule Changes while remaining tailored to the Exchange's own business, ultimately benefit the investing public. As described above, the proposed rule changes are substantially similar to existing FINRA and Nasdaq rules as well as to the FINRA Rule Changes that will become effective October 1, 2018. Aligning the Exchange's rules in this area with those of FINRA and those of the Exchange's affiliated exchanges will help to create a greater degree of consistency, uniformity and regulatory efficiency with respect to registration, qualification and continuing education requirements applicable to associated persons, thereby facilitating compliance by members of the Exchange who also hold membership in FINRA or in one or more of the Exchange's affiliated exchanges. The proposed rule change does not impose any significant burden on competition because it will apply uniformly to all similarly situated members and associated persons of members.

Furthermore, Rule 19b-4(f)(6)(iii) 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.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the operative delay to permit the Exchange to permit the proposed rule changes to become operative concurrent with the effectiveness of the FINRA Rule Changes on October 1, 2018.<sup>83</sup>

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

As described above, and with the exceptions noted above, proposed Rules 1210, 1220, 1230 and 1240 are based upon FINRA Rules 1210, 1220, 1230 and 1240, which become effective October 1, 2018. Proposed Rule 1250 is based upon current Nasdaq Rule 1140.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

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<sup>83</sup> As noted above, the new registration requirement for developers of algorithmic trading strategies would become operative April 1, 2019.



10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2018-078)

September \_\_, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend, Reorganize and Enhance its Membership, Registration and Qualification Rules

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 September 27, 2018, 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, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend, reorganize and enhance its membership, registration and qualification rules, and to make conforming changes to certain other rules.

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

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

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

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

**Overview**

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

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

<sup>4</sup> See Rule 1060, Persons Exempt from Registration.

<sup>5</sup> See Rule 1120, Continuing Education Requirements.

to amend, reorganize and enhance its rules regarding registration, qualification examinations and continuing education, as described below.

In 2006 Nasdaq separated from the National Association of Securities Dealers, Inc. (formerly “NASD” and now the Financial Industry Regulatory Authority or “FINRA”) and began to operate as a national securities exchange. At that time it adopted a rulebook with provisions respecting registration, qualification examinations and continuing education that were designed to parallel the NASD rulebook in many respects.<sup>6</sup> Recently, the Commission approved a FINRA proposed rule change consolidating and adopting NASD and Incorporated NYSE rules relating to qualification and registration requirements into the Consolidated FINRA Rulebook,<sup>7</sup> restructuring the FINRA representative-level qualification examinations, creating a general knowledge examination and specialized knowledge examinations, allowing permissive registration, establishing an examination waiver process for persons working for a financial services affiliate of a member, and amending certain continuing education (“CE”) requirements (collectively, the “FINRA Rule Changes”).<sup>8</sup> The FINRA Rule Changes will become effective on October 1, 2018.

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<sup>6</sup> See Securities Exchange Act Release No. 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006).

<sup>7</sup> The current FINRA rulebook consists of: (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from the New York Stock Exchange (“NYSE”) (the “Incorporated NYSE rules”). While the NASD rules generally apply to all FINRA members, the Incorporated NYSE rules apply only to those members of FINRA that are also members of the NYSE.

<sup>8</sup> See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (Order Approving File No. SR-FINRA-2017-007). See also FINRA Regulatory Notice 17-30 (SEC Approves Consolidated FINRA Registration Rules, Restructured Representative-Level Qualification Examinations and Changes to Continuing Education Requirements) (October

The Exchange now proposes to amend, reorganize and enhance certain of its corresponding membership, registration and qualification requirements rules in part in response to the FINRA Rule Changes, and also in order to facilitate the adoption of similar membership, registration and qualification rules by Nasdaq's affiliated exchanges in the interest of uniformity and to facilitate compliance with membership, registration and qualification regulatory requirements by members of multiple Nasdaq-affiliated exchanges. At the same time, the Exchange is proposing to further amend or delete certain existing Exchange rules originally based upon FINRA rules but which are no longer appropriate for the business conducted by Nasdaq or its affiliated exchanges.<sup>9</sup> Last, the Exchange proposes to enhance its registration rules by adding a new registration

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2017). FINRA articulated its belief that the proposed rule change would streamline, and bring consistency and uniformity to, its registration rules, which would, in turn, assist FINRA members and their associated persons in complying with the rules and improve regulatory efficiency. FINRA also determined to enhance the overall efficiency of its representative-level examinations program by eliminating redundancy of subject matter content across examinations, retiring several outdated representative-level registrations, and introducing a general knowledge examination that could be taken by all potential representative-level registrants and the general public. FINRA amended certain aspects of its continuing education rule, including by codifying existing guidance regarding the effect of failing to complete the Regulatory Element on a registered person's activities and compensation.

<sup>9</sup> For example, the Exchange is deleting the Limited Principal - Investment Company and Variable Contracts Products (current Nasdaq Rule 1022(d)), Limited Representative - Investment Company and Variable Contracts Products (current Nasdaq Rule 1032(b)) and Introducing Broker/Dealer Financial and Operations Principal (current Nasdaq Rule 1022(c)) registration categories from the array of registration categories recognized by the Exchange. Although FINRA is retaining these registration categories for its own purposes, the activities permitted by registration in those categories have little or no practical relevance to the Exchange.

requirement applicable to developers of algorithmic trading systems similar to a requirement adopted by FINRA pursuant to a 2016 FINRA proposed rule change.<sup>10</sup>

As part of this proposed rule change, current IM-1002-2, Status of Persons Serving in the Armed Forces of the United States; IM-1002-3, Failure to Register Personnel; 1020, Registration of Principals; 1021, Registration Requirements; 1022, Categories of Principal Registration; IM-1022-1, Reserved; IM-1022-2, Limited Principal-General Securities Sales Supervisor; 1030, Registration of Representatives; 1031, Registration Requirements, Sections (a)-(e); 1032, Categories of Representative Registration; 1040, Registration of Assistant Representatives; 1041, Registration Requirements for Assistant Representatives; 1042, Restrictions for Assistant Representatives; 1043, Reserved; 1060, Persons Exempt from Registration<sup>11</sup>; 1070, Qualification Examinations and Waiver of Requirements; 1080, Confidentiality of Examinations; 1100, Reserved; 1110, Reserved; 1120, Continuing Education Requirements; and Chapter II, Section 2, Requirements for Options Participation, Subsections (g) and (h) and Commentary.01, are proposed to be deleted. Rule 1140, Electronic Filing Requirements for Uniform Forms, is proposed to be amended and

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<sup>10</sup> See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR-FINRA-2016-007). In its proposed rule change FINRA addressed the increasing significance of algorithmic trading strategies by amending its rules to require registration, as Securities Traders, of associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities.

<sup>11</sup> Provisions currently found in Rule 1060(b) are being amended and relocated to new Rule 2040, as discussed below.

relocated. A number of other rules are proposed to be amended with conforming changes, or relocated in view of the foregoing amendments.<sup>12</sup>

In place of the deleted rules and rule sections, the Exchange proposes to adopt a new 1200 Series of rules captioned Registration, Qualification and Continuing Education, generally conforming to and based upon FINRA's new 1200 Series of rules resulting from the FINRA Rule Changes, but with a number of Exchange-specific variations.<sup>13</sup> The proposed new 1200 Series is also being proposed for adoption by Nasdaq's affiliated exchanges in order to facilitate compliance with membership, registration and qualification regulatory requirements by members of two or more of those affiliated exchanges.<sup>14</sup> In the new 1200 Series the Exchange would, among other things, recognize

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<sup>12</sup> Conforming amendments are proposed to Rules 0120, Definitions; 1050, Research Analysts; 3010, Supervision; 7003, Registration and Processing Fees; IM-9216, Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2); and 9630, Appeal. In the Exchange's Options Rules, amendments are proposed to Chapter XI, Section 2, Registration of Options Principals and Section 3, Registration of Representatives.

<sup>13</sup> The proposed 1200 Series of Rules would consist of Rule 1210, Registration Requirements; Rule 1220, Registration Categories; Rule 1230, Associated Persons Exempt from Registration; Rule 1240, Continuing Education Requirements; and Rule 1250, Electronic Filing Requirements for Uniform Forms.

<sup>14</sup> The Exchange's five affiliated exchanges, Nasdaq BX, Inc. ("BX"), Nasdaq PHLX LLC ("PHLX"), Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), and Nasdaq MRX, LLC ("MRX") (together with Nasdaq, the "Nasdaq Affiliated Exchanges") are also submitting proposed rule changes to adopt the 1200 Series of rules. See SR-BX-2018-047, SR-Phlx-2018-61, SR-ISE-2018-82, SR-GEMX-2018-33, and SR-MRX-2018-31. The Exchange recently added a shell structure to its rulebook with the purpose of improving efficiency and readability and to align its rules more closely to those of the other Nasdaq Affiliated Exchanges. See Securities Exchange Act Release No. 82175 (November 29, 2017), 82 FR 57494 (December 5, 2017) (SR-NASDAQ-2017-125). Ultimately, the Exchange intends to submit another proposed rule change to transfer the 1200 Series of rules into the new shell structure. (The Exchange notes that the Phlx 1200 Series of rules would differ slightly from the 1200 Series

additional associated person registration categories, recognize a new general knowledge examination, permit the maintenance of permissive registrations, and require Securities Trader registration of developers of algorithmic trading strategies consistent with a comparable existing FINRA registration requirement.<sup>15</sup>

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

## **Proposed Rules**

### **A. Registration Requirements (Proposed Rule 1210)**

Exchange Rules 1021(a) and 1031(a) currently require that persons engaged, or to be engaged, in the investment banking or securities business of a member who are to function as representatives or principals register with the Exchange in the category of registration appropriate to their functions as specified in Exchange Rules 1022 and 1032.<sup>16</sup> The Exchange is proposing to consolidate and streamline provisions of

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of the other Nasdaq Affiliated Exchanges given Phlx's trading floor and its unique membership structure which features the concept of a "member organization.").

<sup>15</sup> See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (order approving SR-FINRA-2016-007). In its proposed rule change to adopt this registration requirement, FINRA addressed the increasing significance of algorithmic trading strategies by proposing to require registration, as Securities Traders, of associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities.

<sup>16</sup> In addition, IM-1002-3 provides that the failure to register an individual as a registered representative may be deemed to be conduct inconsistent with just and equitable principles of trade and may be sufficient cause for appropriate disciplinary action. As explained below the Exchange proposes to delete IM-1002-3 as superfluous.



Exchange Rules 1021(a) and 1031(a) and to adopt them as Exchange Rule 1210, subject to several changes.<sup>17</sup>

Proposed Rule 1210 provides that each person engaged in the securities business of a member must register with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in proposed Rule 1220, unless exempt from registration pursuant to proposed Rule 1230. Unlike current Rules 1021(a) and 1031(a), proposed Rule 1210 would not require persons engaged in the investment banking business of a member to register with the Exchange since a member's investment banking business is not the primary concern of the Exchange or the focus of its operations.<sup>18</sup> Proposed Exchange Rule 1210 also

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<sup>17</sup> Rule 1031, Registration Requirements, contains certain sections that are not affected by this proposed rule change. However, due to the overall organizational restructuring of the registration rules, those sections (current Rules 1031(c), (d) and (e)) are being relocated with non-substantive amendments to new Supplementary Material .12, Application for Registration and Jurisdiction, to proposed Rule 1210, Registration Requirements. These relocated provisions govern the process for applying for registration and amending the registration application, as well as for notifying the Exchange of termination of a member's association with a person registered with the Exchange. The Exchange proposes to adopt Rule 1210, Supplemental Material .12, into the 1200 Series in order to have uniform processes and requirements in this area across the Nasdaq Affiliated Exchanges. This relocated language is unique to the Exchange - the FINRA Rule Changes do not contain a counterpart Rule 1210 Supplementary Material .12. The Exchange anticipates amending Rule 1031(f) in a future proposed rule change.

<sup>18</sup> Miami International Securities Exchange LLC ("MIAX") Rule 203(a) and ISE Rule 313(a)(1) likewise require registration of associated persons of members engaged in the member's securities business, but do not require registration with the exchanges of associated persons of members who engage in the member's investment banking business. Because the Exchange's proposed registration rules focus solely on securities trading activity, the proposed rules differ from the FINRA Rule Changes by omitting references to investment banking in proposed Rules 1210, 1210.03, 1210.10, 1220(a)(1), 1220(a)(2)(B), 1220(b), and 1240(b)(1), and also by omitting as unnecessary from Rule 1220(a)(10) a

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

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

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

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

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limitation on the qualification of a General Securities Sales Supervisor to supervise the origination and structuring of an underwriting.

qualified for registration under Rule 1022(b) and (c) as a Financial and Operations Principal (or an Introducing Broker/Dealer Financial and Operations Principal).<sup>19</sup>

The Exchange is proposing to adopt Rule 1021(e) as Rule 1210.01, subject to the following changes. The Exchange proposes to provide firms that limit the scope of their business with greater flexibility to satisfy the two-principal requirement. In particular, proposed Rule 1210.01 requires that a member have a minimum of two General Securities Principals, provided that a member that is limited in the scope of its activities may instead have two officers or partners who are registered in a principal category that corresponds to the scope of the member's activities.<sup>20</sup> For instance, if a firm's business is limited to securities trading, the firm may have two Securities Trader Principals, instead of two General Securities Principals. Currently, a sole proprietor member (without any other associated persons) is not subject to the two-principal requirement because such member is operating as a one-person firm. Given that one-person firms may be organized in legal forms other than a sole proprietorship (such as a single-person limited liability company), proposed Exchange Rule 1210.01 provides that any member with only one associated person is excluded from the two principal requirement. In addition, proposed Rule 1210.01 clarifies that existing members as well as new applicants may request a waiver of the two-principal requirement. Finally, the Exchange is proposing to retain the

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<sup>19</sup> Exchange Rules 1022(b) and (c) as well as other Exchange rules currently refer to categories of limited principal registration as "Limited Principal – " followed by the name of the registration category. In this proposed rule change and in the proposed rules, the Exchange will no longer employ the term "Limited Principal – " in identifying various principal registration categories. No substantive change is intended; shortening the names of the various principals simply improves readability of the rules.

<sup>20</sup> The principal registration categories are described in greater detail below.

existing rule's provision permitting a proprietary trading firm with 25 or fewer registered representatives to have just one registered principal. The FINRA Rule Changes do not include this provision.<sup>21</sup>

### **C. Permissive Registrations (Proposed Rule 1210.02)**

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

The Exchange is proposing to consolidate these provisions under Rule 1210.02.

The Exchange is also proposing to expand the scope of permissive registrations and to

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<sup>21</sup> The Exchange is not proposing provisions conforming to the new FINRA Rule 1210.01 requirements that all FINRA members are required to have a Principal Financial Officer and a Principal Operations Officer, because it believes that its proposed Rule 1220(a)(4), Financial and Operations Principal, which requires member firms operating pursuant to certain provisions of SEC rules to designate at least one Financial and Operations Principal, is sufficient. Further, the Exchange is not adopting the FINRA Rule 1210.01 requirements that (1) a member engaged in investment banking activities have an Investment Banking Principal, (2) a member engaged in research activities have a Research Principal, or (3) a member engaged in options activities with the public have a Registered Options Principal. The Exchange does not recognize the Investment Banking Principal or the Research Principal registration categories, and the Registered Options Principal registration requirement is set forth in Rule 1210.08 and its inclusion is therefore unnecessary in Rule 1210.01.

clarify a member's obligations regarding individuals who are maintaining such registrations.

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

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

Individuals maintaining a permissive registration under the proposed rule change would be considered registered persons and subject to all Exchange rules, to the extent relevant to their activities. For instance, an individual working solely in an administrative capacity would be able to maintain a General Securities Representative registration and would be considered a registered person for purposes of rules relating to borrowing from or lending to customers, but the rule would have no practical application to his or her conduct because he or she would not have any customers.

Consistent with the Exchange's supervision rules, members would be required to have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions.<sup>22</sup> With respect to an individual who solely maintains a permissive registration, such as an individual working exclusively in an administrative capacity, the individual's day-to-day supervisor may be a nonregistered person. Members would be required to assign a registered supervisor to this person who would be responsible for periodically contacting such individual's day-to-day supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor must be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor must be registered as a principal.<sup>23</sup>

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<sup>22</sup> The FINRA Proposed Rules at Rule 1210.02 cite FINRA's own supervision rule, by number. Because the 1200 Series of rules is intended to apply to the Exchange as well as to its affiliates which have different supervision rules, proposed Rule 1210.02 refers generally to the supervision rules rather than identifying them by number.

<sup>23</sup> In either case, the registered supervisor of an individual who solely maintains a permissive registration would not be required to be registered in the same

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

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

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

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

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representative or principal registration category as the permissively-registered individual.

registered person would need to pass only the appropriate representative-level qualification examination.<sup>24</sup> Thus under the proposed rule change, individuals seeking registration in two or more representative-level categories would experience a net decrease in the total number of exam questions they would be required to answer because the SIE content would be tested only once.

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

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<sup>24</sup> The exception for Order Processing Assistant Representatives and Foreign Associates was adopted by FINRA in FINRA Rule 1210.03, and is included in proposed Exchange Rule 1210.03 without the reference to Foreign Associates which is a registration category the Nasdaq Affiliated Exchanges do not recognize. FINRA has stated that the SIE would assess basic product knowledge; the structure and function of the securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. Proposed Rule 1210.03 provides that all associated persons, such as associated persons whose functions are solely and exclusively clerical or ministerial, are eligible to take the SIE. Proposed Rule 1210.03 also provides that individuals who are not associated persons of firms, such as members of the general public, are eligible to take the SIE. FINRA has stated its belief that expanding the pool of individuals who are eligible to take the SIE would enable prospective securities industry professionals to demonstrate to prospective employers a basic level of knowledge prior to submitting a job application. Further, this approach would allow for more flexibility and career mobility within the securities industry. While all associated persons of firms as well as individuals who are not associated persons would be eligible to take the SIE pursuant to proposed Rule 1210.03, passing the SIE alone would not qualify them for registration with the Exchange. Rather, to be eligible for registration with the Exchange, an individual would be required to pass an applicable representative or principal qualification examination and complete the other requirements of the registration process.



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

Further, registered representatives, other than an individual registered as an Order Processing Assistant Representative, would be considered to have passed the SIE in the CRD system, and thus if they wish to register in any other representative category after the operative date of the proposed rule change, they could do so by taking only the appropriate specialized knowledge examination.<sup>25</sup> However, with respect to an individual who is not registered on the operative date of the proposed rule change but was registered within the past two years prior to the operative date of the proposed rule change, the individual's SIE status in the CRD system would be administratively terminated if such individual does not register within four years from the date of the individual's last registration.<sup>26</sup>

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<sup>25</sup> Under the proposed rule change, only individuals who have passed an appropriate representative-level examination would be considered to have passed the SIE. Registered principals who do not hold an appropriate representative-level registration would not be considered to have passed the SIE. For example, an individual who is registered solely as a Financial and Operations Principal (Series 27) today would have to take the Series 7 to become registered as a General Securities Representative. Under the proposed rule change, in the future, this individual would have to pass the SIE and the specialized Series 7 examination to obtain registration as a General Securities Representative.

<sup>26</sup> As discussed below, the Exchange is proposing a four-year expiration period for the SIE.

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

Finally, paragraph (d) of Rule 1070 currently permits the Exchange, in exceptional cases and where good cause is shown, to waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications for registration. The Exchange is proposing to transfer the provisions of Rule 1070(d) into proposed Rule 1210.03 with changes which track FINRA Rule 1210.03.<sup>27</sup> The proposed rule provides that the Exchange will only consider examination waiver requests submitted by a firm for individuals associated with the firm who are seeking registration in a representative- or principal-level registration category. Moreover, proposed Rule

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<sup>27</sup> Rules 1070(a), (b) and (c) provide general information relating to the examination process. The Exchange is proposing to delete these provisions given that they relate to the administration of the examination program rather than rule requirements.

1210.03 states that the Exchange will consider waivers of the SIE alone or the SIE and the representative- and principal-level examination(s) for such individuals.

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

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

The Exchange is proposing to adopt Rule 1021(d) as Rule 1210.04, subject to the following changes. Proposed Rule 1210.04 states that a member may designate any person currently registered, or who becomes registered, with the member as a representative to function as a principal for a limited period, provided that such person has at least 18 months of experience functioning as a registered representative within the five-year period immediately preceding the designation. This change is intended to ensure that representatives designated to function as principals for the limited period under the proposed rule have an appropriate level of registered representative experience.

The proposed rule clarifies that the requirements of the rule apply to any principal category, including those categories that are not subject to a prerequisite representative-level registration requirement, such as the Financial and Operations Principal registration category.<sup>28</sup> The Exchange is not conserving in Rule 1210.04 the language that this provision applies to a person associated with a member of another registered national securities exchange or association who is required to register in a principal classification under the Nasdaq rules but who is not required to be so registered under the rules of the other exchange or association. The Exchange believes this language is superfluous as the applicability to various individuals of proposed Rule 1210.04 speaks for itself and requires no elaboration.<sup>29</sup> Proposed Rule 1210.04 would increase the Rule 1021(d)'s 90 day period to 120 days, to provide additional flexibility for representatives functioning as principals for a limited period of time.

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

Before taking an examination, FINRA currently requires each candidate to agree to the Rules of Conduct for taking a qualification examination. Among other things, the examination Rules of Conduct require each candidate to attest that he or she is in fact the person who is taking the examination. These Rules of Conduct also require that each candidate agree that the examination content is the intellectual property of FINRA and

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<sup>28</sup> In this regard, the Exchange notes that qualifying as a registered representative is currently a prerequisite to qualifying as a principal on the Exchange except with respect to the Financial and Operations Principal and the Introducing Broker/Dealer Financial and Operations Principal.

<sup>29</sup> Proposed Rule 1210.04 omits FINRA Rule 1210.04's reference to Foreign Associates, which is a registration category not recognized by the Nasdaq Affiliated Exchanges, but otherwise tracks the language of FINRA Rule 1210.04.

that the content cannot be copied or redistributed by any means. If FINRA discovers that a candidate has violated the Rules of Conduct for taking a qualification examination, the candidate may forfeit the results of the examination and may be subject to disciplinary action by FINRA. For instance, for cheating on a qualifications examination, FINRA's Sanction Guidelines recommend a bar.<sup>30</sup>

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

The Exchange proposes to adopt its own version of Rule 1210.05, which would provide that associated persons taking the SIE are subject to the SIE Rules of Conduct, and that associated persons taking any representative or principal examination are subject to the Rules of Conduct for representative and principal examinations. Under the proposed rule, a violation of the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations by an associated person would be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade, such as Exchange Rule 2010A.<sup>31</sup> Further, if the Exchange determines that an associated person has violated the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations, the

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<sup>30</sup> See SR-FINRA-2017-007, pp. 26 – 27.

<sup>31</sup> Pursuant to Exchange Rule 2010A, a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade. FINRA Rule 1210.05 cites FINRA Rule 2010, which is a comparable rule.

associated person may forfeit the results of the examination and may be subject to disciplinary action by the Exchange.

Proposed Rule 1210.05 states that the Exchange considers all of the qualification examinations content to be highly confidential. The removal of examination content from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such qualification examination or any other use that would compromise the effectiveness of the examinations and the use in any manner and at any time of the questions or answers to the examinations would be prohibited and would be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade. Finally, proposed Rule 1210.05 would prohibit an applicant from receiving assistance while taking the examination, and require the applicant to certify that no assistance was given to or received by him or her during the examination.<sup>32</sup>

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

Rule 1070(e) currently sets forth waiting periods for retaking failed examinations. The rule provides that a person who fails a qualification examination would be permitted to retake the examination after either a period of 30 calendar days has elapsed from the date of the prior examination or the next administration of an examination administered on a monthly basis. However, if the person fails an examination three or more times in succession, he or she would be prohibited from retaking the examination either until a

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<sup>32</sup> In view of proposed Rule 1210.05, the Exchange is proposing to delete Rule 1080, Confidentiality of Examinations, which is largely duplicative. The Exchange is not adopting portions of FINRA's Rule 1210.05 which apply to non-associated persons, over whom the Exchange would in any event have no jurisdiction.

period of 180 calendar days has elapsed from the date of his or her last attempt to pass the examination or until the sixth subsequent administration of an examination administered on a monthly basis. The Exchange is proposing to adopt Rule 1070(e) as Rule 1210.06, with the following changes.

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

Proposed Rule 1210.06 further provides that if a person fails an examination three or more times in succession within a two-year period, the person is prohibited from retaking that examination until 180 calendar days from the date of the person's last attempt to pass it. These waiting periods would apply to the SIE and the representative- and principal-level examinations.<sup>33</sup>

#### **H. CE Requirements (Proposed Rule 1210.07)**

Pursuant to current Rule 1120, the CE requirements applicable to registered persons consist of a Regulatory Element<sup>34</sup> and a Firm Element.<sup>35</sup> The Regulatory Element applies to registered persons and must be completed within prescribed time

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<sup>33</sup> FINRA Rule 1210.06 requires individuals taking the SIE who are not associated persons to agree to be subject to the same waiting periods for retaking the SIE. The Exchange is not including this language in proposed Rule 1210.06, as the Exchange will not apply the 1200 Series of rules in any event to individuals who are not associated persons of members.

<sup>34</sup> See Rule 1120(a).

<sup>35</sup> See Rule 1120(b).

frames.<sup>36</sup> For purposes of the Regulatory Element, a “registered person” is defined in the current rule as any person registered with the Exchange as a representative, principal, or assistant representative.<sup>37</sup> The Firm Element consists of annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the member. For purposes of the Firm Element, the term “covered registered persons” is defined as any registered person who has direct contact with customers in the conduct of the member’s securities sales, trading and investment banking activities, and the immediate supervisors of such persons.<sup>38</sup>

The Exchange proposes to delete Rule 1120 and to replace it with Rule 1240, Continuing Education Requirements. The Exchange believes that all registered persons, regardless of their activities, should be subject to the Regulatory Element of the CE requirements so that they can keep their knowledge of the securities industry current.

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<sup>36</sup> Pursuant to Rule 1120(a), each registered person is required to complete the Regulatory Element initially within 120 days after the person’s second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date. Unless otherwise determined by the Exchange, a registered person who has not completed the Regulatory Element program within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under Rule 1120(a) must cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. A registration that is inactive for a period of two years will be administratively terminated. A person whose registration is so terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Exchange’s rules. The Exchange may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

<sup>37</sup> See Rule 1120(a)(5).

<sup>38</sup> See Rule 1120(b)(1).



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

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

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

Rule 1021(c) currently states that any person whose registration has been revoked pursuant to Rule 8310<sup>39</sup> or whose most recent registration as a principal has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application is required to pass a qualification examination for principals appropriate to the category of registration as specified in Rule 1022. Pursuant to Rule 1031(b), any person whose registration has been revoked pursuant to Rule 8310 or whose most recent registration as a representative or principal has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application is required to pass a qualification examination for representatives

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<sup>39</sup> Under Rule 8310(a)(3), the Exchange may impose one or more sanctions on a member or person associated with a member for each violation of the federal securities laws, rules or regulations thereunder, or Exchange rules, including suspending the membership of a member or suspending the registration of a person associated with a member for a definite period or a period contingent on the performance of a particular act.

appropriate to the category of registration as specified in Rule 1032.<sup>40</sup> The two years are calculated from the termination date stated on the individual's Form U5 (Uniform Termination Notice for Securities Industry Registration) and the date the Exchange receives a new application for registration.

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

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

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<sup>40</sup> In addition, Exchange Rule 1041(c) provides that if any person whose most recent registration as an Assistant Representative - Order Processing has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application is required to pass a qualification examination for Assistant Representative - Order Processing. As discussed below, the Exchange is proposing to eliminate Rule 1041(c) as part of the elimination of the Assistant Representative - Order Processing registration category on the Exchange.

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

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

The Exchange is proposing Rule 1210.09 to provide a process whereby individuals who would be working for a financial services industry affiliate of a member<sup>41</sup> would terminate their registrations with the member and would be granted a waiver of their requalification requirements upon re-registering with a member, provided the firm that is requesting the waiver and the individual satisfy the criteria for a Financial Services Affiliate (“FSA”) waiver.<sup>42</sup> The purpose of the FSA waiver is to provide a firm greater flexibility to move personnel, including senior and middle management, between the firm and its financial services affiliate(s) so that they may gain organizational skills and better knowledge of products developed by the affiliate(s)

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<sup>41</sup> Proposed Rule 1210.09 defines a “financial services industry affiliate of a member” as a legal entity that controls, is controlled by or is under common control with a member and is regulated by the SEC, Commodity Futures Trading Commission (“CFTC”), state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

<sup>42</sup> There is no counterpart to proposed Rule 1210.09 in the Exchange’s existing rules. FINRA Rule 1210.09 was recently adopted as a new waiver process for FINRA registrants, as part of the FINRA Rule Changes.

without the individuals having to requalify by examination each time they returned to the firm.

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

To be eligible for initial designation as an FSA-eligible person by a member, an individual must have been registered for a total of five years within the most recent 10-year period prior to the designation, including for the most recent year with that member.<sup>43</sup> An individual would have to satisfy these preconditions only for purposes of his or her initial designation as an FSA-eligible person, and not for any subsequent FSA designation(s). Thereafter, the individual would be eligible for a waiver for up to seven years from the date of initial designation<sup>44</sup> provided that the other conditions of the waiver, as described below, have been satisfied. Consequently, a member other than the member that initially designated an individual as an FSA-eligible person may request a waiver for the individual and more than one member may request a waiver for the individual during the seven-year period.<sup>45</sup>

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<sup>43</sup> For purposes of this requirement, a five year period of registration with the Exchange, with FINRA or with another self-regulatory organization would be sufficient.

<sup>44</sup> Individuals would be eligible for a single, fixed seven-year period from the date of initial designation, and the period would not be tolled or renewed.

<sup>45</sup> The following examples illustrate this point:

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

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

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

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

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

Upon registering an FSA-eligible person, a firm would file a Form U4 and request the appropriate registration(s) for the individual. The firm would also submit an examination waiver request to the Exchange,<sup>46</sup> similar to the process used today for waiver requests, and it would represent that the individual is eligible for an FSA waiver based on the conditions set forth below. The Exchange would review the waiver request and make a determination of whether to grant the request within 30 calendar days of receiving the request. The Exchange would summarily grant the request if the following conditions are met:

- (1) Prior to the individual's initial designation as an FSA-eligible person, the individual was registered for a total of five years within the most recent 10-year period, including for the most recent year with the member that initially designated the individual as an FSA-eligible person;
- (2) The waiver request is made within seven years of the individual's initial designation as an FSA-eligible person by a member;
- (3) The initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5;
- (4) The individual continuously worked for the financial services affiliate(s) of a member since the last Form U5 filing;
- (5) The individual has complied with the Regulatory Element of CE; and
- (6) The individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4, and has not

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<sup>46</sup> The Exchange would consider a waiver of the representative-level qualification examination(s), the principal-level qualification examination(s) and the SIE, as applicable.

otherwise been subject to a statutory disqualification while the individual was designated as an FSA-eligible person with a member.

Following the Form U5 filing, an individual could move between the financial services affiliates of a member so long as the individual is continuously working for an affiliate. Further, a member could submit multiple waiver requests for the individual, provided that the waiver requests are made during the course of the seven-year period.<sup>47</sup> An individual who has been designated as an FSA-eligible person by a member would not be able to take additional examinations to gain additional registrations while working for a financial services affiliate of a member.

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

IM-1002-2(a) and (b) currently provide specific relief to registered persons serving in the Armed Forces of the United States. Among other things, these rules permit a registered person of a member who volunteers for or is called into active duty in the Armed Forces of the United States to be registered in an inactive status and remain eligible to receive ongoing transaction-related compensation. IM-1002-2(c) also includes specific provisions regarding the deferment of the lapse of registration requirements in Exchange Rules 1021(c), 1031(b) and 1041(c) for formerly registered persons serving in the Armed Forces of the United States.

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<sup>47</sup> For example, if a member submits a waiver request for an FSA-eligible person who has been working for a financial services affiliate of the member for three years and re-registers the individual, the member could subsequently file a Form U5 and re-designate the individual as an FSA-eligible person. Moreover, if the individual works with a financial services affiliate of the member for another three years, the member could submit a second waiver request and re-register the individual upon returning to the member.

The Exchange is proposing to adopt IM-1002-2 as Rule 1210.10 with the following changes. To enhance the efficiency of the current notification process for registered persons serving in the Armed Forces, proposed Rule 1210.10 requires that the member with which such person is registered promptly notify the Exchange of such person's return to employment with the member. A sole proprietor must similarly notify the Exchange of his or her return to participation in the securities business. Further, proposed Rule 1210.10 provides that the Exchange would also defer the lapse of the SIE for formerly registered persons serving in the Armed Forces of the United States.<sup>48</sup>

#### **L. Impermissible Registrations (Proposed Rule 1210.11)**

Rules 1021(a) and 1031(a) currently prohibit a member from maintaining a representative or principal registration with the Exchange for any person who is no longer active in the member's investment banking or securities business, who is no longer functioning as a representative or principal as defined under the rules or where the sole purpose is to avoid the requalification requirement applicable to persons who have not been registered for two or more years. These rules also prohibit a member from applying for the registration of a person as representative or principal where the member does not intend to employ the person in its investment banking or securities business. These prohibitions do not apply to the current permissive registration categories.

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<sup>48</sup> Proposed Rule 1210.10 tracks FINRA Rule 1210.10 except for the statement that inactive registered persons are not to be included within the definition of "Personnel" for purposes of dues or assessments as provided in Article VI of the FINRA By-Laws. Instead, proposed Rule 1210.10 conserves language from existing IM-1002-2 stating that inactive persons under the rule are not included within the scope of fees, if any, charged by the Exchange with respect to registered persons.



In light of proposed Rule 1210.02, the Exchange is proposing to delete these provisions and instead adopt Rule 1210.11 prohibiting a member from registering or maintaining the registration of a person unless the registration is consistent with the requirements of proposed Rule 1210.<sup>49</sup>

### **M. Registration Categories (Proposed Rule 1220)**

The Exchange is proposing to integrate the various registration categories and related definitions under the Exchange's rules into a single rule, Rule 1220, subject to the changes described below.<sup>50</sup>

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

Rule 1021(b) currently defines the term "principal" to include sole proprietors, officers, partners, managers of offices of supervisory jurisdiction and directors who are actively engaged in the management of the member's investment banking or securities business, such as supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions. The Exchange is proposing to streamline and adopt Rule 1021(b) as Rule 1220(a)(1).

For the reason discussed above in connection with proposed Rule 1210, proposed Rule 1220(a)(1) would not apply to individuals who are not engaged in the management of the member's securities business even if they are engaged in the management of the

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<sup>49</sup> As discussed above, the Exchange is also proposing Rule 1210, Supplementary Material .12, Application for Registration and Jurisdiction, which is not included in FINRA Rule 1210. Proposed Exchange Rule 1210, Supplementary Material .12, is based upon portions of existing Exchange Rule 1031.

<sup>50</sup> For ease of reference, the Exchange proposes to adopt as Rule 1220, Supplementary Material .07, in chart form, a Summary of Qualification Requirements in chart form for each of the Exchange's permitted registration categories discussed below.

member's investment banking business. The proposed rule clarifies that a member's chief executive officer ("CEO") and chief financial officer ("CFO") (or equivalent officers) are considered principals based solely on their status. The proposed rule further clarifies that the term "principal" includes any other associated person who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules. In addition, the proposed rule provides that the phrase "actively engaged in the management of the member's securities business" includes the management of, and the implementation of corporate policies related to, such business as well as managerial decision-making authority with respect to the member's securities business and management-level responsibilities for supervising any aspect of such business, such as serving as a voting member of the member's executive, management or operations committees.

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

Rule 1022(a)(1) currently requires that an associated person who meets the definition of "principal" under Rule 1021 and each person designated as Chief Compliance Officer ("CCO") on Schedule A of the member's Form BD (Uniform Application for Broker-Dealer Registration) register as a General Securities Principal. A person registering as a General Securities Principal must pass the General Securities Principal examination. The rule, however, provides that such person is not required to register as a General Securities Principal if the person's activities are so limited as to qualify such person for one or more of the limited principal categories specified in Rule 1022. Further, the rule does not preclude individuals registered in a limited principal category from registering as General Securities Principals. Rule 1022(a)(1) also includes transitioning and grandfathering provisions for CCO's.

Rule 1022(a) provides that a person seeking to register as a General Securities Principal must satisfy the General Securities Representative or Corporate Securities Representative prerequisite registration. Rule 1022(a)(2) qualifies this provision by providing that the Corporate Securities Representative prerequisite registration gives a General Securities Principal only limited supervisory authority.

Rule 1022(a)(3) includes a grandfathering provision for persons who were registered as principals before the adoption of the General Securities Principal registration category.

Rule 1022(a)(4) provides that an associated person registered solely as a General Securities Principal is not qualified to function as a Financial and Operations Principal (or an Introducing Broker-Dealer Financial and Operations Principal, as applicable), or Limited Principal - General Securities Sales Supervisor, unless the General Securities Principal is also registered in these other categories.

Exchange Rule 1022(a)(5) currently requires that each associated person who is included within the definition of “principal” in Rule 1021 with supervisory responsibility over the securities trading activities described in Rule 1032(f)(1)<sup>51</sup> register as a Securities Trader Principal. To qualify for registration as a Securities Trader Principal, an individual must be registered as a Securities Trader and pass the General Securities Principal

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<sup>51</sup> Current Rule 1032(f)(1) provides for the registration as a Securities Trader of an associated person if, with respect to transactions in equity, preferred or convertible debt securities or foreign currency options on Nasdaq, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, other than any person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by or is under common control, with the member.

qualification examination. The rule provides that a person qualified and registered as a Securities Trader Principal may only have supervisory responsibility over the activities specified in Rule 1032(f)(1), unless such person is separately registered in another appropriate principal registration category, such as the General Securities Principal registration category. The rule further provides that a person registered as a General Securities Principal is not qualified to supervise the trading activities described in Rule 1032(f)(1), unless he or she qualifies and registers as a Securities Trader (by passing the Series 57 Securities Trader examination) and affirmatively registers as a Securities Trader Principal.

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

The Exchange is proposing to more clearly set forth the obligation to register as a General Securities Principal. Specifically, proposed Rule 1220(a)(2)(A) states that each principal as defined in proposed Rule 1220(a)(1) is required to register with the Exchange as a General Securities Principal, subject to the following exceptions. The proposed rule provides that if a principal's activities are limited to the functions of a Compliance Official, a Financial and Operations Principal, a Securities Trader Principal, a Securities Trader Compliance Officer, or a Registered Options Principal, then the principal shall appropriately register in one or more of these categories.<sup>52</sup> Proposed Rule 1220(a)(2)(A) further provides that if a principal's activities are limited solely to the functions of a General Securities Sales Supervisor, then the principal may appropriately register in that

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<sup>52</sup> The Exchange is proposing to recognize the Compliance Official and Securities Trader Compliance Officer registration categories for the first time as a result of this proposed rule change.

category in lieu of registering as a General Securities Principal, provided that if the principal is engaged in options sales activities he or she shall be required to register as a General Securities Sales Supervisor or as a Registered Options Principal.<sup>53</sup>

Proposed Rule 1220(a)(2)(B) requires that an individual registering as a General Securities Principal satisfy the General Securities Representative prerequisite registration and pass the General Securities Principal qualification examination. In conjunction with the elimination of the Corporate Securities Representative registration category, the Exchange is proposing in Rule 1220(a)(2) to delete the provision in Rule 1022(a)(1)(A) permitting the Corporate Securities Representative prerequisite registration. However, proposed Rule 1220(a)(2)(B) provides that, subject to the lapse of registration provisions in proposed Rule 1210.08, General Securities Principals who obtained the Corporate Securities Representative prerequisite registration on the Exchange in lieu of the General Securities Representative prerequisite registration and individuals who had been registered as such within the past two years prior to the operative date of the proposed rule change, may continue to supervise corporate securities activities as currently permitted. Proposed Rule 1220(a)(2)(B) requires all other individuals registering as General Securities Principal after October 1, 2018, to first become registered as a General Securities Representative pursuant to Rule 1220(b)(2).<sup>54</sup>

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<sup>53</sup> The Exchange's proposed Rule 1220(a)(2)(A) deviates somewhat from the counterpart FINRA rule in that it does not offer various limited registration categories provided for in FINRA's new Rule 1220(a)(2)(A).

<sup>54</sup> The Exchange is not adopting the FINRA Rule 1220(a)(2)(B) language permitting an individual registering as a General Securities Principal after October 1, 2018 to register as a General Securities Sales Supervisor and to pass the General Securities Principal Sales Supervisor Module qualification examination. The Exchange believes that individuals registering as General Securities Principals

Moreover, as described in greater detail below, the Exchange is proposing to adopt with some changes the requirements of Rule 1022(a)(1) relating to the registration of CCOs, and Rule 1022(a)(5) relating to the supervision of securities trading activities as Rule 1220(a)(3).

The Exchange is also proposing to eliminate the grandfathering provision for individuals who were registered as principals prior to the adoption of the General Securities Principal registration category because it no longer has any practical application. Finally, the Exchange is proposing to delete the provision that persons eligible for registration in other principal categories are not precluded from registering as General Securities Principals because it is superfluous.<sup>55</sup>

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

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

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

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should be required to demonstrate their competence for that role by passing the General Securities Principal qualification examination.

<sup>55</sup> Proposed Rule 1220(a)(2) generally tracks FINRA Rule 1220(a)(2), except that it omits references to a number of registration categories which FINRA recognizes but that the Exchange does not, and it includes a reference to the Securities Trader Compliance Officer category which the Exchange proposes to recognize, but which FINRA does not. Additionally, proposed Rule 1220(a)(2)(A)(i) extends that provision's exception to the General Securities Principal registration requirement to certain principals whose activities are "limited to" (rather than "include") the functions of a more limited principal. The Exchange believes that activities "limited to" expresses the intent of that exception more accurately than activities that "include." Finally, proposed Rule 1220(a)(2)(B) specifies that registration as a Corporate Securities Representative must be with the Exchange in order to fulfill the Corporate Securities Representative registration prerequisite for General Securities Principal registration pursuant to that rule.

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

Additionally, proposed Rule 1220(a)(3) provides that an individual designated as a Chief Compliance Officer on Schedule A of Form BD may register and qualify as a Securities Trader Compliance Officer if, with respect to transactions in equity, preferred or convertible debt securities, or options such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with a member. All individuals registering as Securities Trader Compliance Officers would be required to first become registered pursuant to paragraph (b)(4) as a Securities Trader, and to pass the Compliance Official qualification exam.<sup>56</sup>

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<sup>56</sup> Proposed Rule 1220(a)(3) differs from FINRA Rule 1220(a)(3), Compliance Officer. The Exchange does not recognize the Compliance Officer registration category. Similarly, FINRA does not recognize the Compliance Official or the Securities Trader Compliance Officer registration categories which the Exchange proposes to recognize. However, FINRA Rule 1220(a)(3), like proposed Rule 1220(a)(3), offers an exception pursuant to which a Chief Compliance Officer designated on Schedule A of Form BD may register in a principal category that corresponds to the limited scope of the member's business.

#### **4. Financial and Operations Principal, (Proposed Rule 1220(a)(4))**

Rule 1022(b)(1) currently provides that every member operating pursuant to the provisions of SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), shall designate as Limited Principal—Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who performs the duties described in Rule 1022(b)(2).<sup>57</sup> Each person associated with a member who performs such duties is required to register as a Limited Principal—Financial and Operations with the Exchange and pass an appropriate qualification examination before such registration may become effective. A person registered solely as a Limited Principal—Financial and Operations is not qualified to function in a principal capacity with responsibility over any area of business activity not described in 1022(b)(2).

Rule 1022(c) currently provides that every member subject to the requirements of SEC Rule 15c3-1, other than a member operating pursuant to SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8) in which case Rule 1022(b) shall apply, shall designate as Limited Principal—Introducing Broker/Dealer Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who perform the duties

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<sup>57</sup> These duties include (A) final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; (B) final preparation of such reports; (C) supervision of individuals who assist in the preparation of such reports; (D) supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived; (E) supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; (F) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; or (G) any other matter involving the financial and operational management of the member.



described in 1022(c)(2).<sup>58</sup> Each person associated with a member who performs such duties is required to register as a Limited Principal—Introducing Broker/Dealer Financial and Operations with the Exchange and pass an appropriate Qualification Examination before such registration may become effective.

Financial and Operations Principals and Introducing Broker-Dealer Financial and Operations Principals are not subject to a prerequisite representative registration, but they must pass the Financial and Operations Principal or Introducing Broker-Dealer Financial and Operations Principal examination, as applicable.

The Exchange is proposing to move the provisions in Rules 1022(b) regarding Financial and Operations Principals to Rule 1220(a)(4)(A), substituting the word “and” for the current word “or” found in Rule 1022(b)(2)(F) in order to conform to FINRA Rule 1220(a)(4)(A) in describing the duties of a Financial and Operations Principal. In addition, the Exchange proposes to delete the Introducing Broker-Dealer Financial and Operations Principals Rule 1022(c), as the Exchange has determined it no longer requires this registration category as it is relatively little used.<sup>59</sup>

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<sup>58</sup> These duties include (A) final approval and responsibilities for the accuracy of financial reports submitted to any duly established securities industry regulatory body; (B) final preparation of such reports; (C) supervision of individuals who assist in the preparation of such reports; (D) supervision of and responsibility for individuals who are involved in the actual maintenance of the member’s books and records from which such reports are derived; (E) supervision and/or performance of the member’s responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; (F) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member’s back office operations; or (G) any other matter involving the financial and operational management of the member.

<sup>59</sup> FINRA Rule 1220(a)(4) differs from proposed Rule 1220(a)(4) in that it includes an Introducing Broker-Dealer Financial and Operations Principal registration requirement. Additionally, proposed Rule 1220(a)(4) contains a requirement, which the FINRA rule does not, that each person associated with a member who

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

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

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

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

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

The Exchange is proposing to adopt Rule 1022(a)(5) relating to Securities Trader Principal registration as Rule 1220(a)(7). Similar to the current rule, proposed Rule 1220(a)(7) requires that a principal responsible for supervising the securities trading activities specified in proposed Rule 1220(b)(4)<sup>60</sup> register as a Securities Trader Principal. The proposed rule requires individuals registering as Securities Trader Principals to be registered as Securities Traders and to pass the General Securities Principal qualification examination.

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performs the duties of a Financial and Operations Principal must register as such with the Exchange. Further, as discussed above, the Exchange is not adopting a Principal Financial Officer or Principal Operations Officer requirement like FINRA Rule 1220(a)(4)(B), as it believes the Financial and Operations Principal requirement is sufficient. Finally, proposed Rule 1220(a)(4)(B)(v) and (vi) contain minor wording variations from the FINRA rule which are carried over from existing Nasdaq Rule 1022.

<sup>60</sup> Proposed Rule 1220(b)(4), discussed below, provides for representative-level registration in the "Securities Trader" category.

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

Chapter II, Section 2(g) of the rulebook currently requires that members engaged in security futures or options transactions with public customers have at least one Registered Options and Security Futures Principal. It also provides that every person engaged in the supervision of options and security futures sales practices shall be registered as a Registered Options and Security Futures Principal and pass the appropriate qualification examination for Registered Options and Security Futures Principal, or an equivalent examination acceptable to the Exchange. Further, each person required to register and qualify as a Registered Options and Security Futures Principal must, prior to or concurrent with such registration, be or become qualified pursuant to the Rule 1030 Series, as either a General Securities Representative or a Limited Representative—Corporate Securities and a Registered Options and Security Futures Representative. The rule provides that a person registered solely as a Registered Options and Security Futures Principal is not qualified to function in a principal capacity with responsibility over any area of business activity not prescribed in Chapter II, Section 2(g). Chapter II, Section 2(g)(5) provides that any person who is registered as a Registered Options and Security Futures Principal, or who becomes registered as a Registered Options and Security Futures Principal before a revised examination that includes security futures products is offered, must complete a firm-element continuing education program that addresses security futures and a principal's responsibilities for security futures before such person can supervise security futures activities. Finally, Chapter II, Section 2 of the Exchange's options rules further requires in Commentary .01 that members that have one Registered Options Principal promptly notify the Exchange and agree to specified

conditions if such person is terminated, resigns, becomes incapacitated or is otherwise unable to perform his or her duties.

The Exchange is proposing to adopt Chapter II, Section (2)(g) as Rule 1220(a)(8), Registered Options Principal, with certain changes. The registration category would now be titled Registered Options Principal, rather than Registered Options and Security Futures Principal.<sup>61</sup> All references to a revised examination that includes security futures products would be deleted. Instead, Rule 1220(b), Supplementary Material .02 will simply provide that each person who is registered with the Exchange as a Registered Options Principal (or as a General Securities Representative, Options Representative, or General Securities Sales Supervisor) shall be eligible to engage in security futures activities as a principal, as applicable, provided that such individual completes a Firm Element program as set forth in proposed Rule 1240 that addresses security futures products before such person engages in security futures activities.<sup>62</sup>

Proposed Rule 1220(a)(8) provides that a General Securities Sales Supervisor may also supervise options activities. Rule 1220(b), Supplementary Material .02

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<sup>61</sup> FINRA has also shortened references to “Registered Options and Security Futures Principal” in its rulebook to “Registered Options Principal”. See Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (SR-FINRA-2008-032).

<sup>62</sup> Unlike FINRA Rule 1220.02, proposed Exchange Rule 1220.02 omits references to United Kingdom Securities Representatives and Canada Securities Representatives, which are registration categories the Exchange does not recognize. In any case, the Exchange does not currently offer security futures products for trading.

regarding security futures activities will apply to General Securities Sales Supervisors as well as to Registered Options Principals.<sup>63</sup>

Further, as discussed below, the Exchange is proposing to eliminate the Options Representative and Corporate Securities Representative registration categories. In conjunction with these changes, the Exchange is proposing to eliminate registration as an Options Representative and a Corporate Securities Representative from the prerequisite choices in the current rule. Consequently, a person registering as a Registered Options Principal under proposed Rule 1220(a)(8) would be required to satisfy the General Securities Representative prerequisite registration.<sup>64</sup>

Finally, the Exchange is proposing to adopt Chapter II, Section 2 Commentary .01 with non-substantive changes as Supplementary Material .03 of Rule 1220.<sup>65</sup>

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<sup>63</sup> Rule 1220(b), Supplementary Material .02 regarding security futures activities will also apply to General Securities Representatives and to Options Representatives.

<sup>64</sup> Proposed Rule 1220(a)(8) differs from FINRA Rule 1220(a)(8) in that it omits certain references to other specific FINRA rules.

<sup>65</sup> Chapter XI, Doing Business with the Public, at Section 2(a) provides that no order entry firm (“OEF”) shall be approved to transact options business with the public until those associated persons who are designated as Options Principals have been approved by and registered with the Exchange. Persons engaged in the management and supervision of the OEF’s business pertaining to options contracts must be designated as Options Principals and shall have responsibility for the overall oversight of the OEF’s options related activities on the Exchange. Similarly, Chapter XI, Sections 3(a) and (b) provide that no OEF shall be approved to transact business with the public until those persons associated with it who are designated representatives have been approved by and registered with the Exchange, and also that persons who perform duties for the OEF which are customarily performed by sales representatives or branch office managers shall be designated as representatives of the OEF. The foregoing provisions of Chapter XI are specific to conducting an options business with the public and are not proposed to be amended in this proposed rule change, other than to add a customer protection requirement, similar to existing Phlx Rule 1024.08 and existing ISE Rule 602(d), that a person accepting orders from non-member

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

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

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

Pursuant to Exchange Rule 1022(g), each associated person of a member who is included within the definition of "principal" in Rule 1021 may register as a Limited Principal - General Securities Sales Supervisor, instead of separately registering in multiple principal registration categories,<sup>66</sup> if the individual's supervisory responsibilities are limited solely to securities sales activities. A person registering as a Limited Principal - General Securities Sales Supervisor must satisfy the General Securities Representative prerequisite registration and pass the General Securities Sales Supervisor examinations.<sup>67</sup> Moreover, a General Securities Sales Supervisor is precluded from performing any of the following activities: (1) supervision of the origination and structuring of underwritings;

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customers (unless such customer is a broker-dealer registered with the Commission) is required to register with the Exchange and to be qualified by passing the General Securities Registered Representative Examination (Series 7). However, Chapter XI, Sections 2(b) and (c) and Section 3(c) also contain provisions regarding submission of Forms U4 and U5 to WebCRD that are duplicative of the proposed 1200 Series of rules, in particular proposed Rules 1210.12, Application for Registration and Jurisdiction, and 1250, Electronic Filing Requirements for Electronic Forms, and are therefore proposed to be deleted.

<sup>66</sup> For instance, a principal supervising the sale of corporate securities and options must be registered as a General Securities Principal and a Registered Options Principal, unless the principal is registered as a General Securities Sales Supervisor.

<sup>67</sup> An individual may also register as a General Securities Sales Supervisor by passing a combination of other principal-level examinations.

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

The Exchange is proposing to adopt Rule 1022(g) and IM-1022-2 as Rules 1220(a)(10) and 1220.04, respectively.<sup>68</sup> Rule 1220(a)(10), however, omits the current Rule 1022(g) prohibition against supervision of the origination and structuring of underwritings, as that activity does not fall within the new, more limited scope of “securities trading” covered by the new 1200 Series of rules.

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

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

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<sup>68</sup> The Exchange is not proposing to carry over into proposed Rule 1220(a)(10) the current Rule 1022(g)(2)(C)(iii) prohibition against final approval of advertisements by General Securities Sales Supervisors. The Exchange notes that FINRA removed this prohibition several years ago from NASD Rule 1022(g) (Limited Principal— General Securities Sales Supervisor) and NASD IM-1022-2 (Limited Principal— General Securities Sales Supervisor). See Securities Exchange Act Release No. 68918 (February 13, 2013), 78 FR 11925 (February 20, 2013) (SR-FINRA-2013-014). Also, unlike FINRA Rule 1220.04, proposed Exchange Rule 1220.04 refers to “multiple exchanges” rather than listing the various exchanges where a sales principal might be required to qualify in the absence of the General Securities Sales Supervisor registration category. It also omits FINRA internal cross-references.

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

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

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

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

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

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

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



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

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

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

Rule 1032(a)(2) provides that if a representative does not engage in municipal securities activities, registration as a United Kingdom Securities Representative or Canada Securities Representative is equivalent to registration as a General Securities Representative. These foreign registration categories were created in the 1990s as an alternative to General Securities Representative registration for individuals who do not engage in municipal securities activities and who are in good standing as a representative with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator. To qualify for registration as a United Kingdom

Securities Representative or Canada Securities Representative, an individual must pass the United Kingdom Securities Representative examination or Canada Securities Representative examinations, respectively. Rule 1032(a)(2) also permits a person registered and in good standing as a representative with the Japanese securities regulators to become qualified to function as a General Securities Representative by passing the Japan Module of the General Securities Representative examination. The Japan Module, however, was never implemented.

The Exchange is proposing to streamline the provisions of Rule 1032(a) and adopt them as Rule 1220(b)(2) with the following changes.

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

Further, consistent with the proposed restructuring of the representative-level examinations, proposed Rule 1220(b)(2)(B) would require that individuals registering as General Securities Representatives pass the SIE and the General Securities Representative examination.<sup>69</sup>

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<sup>69</sup> Proposed Rule 1220(b)(2)(B) differs from FINRA Rule 1220(b)(2)(B) in that it omits references to various registration categories which FINRA recognizes but which the Exchange does not propose to recognize.

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

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

*Operations Professional, Investment Banking Representative, Research Analyst, Direct Participation Programs Representative and Private Securities Offerings Representative.* The Exchange has not adopted these registration categories for its associated persons. The Exchange is reserving Rules 1220(b)(3) – Operations Professional, and related Rule 1220.05; 1220(b)(5) – Investment Banking Representative,

1220(b)(6) – Research Analyst; 1220(b)(8) – Direct Participation Programs Representative; and 1220(b)(9) - Private Securities Offerings Representative, retaining the captions, solely to facilitate comparison with FINRA’s rules.

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

The Exchange now proposes to amend the rule, and adopt it as proposed Rule 1220(b)(4).<sup>70</sup> As amended, the Rule would require individuals registering as Securities Traders to pass the SIE as well as the Securities Trader qualification exam, and it would

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<sup>70</sup> Proposed Rule 1220(b)(4)(A) differs from FINRA Rule 1220(b)(4)(A) in that it applies to trading on the Exchange while the FINRA rule is limited to the specified trading which is “effected otherwise than on a securities exchange.” Additionally, the FINRA rule does not specifically extend to options trading.

be expanded to refer not just to foreign currency options, but to the trading of options generally.

Additionally, proposed Rule 1220(b)(4)(A) would require each person associated with a member who is: (i) primarily responsible for the design, development or significant modification of an algorithmic trading strategy relating to equity, preferred or convertible debt securities or options; or (ii) responsible for the day-to-day supervision or direction of such activities to register with the Exchange as a Securities Trader.<sup>71</sup>

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

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<sup>71</sup> As noted above, this new registration requirement was recently added to the FINRA rulebook. The Exchange has determined to add a parallel requirement to its own rules, but also to add options to the scope of products within the proposed rule’s coverage. See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR-FINRA-2016-007).

whether independently or via a linked router—would not constitute an algorithmic trading strategy.<sup>72</sup>

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

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

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<sup>72</sup> See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR-FINRA-2016-007).

for the development of the algorithmic trading strategy or are not responsible for the day-to-day supervision or direction of others on the team. Under this scenario, the person on the business side that is primarily responsible for the design of the algorithmic trading strategy, as communicated to the lead developer, also would be required to register. In the event of a significant modification to the algorithm, members, likewise, would be required to ensure that the associated person primarily responsible for the significant modification (or the associated person supervising or directing such activity), is registered as a Securities Trader.

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

Pursuant to proposed Rule 1220(b)(4)(B) each person registered as a Securities Trader on October 1, 2018 and each person who was registered as a Securities Trader within two years prior to October 1, 2018 would be qualified to register as a Securities Trader without passing any additional qualification examinations. All other individuals

registering as Securities Traders after October 1, 2018 would be required, prior to or concurrent with such registration, pass the SIE and the Securities Trader qualification examination.

*Investment Company and Variable Contracts Products Representative – Proposed Rule 1220(b)(7).* Pursuant to current Rule 1032(b), each associated person of a member who is included within the definition of “representative” in Rule 1031 may register as an Investment Company and Variable Contracts Products Representative, instead of registering as a General Securities Representative, if the individual’s activities are limited solely to redeemable securities of companies registered under the Investment Company Act, securities of closed-end companies registered under the Investment Company Act during the period of original distribution and specified insurance contracts, such as variable contracts. Individuals registering as Investment Company and Variable Contracts Products Representatives must pass the Investment Company and Variable Contracts Products Representative examination. The Exchange has experienced little demand for registration in this category. Therefore, it now proposes to eliminate the Investment Company and Variable Contracts Products Representative category as an acceptable category for Exchange representative registration. The Exchange is reserving proposed Rule 1220(b)(7), retaining the caption solely to facilitate comparison with FINRA’s rule.

#### **17. Additional Eliminated Registration Categories (Proposed Rule 1220.06)**

As noted above, the Exchange is proposing to eliminate the Investment Company and Variable Products Representative category, reserving proposed Rule 1220(b)(7), and retaining the caption solely to facilitate comparison with FINRA’s rule. Similarly, it is eliminating the Investment Company and Variable Contracts Products Principal category,



reserving proposed Rule 1220(a)(11), and retaining the caption solely to facilitate comparison with FINRA's rule.

Consistent with the FINRA Rule Changes, the Exchange is also proposing to eliminate from its rules the Order Processing Assistant Representative, Options Representative, and Corporate Securities Representative categories that FINRA is eliminating effective October 1, 2018, as discussed below.

*Order Processing Assistant Representative.* Pursuant to current Rule 1041, an associated person is not required to register as a General Securities Representative or in one or more of the limited categories of representative registration if the person's activities are so limited as to qualify such person for registration as an Order Processing Assistant Representative. An Order Processing Assistant Representative is an associated person whose only function is to accept unsolicited customer orders from existing customers for submission for execution by the member. Pursuant to Rule 1042, Order Processing Assistant Representatives are subject to specified restrictions regarding their activities and compensation and are subject to particular supervisory requirements. In addition, they may not be registered concurrently in any other capacity.

*Options Representative.* Chapter II, Section 2(h) of the Exchange's rulebook provides that each person associated with a member who is included within the definition of a representative as defined in Rule 1031 may register with the Exchange as a Limited Representative—Options and Security Futures if: (A) such person's activities in the investment banking or securities business of the member involve the solicitation or sale of option or security futures contracts, including option contracts on government securities as that term is defined in Section 3(a)(42)(D) of the Act, for the account of a

broker, dealer or public customer; and (B) such person passes an appropriate qualification examination for Limited Representative—Options and Security Futures. It also provides that each person seeking to register and qualify as a Limited Representative—Options and Security Futures must, concurrent with or before such registration may become effective, become registered with the Exchange or another SRO as either as a Limited Representative—Corporate Securities or Limited Representative—Government Securities. The Limited Representative—Options and Security Futures registration category is the same as the Options Representative category.

*Corporate Securities Representative.* Rule 1032(e) currently provides that each associated person of a member who is included within the definition of “representative” in Rule 1031 may register as a Corporate Securities Representative, instead of a General Securities Representative, if the individual’s activities are limited solely to securities as defined under Section 3(a)(10) of the Act, other than municipal securities, options, mutual funds (except for money market funds), variable contracts and direct participation program securities. Individuals registering as Corporate Securities Representatives must pass the Corporate Securities Representative examination.

The Exchange is proposing to eliminate the current registration categories of Order Processing Assistant Representative, Options Representative, and Corporate Securities, as FINRA has done in the FINRA Rule Changes. The Exchange believes that the utility of the Order Processing Assistant Representative registration category has diminished as technological advances and changes in industry practice have reduced the need for such representatives. As a result, the volume of candidates taking the Order Processing Assistant Representative examination has diminished. The Options

Representative and Corporate Securities Representative registration categories were created over the years as subcategories of the General Securities Representative category. These subcategories currently allow an individual to sell a subset of the products (e.g., options, common stocks and corporate bonds) permitted to be sold by a General Securities Representative. In recent years, however, the utility of these subcategories has also diminished as a result of technological, regulatory and business practice changes. This is evidenced by the low annual volume for each of these examinations and the relatively low number of individuals who currently hold these registrations.

Investment Company and Variable Products Representatives, Investment Company and Variable Contracts Products Principals, Order Processing Assistant Representatives, Options Representatives, and Corporate Securities Representatives would be eligible to maintain their registrations with the Exchange. Specifically, proposed Rule 1220.06 provides that, subject to the lapse of registration provisions in proposed Rule 1210.08, individuals who are registered with the Exchange in any capacity recognized by the Exchange immediately prior to October 1, 2018, and each person who was registered with the Exchange in such categories within two years prior to October 1, 2018, shall be eligible to maintain such registrations with the Exchange. However, if individuals registered in these categories terminate their registration with the Exchange and the registration remains terminated for two or more years, they would not be able to re-register in that category. In addition, proposed Rule 1220.06 would include the current

restrictions to which Order Processing Assistant Representatives are subject under Rule 1042.<sup>73</sup>

### **18. Grandfathering Provisions**

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

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

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

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

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<sup>73</sup> Proposed Exchange Rule 1220.06 omits references to a number of registration categories it does not propose to recognize, but which FINRA refers to in its own Rule 1220.06.

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

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

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

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

The Exchange is proposing to adopt Rule 1060(a) as Rule 1230 subject to the following changes. As noted above, Rule 1060(a) exempts from registration those associated persons who are not actively engaged in the investment banking or securities business. Rule 1060(a) also exempts from registration those associated persons whose functions are related solely and exclusively to a member's need for nominal corporate officers or for capital participation.<sup>74</sup> The Exchange believes that the determination of whether an associated person is required to register must be based on an analysis of the person's activities and functions in the context of the various registration categories. The Exchange does not believe that categorical exemptions for associated persons who are not "actively engaged" in a member's investment banking or securities business, associated persons whose functions are related only to a member's need for nominal corporate officers or associated persons whose functions are related only to a member's need for capital participation is consistent with this analytical framework. The Exchange therefore is proposing to delete these exemptions. Rule 1060(a) further exempts from registration associated persons whose functions are related solely and exclusively to effecting transactions on the floor of another national securities exchange as long as they are registered as floor members with such exchange. Because exchanges have registration categories other than the floor member category, proposed Rule 1230 clarifies that the exemption applies to associated persons solely and exclusively effecting transactions on the floor of another national securities exchange, provided they are appropriately

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<sup>74</sup> These exemptions generally apply to associated persons who are corporate officers of a member in name only to meet specific corporate legal obligations or who only provide capital for a member, but have no other role in a member's business.

registered with such exchange.<sup>75</sup> Additionally, the Exchange proposes to add Section 3 of Rule 1230, pursuant to which persons associated with a member that are not citizens, nationals, or residents of the United States or any of its territories or possessions, that will conduct all of their securities activities in areas outside the jurisdiction of the United States, and that will not engage in any securities activities with or for any citizen, national or resident of the United States need not register with the Exchange.<sup>76</sup>

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

#### **O. Changes to CE Requirements (Proposed Rule 1240)**

As described above, current Rule 1120 includes a Regulatory Element and a Firm Element. The Regulatory Element applies to registered persons and consists of periodic computer-based training on regulatory, compliance, ethical, supervisory subjects and sales practice standards. The Firm Element consists of at least annual, member-developed

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<sup>75</sup> Proposed Rule 1230 differs from FINRA Rule 1230 in that it contains a number of additional exemptions, based upon current Nasdaq Rule 1060(a), which are not included in FINRA Rule 1230.

<sup>76</sup> Individuals described by Section 3 of Rule 1230 who are associated with FINRA members may be registered with FINRA as Foreign Associates pursuant to FINRA Rule 1220.06. FINRA is eliminating this registration category effective October 1, 2018, and the Exchange has never recognized it.

and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the member. The Exchange is proposing to delete Rule 1120 and replace it with Rule 1240. Proposed Rule 1240 would differ from current Rule 1120 in a number of respects, discussed below.<sup>77</sup>

### **1. Regulatory Element**

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

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<sup>77</sup> Proposed Rule 1240 also differs slightly from FINRA Rule 1240 in that it omits references to certain registration categories which the Exchange does not recognize as well as an internal cross reference to FINRA Rule 4517.



Further, the Exchange is proposing to add a rule to address the impact of failing to complete the Regulatory Element on a registered person's activities and compensation. Specifically, proposed Rule 1240(a)(2) provides that any person whose registration has been deemed inactive under the rule may not accept or solicit business or receive any compensation for the purchase or sale of securities. However, like the FINRA rule, the proposed rule provides that such person may receive trail or residual commissions resulting from transactions completed before the inactive status, unless the member with which the person is associated has a policy prohibiting such trail or residual commissions.

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

## **2. Firm Element**

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

## **P. Electronic Filing Rules**

Existing Rule 1140, Electronic Filing Requirements for Uniform Forms, is proposed to be relocated as Rule 1250, Electronic Requirements for Uniform Forms, with non-substantive conforming changes. As revised the rule provides that all forms required

to be filed under the Exchange's registration rules including the Rule 1200 series shall be filed through an electronic process or such other process as the Exchange may prescribe to the Central Registration Depository. Rule 1250, as part of the uniform 1200 Series, will consolidate Form U4 and U5 electronic filing requirements in a single location, across the Nasdaq Affiliated Exchanges.

#### **Q. Other Rules**

The Exchange is deleting Rule 1060, Persons Exempt from Registration, as explained above. Rule 1060(b) however, contains provisions dealing with Nonregistered Foreign "Finders" and is simply being relocated with non-substantive changes to new Rule 2040.<sup>78</sup> The remaining rules identified above under "Overview" which are to be amended in this proposed rule change but are not further discussed herein simply update citations and/or make technical or non-substantive changes to the proposed new rules.

#### **2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>79</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>80</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 rule change will streamline, and bring consistency and uniformity to, the registration rules, which will, in turn, assist members

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<sup>78</sup> The FINRA counterpart to current Rule 1060(b) occupies a similar location in the FINRA rulebook. See FINRA Rule 2040(c), Nonregistered Foreign Finders.

<sup>79</sup> 15 U.S.C. 78f(b).

<sup>80</sup> 15 U.S.C. 78f(b)(5).

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

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

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

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that all associated persons of members engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions, will be supervised, and can be identified by regulators. The proposed new 1200 Series of rules, which are similar in many respects to the registration-related requirements adopted by FINRA effective October 1, 2018, should enhance the ability of member firms to comply with the Exchange's rules as well

as with the Federal securities laws. Additionally, as described above, the Exchange intends the amendments described herein to eliminate inconsistent registration-related requirements across the Nasdaq Affiliated Exchanges, thereby promoting uniformity of regulation across markets. The new 1200 Series should in fact remove administrative burdens that currently exist for members seeking to register associated persons on multiple Nasdaq Affiliated Exchanges featuring varying registration-related requirements. Additionally, all similarly-situated associated persons of members will be treated similarly under the new 1200 Series in terms of standards of training, experience and competence for persons associated with Exchange members.

With respect to registration of developers of algorithmic trading strategies in particular, the Exchange recognizes that the proposal would impose costs on member firms employing associated persons engaged in the activity subject to the registration requirement. Specifically, among other things, additional associated persons would be required to become registered under the proposal, and the firm would need to establish policies and procedures to monitor compliance with the proposed requirement on an ongoing basis. However, given the prevalence and importance of algorithmic trading strategies in today's markets, the Exchange believes that associated persons engaged in the activities covered by this proposal must meet a minimum standard of knowledge regarding the applicable securities rules and regulations. To mitigate the costs imposed on member firms, the proposed rule change limits the scope of registration requirement by excluding technological or development support personnel who are not primarily responsible for the covered activities. It also excludes supervisors who are not responsible for the "day-to-day" supervision or direction of the covered activities.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>81</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>82</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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

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<sup>81</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>82</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

#### 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-2018-078 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-2018-078. 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 Web site (<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 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2018-078 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>83</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>83</sup> 17 CFR 200.30-3(a)(12).



**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**The Nasdaq Stock Market Rules****Equity Rules****General Provisions (0100)****0100. General Provisions**

\* \* \* \* \*

**0120. Definitions****Definitions**

When used in these Rules, unless the context otherwise requires:

**(a) "Act"**

The term "Act" or "Exchange Act" means the Securities Exchange Act of 1934, as amended.

**(b) – (o) No change.**

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**1000. Membership, Registration and Qualification Requirements****1001. Nasdaq Regulatory Contract with FINRA**

Nasdaq and FINRA are parties to the Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Rule 1000 Series and the Rule 1200 Series on behalf of Nasdaq. Nasdaq Rules that refer to the Nasdaq Regulation, Nasdaq Regulation staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.

Notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions. In addition, Nasdaq has incorporated by reference certain NASD rules. Nasdaq members shall comply with these rules and interpretations as if such rules and interpretations were part of Nasdaq's rules.

**1002. Qualifications of Nasdaq Members and Associated Persons**

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**[IM-1002-2. Status of Persons Serving in the Armed Forces of the United States****(a) Inactive Status of Currently Registered Persons**

(1) A registered person of a member who volunteers for or is called into active duty in the Armed Forces of the United States shall be placed, after proper notification to Nasdaq, upon inactive status and need not be re-registered by such member upon his or her return to active employment with the member. Such a person will remain eligible to receive transaction-related compensation, including continuing commissions, because he or she remains registered with a member of Nasdaq. The employing member also may allow such a person to enter into an arrangement with another registered person of the member to take over and service the person's accounts and to share transaction-related compensation based upon the business generated by such accounts. However, since such persons are inactive, they may not perform any of the duties performed by a registered person.

(2) A registered person who is placed on inactive status pursuant to this paragraph (a) shall not be included within the scope of fees, if any, charged by Nasdaq with respect to registered persons.

(3) A registered person who is placed on inactive status pursuant to this paragraph (a) shall not be required to complete either of the Regulatory or Firm Elements of the continuing education requirements set forth in Rule 1120 during the pendency of such inactive status.

(4) The relief provided in subparagraphs (a)(1), (a)(2), and (a)(3) shall be available to a registered person who is placed on inactive status pursuant to this paragraph (a) during the period that such a person remains registered with the member with which he or she was registered at the beginning of active duty in the Armed Forces of the United States, regardless of whether the person returns to active employment with another member upon completion of his or her active duty in the Armed Forces of the United States.

(5) The relief described in this paragraph (a) will be provided only to a person registered with a member and only while the person remains on active military duty.

**(b) Inactive Status of Sole Proprietorships**

(1) A member that is a sole proprietor who temporarily closes his or her business by reason of volunteering for or being called into active duty in the Armed Forces of the United States, shall be placed, after proper notification to Nasdaq, on inactive status while the member remains on active military duty.

(2) A sole proprietor member placed on inactive status as set forth in this paragraph (b) shall not be required to pay dues or assessments during the pendency of such inactive status and shall not be required to pay an admission fee upon return to active participation in the investment banking and securities business.

(3) The relief described in this paragraph (b) will be provided only to a sole proprietor member and only while the person remains on active military duty.

(c) Status of Formerly Registered Persons

(1) If a person who is currently not registered with a member volunteers for or is called into active duty in the Armed Forces of the United States at any time within two years after the date the person ceases to be registered with a member, Nasdaq will defer the lapse of registration requirements set forth in Rules 1021(c), 1031(c), and 1041(c) (i.e., toll the two-year expiration provisions for qualification examination requirements). Nasdaq will defer the lapse of registration requirements commencing on the date the person begins actively serving in the Armed Forces of the United States, provided that Nasdaq is properly notified of the person's period of active military service within 90 days following his or her completion of active service or upon his or her re-registration with a member, whichever occurs first. The deferral will terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person does not re-register with a member within 90 days following his or her completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a member without being subject to the qualification examination requirements shall consist of the standard two-year period provided in Rules 1021(c), 1031(c), and 1041(c) reduced by the period of time between the person's termination of registration and beginning of active service in the Armed Forces of the United States.

(2) If a person placed upon inactive status while serving in the Armed Forces of the United States ceases to be registered with a member, Nasdaq will defer the lapse of registration requirements set forth in Rules 1021(c), 1031(c), and 1041(c) (i.e., toll the two-year expiration provisions for qualification examination requirements) during the pendency of his or her active service in the Armed Forces of the United States. Nasdaq will defer the lapse of registration requirements based on existing information in the Central Registration Depository, provided that Nasdaq is properly notified of the person's period of active military service within two years following his or her completion of active service or upon his or her re-registration with a member, whichever occurs first. The deferral will terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person does not re-register with a member within 90 days following his or her completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a member without being subject to the qualification examination requirements shall consist of the standard two-year period provided in Rules 1021(c), 1031(c), and 1041(c).

**IM-1002-3. Failure to Register Personnel**

The failure of any member to register an employee, who should be so registered, as a Registered Representative may be deemed to be conduct inconsistent with just and

equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.]

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#### **1010. Membership Proceedings.**

#### **1011. Definitions.**

Unless otherwise provided, terms used in the Rule 1000 Series and the Rule 1200 Series shall have the meaning as defined in Rule 0120.

(a) - (j) No change.

#### **(k) "Representative"**

The term "Representative" shall have the meaning assigned to it in Rule 1220(b)(1). [means an Associated Person of a registered broker or dealer, including assistant officers other than principals, who is engaged in the investment banking or securities business for the member including the functions of supervision, solicitation or conduct of business in securities or who is engaged in the training of persons associated with a broker or dealer for any of these functions are designated as representatives. As provided in Rule 1031, a ]All Representatives of Nasdaq Members are required to be registered with Nasdaq, and Representatives that are so registered are referred to herein as "Registered Representatives."

(l) – (o) No change.

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#### **[1020. Registration of Principals**

#### **1021. Registration Requirements**

#### **(a) All Principals Must Be Registered**

All persons engaged or to be engaged in the investment banking or securities business of a member who are to function as principals shall be registered as such with Nasdaq in the category of registration appropriate to the function to be performed as specified in Rule 1022. Before their registration can become effective, they shall pass a Qualification Examination for Principals appropriate to the category of registration as specified by the Nasdaq Board. A member shall not maintain a principal registration with Nasdaq for any person (1) who is no longer active in the member's investment banking or securities business, (2) who is no longer functioning as a principal, or (3) where the sole purpose is to avoid the examination requirement prescribed in paragraph (c). A member shall not make application for the registration of any person as principal where there is no intent to employ such person in the member's investment banking or securities business. A

member may, however, maintain or make application for the registration as a principal of a person who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the member or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

**(b) Definition of Principal**

Persons associated with a member, enumerated in subparagraphs (1) through (5) hereafter, who are actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions are designated as principals. Such persons shall include:

- (1) Sole Proprietors
- (2) Officers
- (3) Partners
- (4) Managers of Offices of Supervisory Jurisdiction, and
- (5) Directors of Corporations.

**(c) Requirements for Examination on Lapse of Registration**

Any person whose registration has been revoked pursuant to Rule 8310 or whose most recent registration as a principal has been terminated for a period of two or more years immediately preceding the date of receipt by Nasdaq of a new application shall be required to pass a Qualification Examination for Principals appropriate to the category of registration as specified in Rule 1022 hereof.

**(d) Application for Principal Status**

(1) Any person associated with a member as a Registered Representative whose duties are changed by the member so as to require registration in any principal classification shall be allowed a period of 90 calendar days following the change in his or her duties during which to pass the appropriate Qualification Examination for Principals. Upon elevation, the member shall submit to Nasdaq an amended "Uniform Application for Securities Industry Registration or Transfer" and any applicable fees. In no event may a person function as a Principal beyond the initial 90 calendar day period following the change in his or her duties without having successfully passed the appropriate Qualification Examination. This provision shall apply to a person associated with a member of another registered national securities exchange or association who is required to register in a principal classification under the Nasdaq Rules but who is not required to be so registered under the rules of the other exchange or association.

(2) Any person not presently associated with a member as a Registered Representative seeking registration as a Principal shall submit the appropriate application for registration and any required registration and examination fees. Such person shall be allowed a period of 90 days after all applicable prerequisites are fulfilled to pass the appropriate Qualification Examination for Principals. In no event may a person previously unregistered in any capacity applying for principal status function as a Principal until fully qualified.

**(e) Requirement of Two Registered Principals for Members**

(1) A Nasdaq member, except a sole proprietorship, shall have at least two officers or partners who are registered as principals with respect to each aspect of the member's investment banking and securities business pursuant to the applicable provisions of Rule 1022; provided, however, that a proprietary trading firm with 25 or fewer registered representatives shall only be required to have one officer or partner who is registered as a principal. This requirement applies to persons seeking admission as members and existing members.

(2) Pursuant to the Rule 9600 Series, Nasdaq may waive the provisions of subparagraph (1) in situations that indicate conclusively that only one person associated with an applicant for membership should be required to register as a principal.

(3) In addition to the provisions of subparagraph (1) above, an applicant for membership, if the nature of its business so requires, shall have at least one person qualified for registration pursuant to Rule 1022(b) and (c).

**1022. Categories of Principal Registration**

**(a) General Securities Principal**

(1) Each person associated with a member who is included within the definition of principal in Rule 1021, and each person designated as a Chief Compliance Officer on Schedule A of Form BD, shall be required to register with Nasdaq as a General Securities Principal and shall pass an appropriate Qualification Examination before such registration may become effective unless such person's activities are so limited as to qualify such person for one or more of the limited categories of principal registration specified hereafter. A person whose activities in the investment banking or securities business are so limited is not, however, precluded from attempting to become qualified for registration as a General Securities Principal, and if qualified, may become so registered. Each person seeking to register and qualify as a General Securities Principal must, prior to or concurrent with such registration, become registered, pursuant to the Rule 1030 Series, either as a General Securities Representative or as a Limited Representative—Corporate Securities. A person who has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to January 1, 2002, and who has not been subject within the last ten years to any statutory disqualification as defined in Section 3(a)(39) of the Act; a suspension; or the imposition of a fine of \$5,000 or more

for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding shall be required to register as a General Securities Principal, but shall be exempt from the requirement to pass the appropriate Qualification Examination. .

**(2)** A Limited Representative—Corporate Securities seeking registration as General Securities Principal who will have supervisory responsibility over the conduct of business in investment company products and variable contracts products must, prior to or concurrent with registration as a General Securities principal, become registered pursuant to the Rule 1030 Series hereof, as a Limited Representative—Investment Company and Variable Contracts Products.

**(3)** Except as provided in Rule 1021(c), a person who was registered with FINRA as a Principal, shall not be required to pass a Qualification Examination for General Securities Principal and shall be qualified as a General Securities Principal.

**(4)** A person registered solely as a General Securities Principal shall not be qualified to function as a Limited Principal—Financial and Operations or Limited Principal—General Securities Sales Supervisor unless that person is also qualified and registered as such.

**(5)(A)** Each person associated with a member who is included within the definition of principal in Rule 1021 and who will have supervisory responsibility over the securities trading activities described in Rule 1032(f)(1) shall become qualified and registered as a Securities Trader Principal. To qualify for registration as a Securities Trader Principal, such person shall become qualified and registered as a Securities Trader under Rule 1032(f) and pass the General Securities Principal qualification examination. A person who is qualified and registered as a Securities Trader Principal under this subparagraph (A) may only have supervisory responsibility over the activities specified in Rule 1032(f)(1), unless such person is separately qualified and registered in another appropriate principal registration category, such as the General Securities Principal registration category.

**(B)** A person who is registered as a General Securities Principal shall not be qualified to supervise the trading activities described in Rule 1032(f)(1), unless such person has also become qualified and registered as a Securities Trader under Rule 1032(f) by passing the Securities Trader qualification examination and become registered as a Securities Trader Principal.

**(b) Limited Principal—Financial and Operations**

**(1)** Every member of Nasdaq that is operating pursuant to the provisions of SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), shall designate as Limited Principal—Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who performs the duties described in subparagraph (2) hereof. Each

person associated with a member who performs such duties shall be required to register as a Limited Principal—Financial and Operations with Nasdaq and shall pass an appropriate Qualification Examination before such registration may become effective.

(2) The term "Limited Principal—Financial and Operations" shall mean a person associated with a member whose duties include:

(A) final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body;

(B) final preparation of such reports;

(C) supervision of individuals who assist in the preparation of such reports;

(D) supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived;

(E) supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act;

(F) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; or

(G) any other matter involving the financial and operational management of the member.

(3) A person registered solely as a Limited Principal—Financial and Operations shall not be qualified to function in a principal capacity with responsibility over any area of business activity not described in subparagraph (2) hereof.

**(c) Limited Principal—Introducing Broker/Dealer Financial and Operations**

(1) Every member of Nasdaq that is subject to the requirements of SEC Rule 15c3-1, other than a member operating pursuant to SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8) in which case paragraph (b) shall apply, shall designate as Limited Principal—Introducing Broker/Dealer Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who perform the duties described in subparagraph (2) hereof. Each person associated with a member who performs such duties shall be required to register as a Limited Principal—Introducing Broker/Dealer Financial and Operations with Nasdaq and shall pass an appropriate Qualification Examination before such registration may become effective.

(2) The term "Limited Principal—Introducing Broker/Dealer Financial and Operations" shall mean a person associated with a member whose duties include:

(A) final approval and responsibilities for the accuracy of financial reports submitted to any duly established securities industry regulatory body;



- (B) final preparation of such reports;
- (C) supervision of individuals who assist in the preparation of such reports;
- (D) supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived;
- (E) supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act;
- (F) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; or
- (G) any other matter involving the financial and operational management of the member.

(3) Except as provided in Rule 1021(c), a person designated pursuant to the provisions of subparagraph (1) hereof, shall not be required to take the Limited Principal—Introducing Broker/Dealer Financial and Operations Examination and shall be qualified for registration as a Limited Principal—Introducing Broker/Dealer Financial and Operations if such a person is qualified to be registered or is registered as a Limited Principal—Financial and Operations as defined in paragraph (b)(2) hereof.

(4) A person registered solely as a Limited Principal—Introducing Broker/Dealer Financial and Operations shall not be qualified to function in a principal capacity with responsibility over any area of business activity not described in subparagraph (2) hereof. Such person shall not be qualified to function in a principal capacity at a member unless such member operates under subparagraph (1) hereof.

**(d) Limited Principal—Investment Company and Variable Contracts Products**

(1) Each person associated with a member who is included within the definition of principal in Rule 1021, may register with Nasdaq as a Limited Principal—Investment Company and Variable Contracts Products if:

(A) his activities in the investment banking and securities business are limited to the solicitation, purchase and/or sale of:

(i) redeemable securities of companies registered pursuant to the Investment Company Act of 1940;

(ii) securities of closed-end companies registered pursuant to the Investment Company Act of 1940 during the period of original distribution only; and

(iii) variable contracts and insurance premium funding programs and other contracts issued by an insurance company except contracts which are exempt securities pursuant to Section 3(a)(8) of the Securities Act of 1933;

(B) he is registered, pursuant to the Rule 1030 Series, as either a General Securities Representative or a Limited Representative—Investment Company and Variable Contracts Products; and

(C) he passes an appropriate Qualification Examination for Limited Principal—Investment Company and Variable Contracts Products.

(2) A person registered solely as a Limited Principal—Investment Company and Variable Contracts Products shall not be qualified to function in a principal capacity with responsibility over any area of business activity not prescribed in subparagraph (1) hereof.

(e) **Reserved**

(f) **Reserved**

(g) **Limited Principal—General Securities Sales Supervisor**

(1) Each person associated with a member who is included in the definition of principal in Rule 1021 may register with Nasdaq as a Limited Principal—General Securities Sales Supervisor if:

(A) his or her supervisory responsibilities in the investment banking and securities business are limited to the securities sales activities of a member, including the training of sales and sales supervisory personnel and the maintenance of records of original entry and/or ledger accounts of the member required to be maintained in branch offices by SEC record keeping rules;

(B) he or she is registered pursuant to the Rule 1030 series as a General Securities Representative; and

(C) he or she is qualified to be so registered by passing an appropriate examination.

(2) A person registered in this category solely on the basis of having passed the Qualification Examination for Limited Principal—General Securities Sales Supervisor shall NOT be qualified to:

(A) function in a principal capacity with responsibility over any area of business activity not described in subparagraph (1);

(B) be included for purposes of the principal numerical requirements of Rule 1021(e)(1);  
or

(C) perform for a member any or all of the following activities:

(i) supervision of the origination and structuring of underwritings;

(ii) supervision of market making commitments;

(iii) final approval of advertisements as these are defined in Rule 2210;

(iv) supervision of the custody of firm or customer funds and/or securities for purposes of SEC Rule 15c3-3; or

(v) supervision of overall compliance with financial responsibility rules for broker/dealers promulgated pursuant to the provisions of the Act.

#### **IM-1022-1. Reserved**

#### **IM-1022-2. Limited Principal—General Securities Sales Supervisor**

Limited Principal—General Securities Sales Supervisor is an alternate category of registration designed to lessen the qualification burdens on principals of general securities firms who supervise sales. Without this category of limited registration, such principals could be required to separately qualify pursuant to the rules of Nasdaq, FINRA, MSRB, NYSE and the options exchanges. While persons may continue to separately qualify with all relevant self-regulatory organizations, the Limited Principal—General Securities Sales Supervisor Examination permits qualification as a supervisor of sales of all securities by one examination. Persons registered as Limited Principals—General Securities Sales Supervisor may also qualify in any other category of principal registration. Persons who are already qualified in one or more categories of principal registration may supervise sales activities of all securities by also qualifying as Limited Principals—General Securities Sales Supervisor.

Functions that may be performed by Limited Principals—General Securities Sales Supervisors. Any person required to be registered as a principal who supervises sales activities in corporate, municipal and option securities, investment company products, variable contracts, direct participation programs, and security futures may be registered solely as a Limited Principal—General Securities Sales Supervisor. In addition to branch office managers, other persons such as regional and national sales managers may also be registered solely as Limited Principals—General Securities Sales Supervisor as long as they supervise only sales activities. Qualification as a General Securities Representative is a prerequisite for registration as a Limited Principal—General Securities Sales Supervisor.

Functions that may not be performed by Limited Principals—General Securities Sales Supervisors. Certain functions may not be performed by persons registered solely as Limited Principal—General Securities Sales Supervisor. These include supervisory

responsibility for the origination and structuring of underwritings, market-making, final approval of advertising, custody of firm or customer funds and/or securities for purposes of SEC Rule 15c3-3 and overall compliance with financial responsibility rules for broker/dealers. Persons responsible for any of these activities are still required to qualify in the appropriate categories of principal registration. Moreover, persons qualified only as Limited Principals—General Securities Sales Supervisor are not included for purposes of the two principal requirements of Rule 1021(e)(1).

### **1030. Registration of Representatives]**

### **1031. Registration Requirements**

#### **[(a) All Representatives Must Be Registered**

All persons engaged or to be engaged in the investment banking or securities business of a member who are to function as representatives shall be registered as such with Nasdaq in the category of registration appropriate to the function to be performed as specified in Rule 1032. Before their registration can become effective, they shall pass a Qualification Examination for Representatives appropriate to the category of registration as specified by the Nasdaq Board. A member shall not maintain a representative registration with Nasdaq for any person (1) who is no longer active in the member's investment banking or securities business, (2) who is no longer functioning as a representative, or (3) where the sole purpose is to avoid the examination requirement prescribed in paragraph (c). A member shall not make application for the registration of any person as representative where there is no intent to employ such person in the member's investment banking or securities business. A member may, however, maintain or make application for the registration as a representative of a person who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the member, or a person who performs administrative support functions for registered personnel, or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

#### **(b) Requirement for Examination on Lapse of Registration**

Any person whose registration has been revoked pursuant to Rule 8310 or whose most recent registration as a representative or principal has been terminated for a period of two (2) or more years immediately preceding the date of receipt by Nasdaq of a new application shall be required to pass a Qualification Examination for Representatives appropriate to the category of registration as specified in Rule 1032.

#### **(c) Qualification Requirements**

No Nasdaq member shall permit any person associated with the Nasdaq member to engage in the investment banking or securities business unless the Nasdaq member determines that such person satisfies the qualification requirements established by the Nasdaq Board and is not subject to statutory disqualification.

**(d) Application for Registration**

(1) Application by any person for registration with Nasdaq, properly signed by the applicant, shall be made to Nasdaq via electronic process or such other process as Nasdaq may prescribe, on the form proscribed by Nasdaq, and shall contain:

(A) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the Nasdaq Rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Nasdaq Rules; and

(B) such other reasonable information with respect to the applicant as Nasdaq may require.

(2) Nasdaq shall not approve an application for registration of any person who is not eligible to be an associated person of a Nasdaq member under the provisions of Nasdaq Rule 1002(b).

(3) Every application for registration filed with Nasdaq shall be kept current at all times by supplementary amendments via electronic process or such other process as Nasdaq may prescribe. Such amendments to the application shall be filed with Nasdaq not later than 30 days after the applicant learns of the facts or circumstances giving rise to the amendment. If such amendment involves a statutory disqualification, such amendment shall be filed not later than ten days after such disqualification occurs.

**(e) Notification by Member to Nasdaq and Associated Person of Termination; Amendment to Notification**

(1) Following the termination of the association with a Nasdaq member of a person who is registered with it, such Nasdaq member shall, not later than 30 days after such termination, give notice of the termination of such association to Nasdaq via electronic process or such other process as Nasdaq may prescribe, on a form designated by Nasdaq, and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with Nasdaq. A Nasdaq member that does not submit such notification and provide a copy to the person whose association has been terminated, within the time period prescribed, shall be assessed any late filing fee that is specified by the Nasdaq Rules. Termination of registration of such person associated with a Nasdaq member shall not take effect so long as any complaint or action under the Nasdaq Rules is pending against a Nasdaq member and to which complaint or action such person associated with a Nasdaq member is also a respondent, or so long as any complaint or action is pending against such person individually under the Nasdaq Rules. Nasdaq, however, may in its discretion declare the termination effective at any time.

(2) The Nasdaq member shall notify Nasdaq, via electronic process or such other process as Nasdaq may prescribe, by means of an amendment to the notice filed pursuant to paragraph (1) in the event that the Nasdaq member learns of facts or circumstances

causing any information set forth in said notice to become inaccurate or incomplete. Such amendment shall be filed with Nasdaq via electronic process or such other process as Nasdaq may prescribe, and a copy provided to the person whose association with the Nasdaq member has been terminated not later than 30 days after the Nasdaq member learns of the facts or circumstances giving rise to the amendment.]

**(f) No change.**

### **[1032. Categories of Representative Registration**

#### **(a) General Securities Representative**

**(1)** Each person associated with a member who is included within the definition of a Representative in Rule 1011, shall be required to register with Nasdaq as a General Securities Representative and shall pass an appropriate Qualification Examination before such registration may become effective unless his or her activities are so limited as to qualify him for one or more of the limited categories of representative registration specified hereafter. A person whose activities in the investment banking or securities business are so limited is not, however, precluded from attempting to become qualified for registration as a General Securities Representative, and if qualified, may become so registered.

**(2)** Except as provided in Rule 1031(b):

**(A)** Reserved

**(B)** A person who is authorized or approved to conduct business in accordance with the requirements of The Financial Services Authority and having passed the Modified General Securities Representative Qualification Examination shall be qualified to be registered as a General Securities Representative except that such person's activities in the investment banking or securities business may not involve the solicitation, purchase and/or sale of municipal securities as defined in Section 3(a)(29) of the Act.

**(C)** A person presently registered and in good standing as a representative with any Canada stock exchange, or with a securities regulator of any Canada Province or Territory, or with the Investment Dealers Association of Canada, and who has completed the training course of the Canadian Securities Institute, and who has passed the Canada Module of the General Securities Registered Representative Examination, shall be qualified to be registered as a General Securities Representative except that such person's activities may not involve the solicitation, purchase and/or sale of municipal securities as defined in Section 3(a)(29) of the Act.

**(D)** A person presently registered and in good standing as a representative with any Japan stock exchange, or with any Japan Securities Dealers Association, and who has passed the Japan Module of the General Securities Registered Representative Examination, shall be qualified to be registered as a General Securities Representative

except that such person's activities may not involve the solicitation, purchase and/or sale of municipal securities as defined in Section 3(a)(29) of the Act.

**(b) Limited Representative—Investment Company and Variable Contracts Products**

(1) Each person associated with a member who is included within the definition of a representative in Rule 1011 may register with Nasdaq as a Limited Representative—Investment Company and Variable Contracts Products if:

(A) his activities in the investment banking or securities business are limited solely to those activities enumerated in Rule 1022(d)(1), and

(B) he passes an appropriate Qualification Examination for Limited Representative—Investment Company and Variable Contracts Products.

(2) A person qualified solely as a Limited Representative—Investment Company and Variable Contracts Products shall not be qualified to function as a representative in any area not described in paragraph (b)(1)(A) hereof.

(c) **Reserved**

(d) **Reserved**

**(e) Limited Representative—Corporate Securities**

(1) Each person associated with a member who is included within the definition of a representative in Rule 1011 may register with Nasdaq as a Limited Representative—Corporate Securities if:

(A) Such person's activities in the investment banking or securities business involve the solicitation, purchase, and/or sale of a "security," as that term is defined in Section 3(a)(10) of the Act, and do not include such activities with respect to the following securities unless such person is separately qualified and registered with the NASD in the category or categories of registration related to these securities:

(i) Municipal securities as defined in Section 3(a)(29) of the Act;

(ii) Options;

(iii) Redeemable securities of companies registered pursuant to the Investment Company Act of 1940, except for money market funds;

(iv) Variable contracts of insurance companies registered pursuant to the Securities Act of 1933; and/or

(v) Direct Participation Programs.

(B) Such person passes an appropriate qualification examination for Limited Representative—Corporate Securities.

(2) A person qualified solely as a Limited Representative—Corporate Securities shall not be qualified to function in any area not described by subparagraph (1) hereof.

(3) For purposes of Rule 1032(e), the terms "option" and "direct participation program" shall have the meanings assigned to such terms by NASD Rules 2860 and 1022(e)(1)(A), respectively, and the definitions contained in such NASD rules shall apply to Nasdaq members as if such Rules were part of Nasdaq's Rules.

**(f) Securities Trader**

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1011 must register with Nasdaq as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities or foreign currency options on Nasdaq, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, other than any person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by or is under common control, with the member.

(2) Before registration as a Securities Trader as defined in subparagraph (1) hereof may become effective, an applicant must pass an appropriate Qualification Examination for Securities Trader (Series 57).

(3) A person registered as a Securities Trader shall not be qualified to function in any other registration category, unless he or she is also qualified and registered in such other registration category.

**(g) Reserved**

**(h) Reserved**

**1040. Registration of Assistant Representatives**

**1041. Registration Requirements for Assistant Representatives**

**(a) All Assistant Representatives—Order Processing Must Be Registered**

All persons associated with a member who are to function as Assistant Representatives—Order Processing shall be registered with Nasdaq. Before their registrations can become



effective, they shall pass a Qualification Examination for Assistant Representatives—Order Processing as specified by the Nasdaq Board.

**(b) Definition of Assistant Representative—Order Processing**

Persons associated with a member who accept unsolicited customer orders for submission for execution by the member are designated as Assistant Representatives—Order Processing.

**(c) Requirement for Examination on Lapse of Registration**

Any persons whose most recent registration as an Assistant Representative—Order Processing has been terminated for a period of two (2) or more years immediately preceding the date of receipt by Nasdaq of a new application shall be required to pass a Qualification Examination for Assistant Representative—Order Processing.

**1042. Restrictions for Assistant Representatives**

**(a) Prohibited Activities**

An Assistant Representative—Order Processing may not solicit transactions or new accounts on behalf of the member, render investment advice, make recommendations to customers regarding the appropriateness of securities transactions, or effect transactions in securities markets on behalf of the member. Persons registered in this category may not be registered concurrently in any other capacity.

**(b) Compensation**

Members may only compensate Assistant Representatives—Order Processing on an hourly wage or salaried basis and may not in any way, directly or indirectly, relate their compensation to the number or size of transactions effected for customers. This provision shall not prohibit persons registered in this capacity from receiving bonuses or other compensation based on a member's profit sharing plan or similar arrangement.

**(c) Supervision**

The activities of Assistant Representatives—Order Processing may only be conducted at a business location of the member that is under the direct supervision of an appropriately registered principal.

**1043. Reserved]**

**1050. Research Analysts**

A Nasdaq member that employs a research analyst or publishes or otherwise distributes a research report shall also be a member of FINRA or the New York Stock Exchange and shall comply with [NASD Rules 2711, 1050, 1022, 1120] FINRA Rules 1120, 1250 and 2241 (and any other [NASD] FINRA rules that apply to research analysts or research reports), as amended[, or New York Stock Exchange Rules 472, 344, 345A, 351 (and any other New York Stock Exchange rules that apply to research analysts or research reports), as amended]. For purposes of this Rule 1050, (i) "research analyst" shall mean an associated person who is primarily responsible for, and any associated person who reports directly or indirectly to such research analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of "research analyst," and (ii) "research report" shall mean a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.

**[1060. Persons Exempt from Registration**

(a) The following persons associated with a member are not required to be registered with Nasdaq:

(1) persons associated with a member whose functions are solely and exclusively clerical or ministerial;

(2) persons associated with a member who are not actively engaged in the investment banking or securities business;

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

(4) persons associated with a member whose functions are related solely and exclusively to:

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

(B) transactions in municipal securities;

(C) transactions in commodities;

(D) transactions in security futures, provided that any such person is registered with FINRA or a registered futures association; or

(E) transactions in variable contracts and insurance premium funding programs and other contracts issued by an insurance company;

**(F)** transactions in direct participation programs;

**(G)** Reserved

**(H)** transactions in government securities; or

**(I)** effecting sales as part of a primary offering of securities not involving a public offering pursuant to Section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder.

For purposes of Rule 1060(a)(4), the term "direct participation program" shall have the meaning assigned to such term by NASD Rule 1022(e)(2) and the definitions contained in such NASD rules shall apply to Nasdaq members as if such Rules were part of Nasdaq's Rules.

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

**(b)** Member firms, and persons associated with a member, may pay to nonregistered foreign persons transaction-related compensation based upon the business of customers they direct to member firms if the following conditions are met:

**(1)** the member firm has assured itself that the nonregistered foreign person who will receive the compensation (the "finder") is not required to register in the U.S. as a broker/dealer nor is subject to a disqualification as defined in the Nasdaq Rules, and has further assured itself that the compensation arrangement does not violate applicable foreign law;

**(2)** the finders are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad;

**(3)** the customers are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities;

**(4)** customers receive a descriptive document, similar to that required by Rule 206(4)-3(b) of the Investment Advisers Act of 1940, that discloses what compensation is being paid to finders;

**(5)** customers provide written acknowledgment to the member firm of the existence of the compensation arrangement and that such acknowledgment is retained and made available for inspection by Nasdaq;

(6) records reflecting payments to finders are maintained on the member firm's books and actual agreements between the member firm and persons compensated are available for inspection by Nasdaq; and

(7) the confirmation of each transaction indicates that a referral or finders fee is being paid pursuant to an agreement.

#### **1070. Qualification Examinations and Waiver of Requirements**

(a) Qualification Examinations specified in this Rule 1000 Series shall consist of a series of questions based upon topics contained in study outlines provided by Nasdaq, a list of which is available from the Department.

(b) Examinations shall be given at such times and places and under such conditions as shall be prescribed by the Nasdaq Board and shall be graded according to the procedure prescribed by the Board.

(c) Examination results shall be reported to member firms and may be accompanied by an analysis of the candidate's performance on the examination. Passing scores assigned to each examination series shall be determined by the Nasdaq Board, or its designee.

(d) Pursuant to the Rule 9600 Series, Nasdaq may, in exceptional cases and where good cause is shown, waive the applicable Qualification Examination and accept other standards as evidence of an applicant's qualifications for registration. Advanced age or physical infirmity will not individually of themselves constitute sufficient grounds to waive a Qualification Examination. Experience in fields ancillary to the investment banking or securities business may constitute sufficient grounds to waive a Qualification Examination.

(e) Any person associated with a member who fails to pass a qualification examination prescribed by Nasdaq shall be permitted to take the examination again after either a period of 30 calendar days has elapsed from the date of the prior examination or the next administration of an examination administered on a monthly basis, except that any person who fails to pass an examination three or more times in succession shall be prohibited from again taking such examination either until a period of 180 calendar days has elapsed from the date of such person's last attempt to pass the examination or until the sixth subsequent administration of an examination administered on a monthly basis.

#### **1080. Confidentiality of Examinations**

Nasdaq considers all of its Qualification Examinations to be highly confidential. The removal from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such Qualification Examination, whether of a present or past series, or any other use which would compromise the effectiveness of the Examinations and the use in any manner and at any time of the questions or answers to the Examinations are prohibited and are deemed to be a violation

of Rule 2110. An applicant cannot receive assistance while taking the examination. Each applicant shall certify to the Board that no assistance was given to or received by him during the examination.]

\* \* \* \* \*

**[1100. Reserved**

**1110. Reserved**

**1120. Continuing Education Requirements**

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with Nasdaq. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

**(a) Regulatory Element**

**(1) Requirements**

No member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person unless such person has complied with the requirements of paragraph (a) hereof.

Each registered person shall complete the Regulatory Element on the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by Nasdaq. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the "base date," shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element shall be determined by Nasdaq and shall be appropriate to either the registered representative or principal status of the person subject to the Rule. The following Regulatory Elements administered by FINRA shall be required:

Persons registered as General Securities Representatives pursuant to Rule 1032(a) or Securities Traders pursuant to Rule 1032(f) must complete the S101.

Persons registered in a supervisory capacity pursuant to Rules 1021 and 1022 must complete the S201.

**(2) Failure to Complete**

Unless otherwise determined by Nasdaq, any registered persons who have not completed the Regulatory Element within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied.

Any person whose registration has been deemed inactive under this Rule shall cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. A registration that is inactive for a period of two years will be administratively terminated. A person whose registration is so terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Rule 1020 Series and the Rule 1030 Series. Nasdaq may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

### **(3) Disciplinary Actions**

Unless otherwise determined by Nasdaq, a registered person will be required to retake the Regulatory Element and satisfy all of its requirements in the event such person:

(A) is subject to any statutory disqualification as defined in Section 3(a)(39) of the Act;

(B) is subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(C) is ordered as a sanction in a disciplinary action to retake the Regulatory Element by any securities governmental agency or self-regulatory organization.

The retaking of the Regulatory Element shall commence with participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (A) above, or the disciplinary action becoming final, in the case of (B) and (C) above. The date of the disciplinary action shall be treated as such person's new base date with Nasdaq.

### **(4) Reassociation in a Registered Capacity**

Any registered person who has terminated association with a member and who has, within two years of the date of termination, become reassociated in a registered capacity with a member shall participate in the Regulatory Element at such intervals that may apply (second anniversary and every three years thereafter) based on the initial registration anniversary date rather than based on the date of reassociation in a registered capacity.

### **(5) Definition of Registered Person**

For purposes of this Rule, the term "registered person" means any person registered with Nasdaq as a representative, principal, or assistant representative pursuant to the Rule 1020, 1030, 1040, and 1110 Series.

**(6) Delivery of the Regulatory Element**

The continuing education Regulatory Element set forth in paragraph (a) of this Rule will be administered through Web-based delivery or such other technological manner and format as specified by the Exchange.

**(7) Regulatory Element Contact Person**

Each member shall designate and identify to Nasdaq (by name and e-mail address) an individual or individuals responsible for receiving e-mail notifications provided via the Central Registration Depository regarding when a registered person is approaching the end of his or her Regulatory Element time frame and when a registered person is deemed inactive due to failure to complete the requirements of the Regulatory Element program. Each member shall identify, review, and, if necessary, update the information regarding its Regulatory Element contact person(s) in the manner prescribed by Nasdaq Rule 1160.

**(b) Firm Element****(1) Persons Subject to the Firm Element**

The requirements of this subparagraph shall apply to any person registered with a member who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and to the immediate supervisors of such persons (collectively, "covered registered persons"). "Customer" shall mean any natural person and any organization, other than another broker or dealer, executing securities transactions with or through or receiving investment banking services from a member.

**(2) Standards for the Firm Element**

**(A)** Each member must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill, and professionalism. At a minimum, each member shall 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 covered registered persons in the Regulatory Element. If a member's analysis establishes the need for supervisory training for persons with supervisory responsibilities, such training must be included in the member's training plan.

**(B)** Minimum Standards for Training Programs — Programs used to implement a member's training plan must be appropriate for the business of the member and, at a minimum must cover the following matters concerning securities products, services, and strategies offered by the member:

**(i)** General investment features and associated risk factors;

- (ii) Suitability and sales practice considerations; and
- (iii) Applicable regulatory requirements.

(C) Administration of Continuing Education Program — A member must administer its continuing education programs 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 covered registered persons.

### **(3) Participation in the Firm Element**

Covered registered persons included in a member's plan must take all appropriate and reasonable steps to participate in continuing education programs as required by the member.

### **(4) Specific Training Requirements**

Nasdaq may require a member, individually or as part of a larger group, to provide specific training to its covered registered persons in such areas as Nasdaq deems appropriate. Such a requirement may stipulate the class of covered registered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.]

\* \* \* \* \*

## **[1140. Electronic Filing Requirements for Uniform Forms**

### **(a) Filing Requirement**

Except as provided in Rule 1013(a)(2), all forms required to be filed under the Rule 1000 Series shall be filed through an electronic process or such other process as Nasdaq may prescribe to the Central Registration Depository.

### **(b) Supervisory Requirements**

(1) In order to comply with the supervisory procedures requirement in Rule 3010, each member shall identify a Registered Principal(s) or corporate officer(s) who has a position of authority over registration functions, to be responsible for supervising the electronic filing of appropriate forms pursuant to this Rule.

(2) The Registered Principal(s) or corporate officer(s) who has or have the responsibility to review and approve the forms filed pursuant to this Rule shall be required to acknowledge, electronically, that he is filing this information on behalf of the member and the member's associated persons.

### **(c) Form U4 Filing Requirements**



(1) Except as provided in paragraphs (c)(2) and (c)(3) below, every initial and transfer electronic Form U4 filing and any amendments to the disclosure information on Form U4 shall 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. As part of the member's recordkeeping requirements, it shall retain the person's manually signed Form U4 or amendments to the disclosure information on Form U4 in accordance with SEA Rule 17a-4(e)(1) and make them available promptly upon regulatory request. An applicant for membership also shall retain in accordance with SEA Rule 17a-4(e)(1) every manually signed Form U4 it receives during the application process and make them available promptly upon regulatory request.

(2) A member may file electronically amendments to the disclosure information on Form U4 without obtaining the subject associated person's manual signature on the form, provided that the member shall use reasonable efforts to:

(A) provide the associated person with a copy of the amended disclosure information prior to filing; and

(B) obtain the associated person's written acknowledgment (which may be electronic) prior to filing that the information has been received and reviewed. As part of the member's recordkeeping requirements, the member shall retain this acknowledgment in accordance with SEA Rule 17a-4(e)(1) and make it available promptly upon regulatory request.

(3) In the event a member is not able to obtain an associated person's manual signature or written acknowledgement of amended disclosure information on Form U4 prior to filing of such information pursuant to paragraph (c)(1) or (2), the member is obligated to file the disclosure information as to which it has knowledge in accordance with the Nasdaq Rule 1030 Series. The member shall use reasonable efforts to provide the associated person with a copy of the amended disclosure information that was filed.

(4) A member may file electronically amendments to administrative data on Form U4 without obtaining the subject associated person's signature on the form. The member shall use reasonable efforts to provide the associated person with a copy of the amended administrative information that was filed.

**(d) Fingerprint Information**

Upon filing an electronic Form U4 on behalf of a person applying for registration, a member shall promptly submit fingerprint information for that person. Nasdaq may make a registration effective pending receipt of the fingerprint information. If a member fails to submit the fingerprint information within 30 days after Nasdaq receives the electronic Form U4, the person's registration shall be deemed inactive. In such case, Nasdaq shall notify the member that the person must immediately cease all activities requiring registration and is prohibited from performing any duties and functioning in any capacity requiring registration. Nasdaq shall administratively terminate a registration that is

inactive for a period of two years. A person whose registration is administratively terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Rule 1020 Series and the Rule 1030 Series. Upon application and a showing of good cause, Nasdaq may extend the 30-day period.

**(e) Form U5 Filing Requirements**

Initial filings and amendments of Form U5 shall be submitted electronically. As part of the member's recordkeeping requirements, it shall retain such records for a period of not less than three years, the first two years in an easily accessible place, in accordance with SEA Rule 17a-4, and make such records available promptly upon regulatory request.

**Supplementary Material**

.01 Delegation of Electronic Filing Functions. The designated registered principal(s) or corporate officer(s) required by paragraph (b)(1) to supervise the member's electronic filings may delegate to an associated person (who need not be registered) the electronic filing of the member's appropriate forms via Web CRD. The registered principal(s) or corporate officer(s) responsible for supervising the member's electronic filings may also delegate to the associated person making the electronic filings the requirement in paragraph (b)(2) to acknowledge, electronically, that he is making the filing on behalf of the member and the member's associated persons. However, the registered principal(s) or corporate officer(s) may not delegate any of the supervision, review, and approval responsibilities mandated in paragraphs (b)(1) and (2) and shall take reasonable and appropriate action to ensure that all delegated electronic filing functions are properly executed and supervised.

.02 Third-Party Agreements. A member may enter into an agreement with a third party pursuant to which the third party agrees to file the required forms electronically on behalf of the member and the member's associated persons. Notwithstanding the existence of such an agreement, the member remains responsible for complying with the requirements of this Rule.

.03 Filing of Amendments Involving Disclosure Information. 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 information pursuant to paragraph (c)(3) (examples of reasons why a member may not be able to obtain the manual signature or written acknowledgement may include, but are not limited to, the associated person refuses to acknowledge such information, is on active military service or otherwise is unavailable during the period provided for filing of such amendments under the Nasdaq Rule 1030 Series, the member shall 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.

.04 Filing of Amendments Involving Administrative Information. For purposes of paragraph (c)(4) of the Rule, administrative data includes such items as the addition of state or self regulatory organization registrations, exam scheduling, and updates to residential, business and personal history.]

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## **1200. Registration, Qualification and Continuing Education**

### **1210. Registration Requirements**

Each person engaged in the securities business of a member shall be registered with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in Rule 1220, unless exempt from registration pursuant to Rule 1230. Such person shall not be qualified to function in any registered capacity other than that for which the person is registered, unless otherwise stated in the rules.

#### **••• Supplementary Material: -----**

**.01 Minimum Number of Registered Principals.** Each member, except a member with only one associated person, shall have at least two officers or partners who are registered as General Securities Principals pursuant to Rule 1220(a)(2), provided that a member that is limited in the scope of its activities may instead have two officers or partners who are registered in a principal category under Rule 1220(a) that corresponds to the scope of the member's activities; and provided further that a proprietary trading firm with 25 or fewer registered representatives shall only be required to have one officer or partner who is registered as a principal. The requirement that a member have a minimum of two principals shall apply to persons seeking admission as members and existing members.

Pursuant to the 9600 Series, the Exchange may waive the requirement that a member have a minimum of two principals in situations that indicate conclusively that only one person associated with an applicant for membership or existing member should be required to register as a principal.

**.02 Permissive Registrations.** A member may make application for or maintain the registration as a representative or principal, pursuant to Rule 1220, of any associated person of the 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.

**.03 Qualification Examinations and Waivers of Examinations.** Before the registration of a person as a representative can become effective under Rule 1210, such person shall pass the Securities Industry Essentials ("SIE") and an appropriate representative qualification examination as specified in Rule 1220(b). Before the registration of a person as a principal can become effective under Rule 1210, such person shall pass an appropriate principal qualification examination as specified in Rule 1220(a).

If the job functions of a registered representative, other than an individual registered as an Order Processing Assistant Representative, change so as to require the person to register in another representative category, the person shall not be required to pass the SIE. Rather, the registered person would need to pass only an appropriate representative qualification examination as specified in Rule 1220(b). All associated persons shall be eligible to take the SIE. In addition, individuals who are not associated persons shall be eligible to take the SIE. However, passing the SIE alone shall not qualify an individual for registration with the Exchange. To be eligible for registration with the Exchange, an individual shall pass an applicable representative or principal qualification examination as specified in Rule 1220 and satisfy all other applicable prerequisite registration requirements.

Pursuant to the Rule 9600 Series, the Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination(s) and accept other standards as evidence of an applicant's qualifications for registration. Age or disability will not individually of themselves constitute sufficient grounds to waive a qualification examination. Experience in fields ancillary to the securities business may constitute sufficient grounds to waive a qualification examination. The Exchange shall only consider waiver requests submitted by a member for individuals associated with the member who are seeking registration in a representative or principal registration category. Moreover, the Exchange shall consider waivers of the SIE alone or the SIE and the applicable representative and principal examination(s) for such individuals. The Exchange shall not consider a waiver of the SIE for individuals who are not associated persons or for associated persons who are not registering with the Exchange as representatives or principals.

**.04 Requirements for Registered Persons Functioning as Principals for a Limited Period.** Subject to the requirements of Rule 1220.03, a member may designate any

person currently registered, or who becomes registered, with the member as a representative to function as a principal for a period of 120 calendar days prior to passing an appropriate principal qualification examination as specified under Rule 1220(a), provided that such person has at least 18 months of experience functioning as a registered representative within the five-year period immediately preceding the designation and has fulfilled all applicable prerequisite registration, fee and examination requirements prior to designation as a principal. However, in no event may such person function as a principal beyond the initial 120 calendar day period without having successfully passed an appropriate principal qualification examination as specified under Rule 1220(a). The requirements above apply to designations to any principal category, including those categories that are not subject to a prerequisite representative registration requirement. Further, a person registered as an Order Processing Assistant Representative shall not be eligible to be designated as a principal under Supplementary Material .04 of this rule.

Subject to the requirements of Rule 1220.03, a member may designate any person currently registered, or who becomes registered, with the member as a principal to function in another principal category for a period of 120 calendar days prior to passing an appropriate qualification examination as specified under Rule 1220. However, in no event may such person function in such other principal category beyond the initial 120 calendar day period without having successfully passed an appropriate qualification examination as specified under Rule 1220.

**.05 Rules of Conduct for Taking Examinations and Confidentiality of Examinations.**

Associated persons taking the SIE shall be subject to the SIE Rules of Conduct. Associated persons taking any representative or principal examination shall be subject to the Rules of Conduct for representative and principal examinations. A violation of the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations by an associated person shall be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade. If the Exchange determines that an associated person has violated the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations, the associated person may forfeit the results of the examination and may be subject to disciplinary action by the Exchange. The Exchange considers all of the qualification examinations content to be highly confidential. The removal of examination content from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such qualification examination or any other use that would compromise the effectiveness of the examinations and the use in any manner and at any time of the questions or answers to the examinations shall be prohibited and shall be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade. An applicant cannot receive assistance while taking the examination and shall certify that no assistance was given to or received by him or her during the examination.

**.06 Waiting Periods for Retaking a Failed Examination.** Any person who fails to pass a qualification examination prescribed by the Exchange shall be permitted to take that examination again after a period of 30 calendar days has elapsed from the date of such

person's last attempt to pass that examination, except that any person who fails to pass an examination three or more times in succession within a two-year period shall be prohibited from again taking that examination until a period of 180 calendar days has elapsed from the date of such person's last attempt to pass that examination.

The waiting periods for retaking a failed examination shall apply to the SIE and the representative and principal examinations specified under Rule 1220.

**.07 All Registered Persons Must Satisfy the Regulatory Element of Continuing Education.** All registered persons, including those individuals who solely maintain permissive registrations pursuant to Rule 1210.02, shall satisfy the Regulatory Element of continuing education as specified in Rule 1240(a).

If a person registered with a member has a continuing education deficiency with respect to that registration as provided under Rule 1240(a), such person shall not be permitted to be registered in another registration category with the Exchange under Rule 1220 with that member or to be registered in any registration category with the Exchange under Rule 1220 with another member, until the person has satisfied the deficiency.

**.08 Lapse of Registration and Expiration of SIE.** Any person who was last registered as a representative two 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 a representative qualification examination appropriate to his or her category of registration as specified in Rule 1220(b). 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 1220(b).

Any person who was last registered as a principal two or more years immediately preceding the date of receipt by the Exchange of a new application for registration as a principal shall be required to pass a principal qualification examination appropriate to his or her category of registration as specified in Rule 1220(a).

Any person whose registration has been revoked pursuant to Rule 8310 shall be required to pass a principal or representative qualification examination appropriate to his or her category of registration as specified in Rule 1220(a) or Rule 1220(b), respectively, to be eligible for registration with the Exchange.

For purposes of Supplementary Material .08 of this Rule, an application shall not be considered to have been received by the Exchange if that application does not result in a registration.

**.09 Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member.** Upon request by a member, the Exchange shall waive

the applicable qualification examination(s) for an individual designated with the Exchange as working for a financial services industry affiliate of a member if the following conditions are met:

(a) Prior to the individual's initial designation, the individual was registered as a representative or principal 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;

(b) The waiver request is made within seven years of the individual's initial designation;

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

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

(e) The individual has complied with the Regulatory Element of continuing education as specified in Rule 1240(a); and

(f) 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 Supplementary Material .09 of this Rule, a "financial services industry affiliate of a member" is a legal entity that controls, is controlled by or is under common control with a member and is regulated by the SEC, Commodity Futures Trading Commission, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

**.10 Status of Persons Serving in the Armed Forces of the United States.**The following provisions address the status of current and former registered persons serving in active duty in the Armed Forces of the United States:

(a) Inactive Status of Currently Registered Persons

A registered person of a member who volunteers for or is called into active duty in the Armed Forces of the United States shall be placed, after proper notification to the Exchange, on inactive status and need not be re-registered by such member upon his or her return to active employment with the member. Such person shall remain eligible to receive transaction-related compensation, including continuing commissions. The employing member also may allow such person to enter into an arrangement with another registered person of the member to take over and service the person's accounts and to share transaction-related compensation based upon the business generated by such accounts. However, because such persons are inactive, they may not perform any of the functions and responsibilities performed by a registered person.

A registered person who is placed on inactive status pursuant to this paragraph (a) shall not be included within the scope of fees, if any, charged by the Exchange with respect to registered persons. In addition, a registered person who is placed on inactive

status pursuant to this paragraph (a) shall not be required to complete either the Regulatory Element or Firm Element set forth in Rule 1240 during the pendency of such inactive status.

The relief provided in this paragraph (a) shall be available to a registered person who is placed on inactive status pursuant to this paragraph (a) during the period that such person remains registered with the member with which he or she was registered at the beginning of active duty in the Armed Forces of the United States, regardless of whether the person returns to active employment with another member upon completion of his or her active duty in the Armed Forces of the United States.

The relief described in this paragraph (a) shall be provided only to a person registered with a member and only while the person remains on active military duty. Further, the member with which such person is registered shall promptly notify the Exchange in such manner as the Exchange may specify of such person's return to active employment with the member.

(b) Inactive Status of Sole Proprietorships

A member that is a sole proprietor who temporarily closes his or her business by reason of volunteering for or being called into active duty in the Armed Forces of the United States, shall be placed, after proper notification to the Exchange, on inactive status while the member remains on active military duty.

A sole proprietor member placed on inactive status as set forth in this paragraph (b) shall not be required to pay dues or assessments during the pendency of such inactive status and shall not be required to pay an admission fee upon return to active participation in the securities business.

The relief described in this paragraph (b) shall be provided only to a sole proprietor member and only while the person remains on active military duty. Further, the sole proprietor shall promptly notify the Exchange in such manner as the Exchange may specify of his or her return to active participation in the securities business.

(c) Status of Formerly Registered Persons

If a person who was formerly registered with a member volunteers for or is called into active duty in the Armed Forces of the United States at any time within two years after the date the person ceased to be registered with a member, the Exchange shall defer the lapse of registration requirements set forth in Rule 1210.08 (i.e., toll the two-year expiration period for representative and principal qualification examinations) and the lapse of the SIE (i.e., toll the four-year expiration period for the SIE). The Exchange shall defer the lapse of registration requirements and the SIE commencing on the date the person begins actively serving in the Armed Forces of the United States, provided that the Exchange is properly notified of the person's period of active military service within 90 days following his or her completion of active service or upon his or her re-



registration with a member, whichever occurs first. The deferral will terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person does not re-register with a member within 90 days following his or her completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a member without being subject to a representative or principal qualification examination or the SIE shall consist of the standard two-year period for representative and principal qualification examinations or the standard four-year period for the SIE, whichever is applicable, as provided in Rule 1210.08 reduced by the period of time between the person's termination of registration and beginning of active service in the Armed Forces of the United States.

If a person placed on inactive status while serving in the Armed Forces of the United States ceases to be registered with a member, the Exchange shall defer the lapse of registration requirements set forth in Rule 1210.08 (i.e., toll the two-year expiration period for representative and principal qualification examinations) and the lapse of the SIE (i.e., toll the four-year expiration period for the SIE) during the pendency of his or her active service in the Armed Forces of the United States. The Exchange shall defer the lapse of registration requirements based on existing information in the CRD system, provided that the Exchange is properly notified of the person's period of active military service within two years following his or her completion of active service or upon his or her re-registration with a member, whichever occurs first. The deferral shall terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person does not re-register with a member within 90 days following his or her completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a member without being subject to a representative or principal qualification examination or the SIE shall consist of the standard two-year period for representative and principal qualification examinations or the standard four-year period for the SIE, whichever is applicable, as provided in Rule 1210.08.

**.11 Impermissible Registrations.** Members shall not register or maintain the registration of any person unless consistent with the requirements of Rule 1210.

## **.12 Application for Registration and Jurisdiction**

### **(a) Application for Registration**

**(1)** Application by any person for registration with the Exchange, properly signed by the applicant, shall be made to the Exchange on Form U4 via the CRD system, and shall contain:

**(A)** an agreement to comply with the federal securities laws, the rules and regulations thereunder, the Exchange Rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Exchange Rules; and

(B) such other reasonable information with respect to the applicant as the Exchange may require.

(2) The Exchange shall not approve an application for registration of any person who is not eligible to be an associated person of an Exchange member under Exchange Rules.

(3) Every application for registration filed with the Exchange shall be kept current at all times by supplementary amendments to Form U4 via the CRD system. Such amendments to the application shall be filed with the Exchange not later than 30 days after the applicant learns of the facts or circumstances giving rise to the amendment. If such amendment involves a statutory disqualification, such amendment shall be filed not later than ten days after such disqualification occurs.

(b) Notification by Member to the Exchange and Associated Person of Termination; Amendment to Notification

(1) Following the termination of the association with an Exchange member of a person who is registered with it, such Exchange member shall, not later than 30 days after such termination, give notice of the termination of such association to the Exchange via the CRD system using Form U5, and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with the Exchange. An Exchange member that does not submit such notification and provide a copy to the person whose association has been terminated, within the time period prescribed, shall be assessed any late filing fee that is specified by Exchange Rules. Termination of registration of such person associated with an Exchange member shall not take effect so long as any complaint or action under the Exchange Rules is pending against an Exchange member and to which complaint or action such person associated with an Exchange member is also a respondent, or so long as any complaint or action is pending against such person individually under the Exchange Rules. The Exchange, however, may in its discretion declare the termination effective at any time.

(2) The Exchange member shall notify the Exchange, via the CRD system, by means of an amendment to the notice filed pursuant to paragraph (1) in the event that the Exchange member learns of facts or circumstances causing any information set forth in said notice to become inaccurate or incomplete. Such amendment shall be filed with the Exchange via the CRD system, and a copy provided to the person whose association with the Exchange member has been terminated not later than 30 days after the Exchange member learns of the facts or circumstances giving rise to the amendment.

(c) No Exchange member shall permit any person associated with the Exchange member to engage in the securities business unless the Exchange member determines that such person satisfies the qualification requirements established by the Exchange Board and is not subject to statutory disqualification.

## 1220. Registration Categories

**(a) Definition of Principal and Principal Registration Categories**

**(1) Definition of Principal**

A “principal” is any person associated with a member, including, but not limited to, sole proprietor, officer, partner, manager of office of supervisory jurisdiction, director or other person occupying a similar status or performing similar functions, who is actively engaged in the management of the member’s securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a member for any of these functions. Such persons shall include, among other persons, a member’s chief executive officer and chief financial officer (or equivalent officers).

A “principal” also includes any other person associated with a member who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules.

The term “actively engaged in the management of the member’s securities business” includes the management of, and the implementation of corporate policies related to, such business. The term also includes managerial decision-making authority with respect to the member’s securities business and management-level responsibilities for supervising any aspect of such business, such as serving as a voting member of the member’s executive, management or operations committees.

**(2) General Securities Principal**

**(A) Requirement**

Each principal as defined in paragraph (a)(1) of this Rule shall be required to register with the Exchange as a General Securities Principal, subject to the following exceptions:

(i) if a principal’s activities are limited to the functions of a Compliance Official, a Financial and Operations Principal, a Securities Trader Principal, a Securities Trader Compliance Officer, or a Registered Options Principal as specified in paragraphs (a)(3) through (a)(8) of this Rule, then such person shall appropriately register in one or more of those categories;

(ii) Reserved.

(iii) if a principal’s activities are limited solely to the functions of a General Securities Sales Supervisor as specified in paragraph (a)(10) of this Rule, then such

person may appropriately register in that category in lieu of registering as a General Securities Principal, provided, however, that if such person is engaged in options sales activities, such person shall be required to register with the Exchange as a Registered Options Principal as specified in paragraph (a)(8) of this Rule or as a General Securities Sales Supervisor as specified in paragraph (a)(10) of this Rule; and

(iv) Reserved.

**(B) Qualifications**

Subject to the lapse of registration provisions in Rule 1210.08, each person registered as a Corporate Securities Representative on the Exchange and a General Securities Principal on October 1, 2018 and each person who was registered as a Corporate Securities Representative on the Exchange and a General Securities Principal within two years prior to October 1, 2018 shall be qualified to register as a General Securities Principal without passing any additional qualification examinations, provided that his or her supervisory responsibilities in the securities business of a member are limited to corporate securities activities of the member.

All other individuals registering as General Securities Principals after October 1, 2018 shall, prior to or concurrent with such registration, become registered pursuant to paragraph (b)(2) of this Rule as a General Securities Representative and pass the General Securities Principal qualification exam.

**(3) Compliance Official**

**(A) Requirement**

Subject to the exception in paragraph (a)(3)(C) of this Rule, each person designated as a Chief Compliance Officer on Schedule A of Form BD shall be required to register with the Exchange as a General Securities Principal, provided that such person may instead register as a Compliance Official if his or her duties do not include supervision of trading.

**(B) Qualifications**

All individuals registering as Compliance Official shall, prior to or concurrent with such registration, pass the Compliance Official qualification examination.

**(C) Exception - Principals**

An individual designated as a Chief Compliance Officer on Schedule A of Form BD of a member that is engaged in limited securities business may be registered in a principal category under Rule 1220(a) that corresponds to the limited scope of the member's business.

**(D) Exception - Securities Trader Compliance Officer.**

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

**(4) Financial and Operations Principal**

**(A) Requirement.**

Every member of the Exchange that is operating pursuant to the provisions of SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), shall designate at least one Financial and Operations Principal who shall be responsible for performing the duties described in subparagraph (B) hereof. Each person associated with a member who performs such duties shall be required to register as a Financial and Operations Principal with the Exchange.

(B) The term Financial and Operations Principal shall mean a person associated with a member whose duties include:

(i) final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body;

(ii) final preparation of such reports;

(iii) supervision of individuals who assist in the preparation of such reports;

(iv) supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived;

(v) supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act;

(vi) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; and

(vii) any other matter involving the financial and operational management of the member.

The requirements of paragraph (a)(4)(A) of this Rule shall not apply to a member that is exempt from the requirement to designate a Financial and Operations Principal.

### **(C) Qualifications**

All individuals registering as a Financial and Operations Principal shall pass the Financial and Operations Principal qualification examination before such registration may become effective.

(D) A person registered solely as a Financial and Operations Principal shall not be qualified to function in a principal capacity with responsibility over any area of business activity not described in subparagraph (2) hereof.

**(5) Investment Banking Principal. Reserved.**

**(6) Research Principal. Reserved.**

**(7) Securities Trader Principal**

#### **(A) Requirement**

Each principal as defined in paragraph (a)(1) of this Rule who is responsible for supervising the securities trading activities specified in paragraph (b)(4) of this Rule shall be required to register with the Exchange as a Securities Trader Principal.

#### **(B) Qualifications**

Each person seeking to register as a Securities Trader Principal shall, prior to or concurrent with such registration, become registered

pursuant to paragraph (b)(4) of this Rule as a Securities Trader and pass the General Securities Principal qualification examination.

### **(8) Registered Options Principal**

#### **(A) Requirement**

Each member that is engaged in transactions in options with the public shall have at least one Registered Options Principal. In addition, each principal as defined in paragraph (a)(1) of this Rule who is responsible for supervising a member's options sales practices with the public shall be required to register with the Exchange as a Registered Options Principal, subject to the following exception. If a principal's options activities are limited solely to those activities that may be supervised by a General Securities Sales Supervisor, then such person may register as a General Securities Sales Supervisor pursuant to paragraph (a)(10) of this Rule in lieu of registering as a Registered Options Principal.

#### **(B) Qualifications**

Subject to the lapse of registration provisions in Rule 1210.08, each person registered as a Registered Options Principal on October 1, 2018 and each person who was registered as a Registered Options Principal within two years prior to October 1, 2018 shall be qualified to register as a Registered Options Principal without passing any additional qualification examinations. All other individuals registering as Registered Options Principals after October 1, 2018 shall, prior to or concurrent with such registration, become registered pursuant to paragraph (b)(2) of this Rule as a General Securities Representative and pass the Registered Options Principal qualification examination.

**(9) Government Securities Principal. Reserved.**

### **(10) General Securities Sales Supervisor**

#### **(A) Principals Engaged in Limited Activities**

Each principal as defined in paragraph (a)(1) of this Rule may register with the Exchange as a General Securities Sales Supervisor if his or her supervisory responsibilities in the securities business of a member are limited to the securities sales activities of the member, including the approval of customer accounts, training of sales and sales supervisory personnel and the maintenance of records of original entry or ledger accounts of the member required to be maintained in branch offices by Exchange Act record-keeping rules.

A person registered solely as a General Securities Sales Supervisor shall not be qualified to perform any of the following activities:

(i) Reserved;

(ii) supervision of market making commitments;

(iii) supervision of the custody of broker-dealer or customer funds or securities for purposes of Exchange Act Rule 15c3-3; or

(iv) supervision of overall compliance with financial responsibility rules for broker-dealers promulgated pursuant to the provisions of the Exchange Act.

**(B) Qualifications**

Each person seeking to register as a General Securities Sales Supervisor shall, prior to or concurrent with such registration become registered pursuant to paragraph (b)(2) of this Rule as a General Securities Representative and pass the General Securities Sales Supervisor qualification examinations.

**(11) Investment Company and Variable Contracts Products Principal. Reserved.**

**(12) Direct Participation Programs Principal. Reserved.**

**(13) Private Securities Offerings Principal. Reserved.**

**(14) Supervisory Analyst. Reserved.**

**(b) Definition of Representative and Representative Registration Categories**

**(1) Definition of Representative**

A “representative” is any person associated with a member, including assistant officers other than principals, who is engaged in the member’s securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a member for any of these functions.

**(2) General Securities Representative**

**(A) Requirement**

Each representative as defined in paragraph (b)(1) of this Rule shall be required to register with the Exchange as a General Securities Representative, subject to the following exception: if a representative’s activities include the functions of a Securities



Trader, as specified in this Rule, then such person shall appropriately register as a Securities Trader.

**(B) Qualifications**

Subject to the lapse of registration provisions in Rule 1210.08, each person registered as a General Securities Representative on October 1, 2018 and each person who was registered as a General Securities Representative within two years prior to October 1, 2018 shall be qualified to register as a General Securities Representative without passing any additional qualification examinations. All other individuals registering as General Securities Representatives after October 1, 2018 shall, prior to or concurrent with such registration, pass the SIE and the General Securities Representative qualification examination.

**(3) Operations Professional. Reserved.**

**(4) Securities Trader**

**(A) Requirement**

Each representative as defined in paragraph (b)(1) of this Rule shall be required to register with the Exchange as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities, or options such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with a member. In addition, each person associated with a member who is: (i) primarily responsible for the design, development or significant modification of an algorithmic trading strategy relating to equity, preferred or convertible debt securities or options; or (ii) responsible for the day-to-day supervision or direction of such activities shall be required to register with the Exchange as a Securities Trader. For purposes of paragraph (b)(4) of this Rule, an “algorithmic trading strategy” is an automated system that generates or routes orders (or order-related messages) but shall not include an automated system that solely routes orders received in their entirety to a market center.

**(B) Qualifications**

Subject to the lapse of registration provisions in Rule 1210.08, each person registered as a Securities Trader on October 1, 2018 and each person who was registered as a Securities Trader within

two years prior to October 1, 2018 shall be qualified to register as a Securities Trader without passing any additional qualification examinations. All other individuals registering as Securities Traders after October 1, 2018 shall, prior to or concurrent with such registration, pass the SIE and the Securities Trader qualification examination.

**(5) Investment Banking Representative – Reserved.**

**(6) Research Analyst – Reserved.**

**(7) Investment Company and Variable Products Representative – Reserved.**

**(8) Direct Participation Programs Representative – Reserved.**

**(9) Private Securities Offerings Representative - Reserved.**

**••• Supplementary Material: -----**

**.01 Foreign Registrations.** Persons who are in good standing as a representative with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator shall be exempt from the requirement to pass the SIE.

**.02 Additional Qualification Requirements for Persons Engaged in Security Futures Activities.** Each person who is registered with the Exchange as a General Securities Representative, Options Representative, Registered Options Principal or General Securities Sales Supervisor shall be eligible to engage in security futures activities as a representative or principal, as applicable, provided that such individual completes a Firm Element program as set forth in Rule 1240 that addresses security futures products before such person engages in security futures activities.

**.03 Members With One Registered Options Principal.** A member that has one Registered Options Principal shall promptly notify the Exchange in the event such person is terminated, resigns, becomes incapacitated or is otherwise unable to perform the duties of a Registered Options Principal. Following receipt of such notification, the Exchange shall require the member to agree, in writing, to refrain from engaging in any options-related activities that would necessitate the prior or subsequent approval of a Registered Options Principal until such time as a new Registered Options Principal has been qualified. Members failing to qualify a new Registered Options Principal within two weeks following the loss of their sole Registered Options Principal, or by the earliest available date for administration of the Registered Options Principal examination, whichever is longer, shall be required to cease doing an options business; provided, however, they may effect

closing transactions in options to reduce or eliminate existing open options positions in their own account as well as the accounts of their customers.

**.04 Scope of General Securities Sales Supervisor Registration Category.**

The General Securities Sales Supervisor category is an alternate category of registration designed to lessen the qualification burdens on principals of general securities firms who supervise sales. Without this category of limited registration, such principals would be required to separately qualify pursuant to the rules of multiple exchanges. While persons may continue to separately qualify with all relevant self-regulatory organizations, the General Securities Sales Supervisor examinations permit qualification as a supervisor of sales of all securities through one registration category. Persons registered as General Securities Sales Supervisors may also qualify in any other category of principal registration. Persons who are already qualified in one or more categories of principal registration may supervise sales activities of all securities by also qualifying as General Securities Sales Supervisors. Any person required to be registered as a principal who supervises sales activities in corporate, municipal and option securities, investment company products, variable contracts, direct participation program securities and security futures may be registered solely as a General Securities Sales Supervisor. In addition to branch office managers, other persons such as regional and national sales managers may also be registered solely as General Securities Sales Supervisors as long as they supervise only sales activities.

**.05 Scope of Operations Professional Requirement. Reserved.**

**.06 Eliminated Registration Categories.** Subject to the lapse of registration provisions in Rule 1210.08, each person who is registered with the Exchange in any capacity recognized by the Exchange immediately prior to October 1, 2018, and each person who was registered with the Exchange in such categories within two years prior to October 1, 2018, shall be eligible to maintain such registrations with the Exchange. However, if persons registered in such categories subsequently terminate such registration(s) with the Exchange and the registration remains terminated for two or more years, they shall not be eligible to re-register in such categories.

Persons registered as Order Processing Assistant Representatives shall be subject to the following conditions: (a) An Assistant Representative—Order Processing may not solicit transactions or new accounts on behalf of the member, render investment advice, make recommendations to customers regarding the appropriateness of securities transactions, or effect transactions in securities markets on behalf of the member. Persons registered in this category may not be registered concurrently in any other capacity. (b) Compensation--Members may only compensate Assistant Representatives—Order Processing on an hourly wage or salaried basis and may not in any way, directly or indirectly, relate their compensation to the number or size of transactions effected for customers. This

provision shall not prohibit persons registered in this capacity from receiving bonuses or other compensation based on a member's profit sharing plan or similar arrangement. (c) Supervision--The activities of Assistant Representatives—Order Processing may only be conducted at a business location of the member that is under the direct supervision of an appropriately registered principal.

**.07 Summary of Qualification Requirements.** The following sets forth the qualification requirements for each of the required registration categories described In Rule 1220:

<b><u>CATEGORY OF REGISTRATION</u></b>	<b><u>QUALIFICATION BEGINNING OCTOBER 1, 2018</u></b>
<u>General Securities Principal (GP) *</u>	<u>Registration as a General Securities Representative and pass the General Securities Principal qualification examination (Series 24)</u>
<u>Compliance Official (CO) *</u>	<u>Pass the Compliance Official Exam (Series 14)</u>
<u>Financial and Operations Principal (FN) *</u>	<u>Pass the Financial and Operations Principal qualification examination (Series 27)</u>
<u>Securities Trader Principal (TP) *</u>	<u>Registration as a Securities Trader and pass the General Securities Principal qualification examination (Series 24)</u>
<u>Registered Options Principal (OP) *</u>	<u>Registration as General Securities Representative and pass the Registered Options Principal qualification examination (Series 4)</u>
<u>General Securities Sales Supervisor (SU)</u>	<u>Registration as a General Securities Representative and pass the General Securities Sales Supervisor qualification examinations (Series 9</u>

	<u>and Series 10)</u>
<u>General Securities Representative (GS)</u>	<u>Pass the SIE and the General Securities Representative qualification examination</u>  <u>(Series 7)</u>
<u>Securities Trader (TD)</u>	<u>Pass the SIE and the Securities Trader qualification examination</u>  <u>(Series 57)</u>
<u>Securities Trader Compliance Officer (CT)</u>	<u>Registration as a Securities Trader and pass the Compliance Official Exam (Series 14)</u>

\* A member may designate a person registered with the member as a representative to function as a principal for a period of 120 calendar days prior to passing an appropriate principal qualification examination subject to the conditions of Rule 1210.04.

### **1230. Associated Persons Exempt from Registration**

The following persons associated with a member are not required to be registered with the Exchange:

(1) persons associated with a member whose functions are solely and exclusively clerical or ministerial;

(2) persons associated with a member whose functions are related solely and exclusively to:

(A) effecting transactions on the floor of another national securities exchange and who are appropriately registered with such exchange;

(B) transactions in municipal securities;

(C) transactions in commodities;

(D) transactions in security futures, provided that any such person is registered with FINRA or a registered futures association; or

(E) transactions in variable contracts and insurance premium funding programs and other contracts issued by an insurance company;

(F) transactions in direct participation programs;

(G) Reserved.

(H) transactions in government securities; or

(I) effecting sales as part of a primary offering of securities not involving a public offering pursuant to Section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder.

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

**••• Supplementary Material: -----**

**.01 Registration Requirements for Associated Persons Who Accept Customer Orders.** The function of accepting customer orders is not considered a clerical or ministerial function. Each person associated with a member who accepts customer orders under any circumstances shall be registered in an appropriate registration category pursuant to Rule 1220. An associated person shall not be considered to be accepting a customer order where occasionally, when an appropriately registered person is unavailable, the associated person transcribes order details submitted by a customer and the registered person contacts the customer to confirm the order details before entering the order.

**1240. Continuing Education Requirements.**

This Rule prescribes requirements regarding the continuing education of specified persons subsequent to their initial registration with the Exchange. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

**(a) Regulatory Element**

**(1) Requirements**

All covered persons shall comply with the requirement to complete the Regulatory Element.

Each covered person shall complete the Regulatory Element on the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the "base date," shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element shall be appropriate to either the registered representative or principal status of the person subject to the Rule. The content of the Regulatory Element for a person designated as

eligible for a waiver pursuant to Rule 1210.09 shall be determined based on the person's most recent registration status and the Regulatory Element shall be completed based on the same cycle had the person remained registered.

### **(2) Failure to Complete**

Unless otherwise determined by the Exchange, any covered persons who have not completed the Regulatory Element within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. Further, such person may not accept or solicit business or receive any compensation for the purchase or sale of securities. However, such person may receive trail or residual commissions resulting from transactions completed before the inactive status, unless the member with which such person is associated has a policy prohibiting such trail or residual commissions. A registration that is inactive for a period of two years will be administratively terminated. A person whose registration is so terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of Rules 1210 and 1220. The Exchange may, upon application and a showing of good cause, allow for additional time for a covered person to satisfy the program requirements. If a person designated as eligible for a waiver pursuant to Rule 1210.09 fails to complete the Regulatory Element within the prescribed time frames, the person shall no longer be eligible for such a waiver.

### **(3) Disciplinary Actions**

Unless otherwise determined by the Exchange, a covered person other than a person designated as eligible for a waiver pursuant to Rule 1210.09 will be required to retake the Regulatory Element and satisfy all of its requirements in the event such person:

(A) is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act;

(B) is subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(C) is ordered as a sanction in a disciplinary action to retake the Regulatory Element by any securities governmental agency or self-regulatory organization.

The retaking of the Regulatory Element shall commence with participation within 120 days of the covered person becoming subject to the statutory disqualification, in the case of (A) above, or the disciplinary action becoming final, in the case of (B) and (C) above.

The date of the disciplinary action shall be treated as such person's new base date with the Exchange.

#### **(4) Reassociation in a Registered Capacity**

Any covered person who has terminated association with a member and who has, within two years of the date of termination, become reassociated in a registered capacity with a member shall participate in the Regulatory Element at such intervals that may apply (second anniversary and every three years thereafter) based on the initial registration anniversary date rather than based on the date of reassociation in a registered capacity.

#### **(5) Definition of Covered Person**

For purposes of this Rule, the term "covered person" means any person registered with the Exchange pursuant to Rule 1210, including any person who is permissively registered pursuant to Rule 1210.02, and any person who is designated as eligible for a waiver pursuant to Rule 1210.09.

#### **(6) Delivery of the Regulatory Element**

The continuing education Regulatory Element will be administered through Web-based delivery or such other technological manner and format as specified by the Exchange.

#### **(7) Regulatory Element Contact Person**

Each member shall designate and identify (by name and e-mail address) an individual or individuals responsible for receiving e-mail notifications provided via the Central Registration Depository regarding when a covered person is approaching the end of his or her Regulatory Element time frame and when a covered person is deemed inactive due to failure to complete the requirements of the Regulatory Element program. Each member shall identify, review, and, if necessary, update the information regarding its Regulatory Element contact person(s) in the manner prescribed by Exchange Rules.

#### **(b) Firm Element**

##### **(1) Persons Subject to the Firm Element**

The requirements of this subparagraph shall apply to any person registered with a member who has direct contact with customers in the conduct of the member's securities sales and trading activities, and to the immediate supervisors of such persons (collectively, "covered registered persons"). "Customer" shall mean any natural person and any organization, other than another broker or dealer, executing securities transactions with or through a member.

##### **(2) Standards for the Firm Element**



(A) Each member must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill, and professionalism. At a minimum, each member shall 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 covered registered persons in the Regulatory Element. If a member's analysis establishes the need for supervisory training for persons with supervisory responsibilities, such training must be included in the member's training plan.

(B) Minimum Standards for Training Programs — 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 in ethics and professional responsibility and the following matters concerning securities products, services, and strategies offered by the member:

(i) General investment features and associated risk factors;

(ii) Suitability and sales practice considerations; and

(iii) Applicable regulatory requirements.

(C) Administration of Continuing Education Program — A member must administer its continuing education programs 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 covered registered persons.

### **(3) Participation in the Firm Element**

Covered registered persons included in a member's plan must take all appropriate and reasonable steps to participate in continuing education programs as required by the member.

### **(4) Specific Training Requirements**

The Exchange may require a member, individually or as part of a larger group, to provide specific training to its covered registered persons in such areas as the Exchange deems appropriate. Such a requirement may stipulate the class of covered registered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.

## **1250. Electronic Filing Requirements for Uniform Forms**

### **(a) Filing Requirement**

All forms required to be filed under the Exchange's registration rules including the Rule 1200 Series shall be filed through an electronic process or such other process as the Exchange may prescribe to the Central Registration Depository.

**(b) Supervisory Requirements**

(1) In order to comply with the supervisory procedures requirements in the Exchange's rules, each member shall identify a Registered Principal(s) or corporate officer(s) who has a position of authority over registration functions, to be responsible for supervising the electronic filing of appropriate forms pursuant to this Rule.

(2) The Registered Principal(s) or corporate officer(s) who has or have the responsibility to review and approve the forms filed pursuant to this Rule shall be required to acknowledge, electronically, that he is filing this information on behalf of the member and the member's associated persons.

**(c) Form U4 Filing Requirements**

(1) Except as provided in paragraphs (c)(2) and (c)(3) below, every initial and transfer electronic Form U4 filing and any amendments to the disclosure information on Form U4 shall 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. As part of the member's recordkeeping requirements, it shall retain the person's manually signed Form U4 or amendments to the disclosure information on Form U4 in accordance with Exchange Act Rule 17a-4(e)(1) and make them available promptly upon regulatory request. An applicant for membership also shall retain in accordance with Exchange Act Rule 17a-4(e)(1) every manually signed Form U4 it receives during the application process and make them available promptly upon regulatory request.

(2) A member may file electronically amendments to the disclosure information on Form U4 without obtaining the subject associated person's manual signature on the form, provided that the member shall use reasonable efforts to:

(A) provide the associated person with a copy of the amended disclosure information prior to filing; and

(B) obtain the associated person's written acknowledgment (which may be electronic) prior to filing that the information has been received and reviewed. As part of the member's recordkeeping requirements, the member shall retain this acknowledgment in accordance with Exchange Act Rule 17a-4(e)(1) and make it available promptly upon regulatory request

(3) In the event a member is not able to obtain an associated person's manual signature or written acknowledgement of amended disclosure information on Form U4 prior to filing of such information pursuant to paragraph (c)(1) or (2), the member is obligated to file the disclosure information as to which it has knowledge in accordance with Exchange

Rule 1220. The member shall use reasonable efforts to provide the associated person with a copy of the amended disclosure information that was filed.

(4) A member may file electronically amendments to administrative data on Form U4 without obtaining the subject associated person's signature on the form. The member shall use reasonable efforts to provide the associated person with a copy of the amended administrative information that was filed.

**(d) Fingerprint Information**

Upon filing an electronic Form U4 on behalf of a person applying for registration, a member shall promptly submit fingerprint information for that person. The Exchange may make a registration effective pending receipt of the fingerprint information. If a member fails to submit the fingerprint information within 30 days after filing of an electronic Form U4, the person's registration shall be deemed inactive. In such case, the person must immediately cease all activities requiring registration and is prohibited from performing any duties and functioning in any capacity requiring registration. The Exchange shall administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of Exchange Rule 1220. Upon application and a showing of good cause, the Exchange may extend the 30-day period.

**(e) Form U5 Filing Requirements.**

Initial filings and amendments of Form U5 shall be submitted electronically. As part of the member's recordkeeping requirements, it shall retain such records for a period of not less than three years, the first two years in an easily accessible place, in accordance with Exchange Act Rule 17a-4, and make such records available promptly upon regulatory request.

**••• Supplementary Material: -----**

**.01 Delegation of Filing Functions.** The designated registered principal(s) or corporate officer(s) required by paragraph (b)(1) to supervise the member's electronic filings may delegate to an associated person (who need not be registered) the electronic filing of the member's appropriate forms via Web CRD. The registered principal(s) or corporate officer(s) responsible for supervising the member's electronic filings may also delegate to the associated person making the electronic filings the requirement in paragraph (b)(2) to acknowledge, electronically, that he is making the filing on behalf of the member and the member's associated persons. However, the registered principal(s) or corporate officer(s) may not delegate any of the supervision, review, and approval responsibilities mandated in paragraphs (b)(1) and (2) and shall take reasonable and appropriate action to ensure that all delegated electronic filing functions are properly executed and supervised.

**.02 Third Party Agreements.** A member may enter into an agreement with a third party pursuant to which the third party agrees to file the required forms electronically on behalf of the member and the member's associated persons. Notwithstanding the existence of such an agreement, the member remains responsible for complying with the requirements of this Rule.

**.03 Filing of Amendments Involving Disclosure Information.** 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 information pursuant to paragraph (c)(3) (examples of reasons why a member may not be able to obtain the manual signature or written acknowledgement may include, but are not limited to, the associated person refuses to acknowledge such information, is on active military service or otherwise is unavailable during the period provided for filing of such amendments under Exchange Rule 1220), the member shall 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.

**.04 Filing of Amendments Involving Administrative Information.** For purposes of paragraph (c)(4) of the Rule, administrative data includes such items as the addition of state or self regulatory organization registrations, exam scheduling, and updates to residential, business and personal history.

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#### **2040. Nonregistered Foreign Finders**

**(a)** Member firms, and persons associated with a member, may pay to nonregistered foreign persons transaction-related compensation based upon the business of customers they direct to member firms if the following conditions are met:

**(1)** the member firm has assured itself that the nonregistered foreign person who will receive the compensation (the "finder") is not required to register in the U.S. as a broker/dealer nor is subject to a disqualification as defined in the Exchange Rules, and has further assured itself that the compensation arrangement does not violate applicable foreign law;

**(2)** the finders are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad;

**(3)** the customers are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities;

**(4)** customers receive a descriptive document, similar to that required by Rule 206(4)-3(b) of the Investment Advisers Act of 1940, that discloses what compensation is being paid to finders;

(5) customers provide written acknowledgment to the member firm of the existence of the compensation arrangement and that such acknowledgment is retained and made available for inspection by the Exchange;

(6) records reflecting payments to finders are maintained on the member firm's books and actual agreements between the member firm and persons compensated are available for inspection by the Exchange; and

(7) the confirmation of each transaction indicates that a referral or finders fee is being paid pursuant to an agreement.

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### **3010. Supervision**

#### **Supervision**

(a) No change.

(b) For purposes of this Rule:

(1) No change.

(2) the term "registered person" in NASD Rule 3010(b)(2)(I) shall be defined as any person registered with Nasdaq as a representative, principal, or assistant representative pursuant to the [1000]1200 Series of the Nasdaq Rules,

(3) references to Article V, Section 3 of the Association's By-Laws shall be construed as references to Nasdaq Rule [1031]1210,

(4) – (5) No change.

(c) No change.

\* \* \* \* \*

### **7003. Registration and Processing Fees**

(a) The following fees will be collected and retained by FINRA via the Web CRD registration system for the registration of associated persons of Nasdaq members that are not also FINRA members:

(1) – (6) No change.

(7) a \$100 session fee (\$55.00 if the Continuing Education is Web-based) for each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Nasdaq Rule 1240[1120 (S101 and S201)].

(8) No change.

(b) No change.

\* \* \* \* \*

### **9000. Code of Procedure**

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### **IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)**

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- Rule [1031]1210.12 — Failure to timely submit amendments to Form U4.

\* \* \* \* \*

- Rule [1120]1240 — Failure to comply with the Firm Element of the continuing education requirements.

\* \* \* \* \*

### **9630. Appeal**

#### **(a) Notice**

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. The notice of appeal shall be filed with the Nasdaq Regulation Department, with a copy of the notice also provided to the appropriate Nasdaq Regulation Department staff. The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. Appeals of decisions issued by Nasdaq Regulation Department staff pursuant to Rule 9620 shall be decided by the Nasdaq Review Council, except with respect to exemptive relief under [Rule 1070 (Qualification Examinations and Waiver of Requirements)]Rule 1210.03, which shall be decided by the Waiver Subcommittee of the Nasdaq Review Council. If the Applicant does not want the decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

(b) – (c) No change.

(d) Oral Argument

(1) No change.

(2) With respect to exemptive relief requested under [Rule 1070]Rule 1210.03, the Waiver Subcommittee of the Nasdaq Review Council may order oral argument and consider any new evidence if the Applicant can show good cause for not including it in its application.

(e) Decision

(1) No change.

(2) With respect to exemptive relief requested under [Rule 1070]Rule 1210.03, after considering all matters on appeal, the Waiver Subcommittee of the Nasdaq Review Council shall affirm, modify, or reverse the decision issued under Rule 9620. The Waiver Subcommittee shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of Nasdaq. The Waiver Subcommittee shall retain the discretion to refer the appeal to the Nasdaq Review Council, in which case the Nasdaq Review Council shall act on such appeal pursuant to its authority under this 9600 Series.

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## **Options Rules**

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## **Chapter II Participation**

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### **Sec. 2 Requirements for Options Participation**

(a) – (f) No change.

[(g) Limited Principal—Registered Options and Security Futures

(1) Every member that is engaged in, or that intends to engage in transactions in security futures or options with Public Customers shall have at least one Registered Options and Security Futures Principal who shall have satisfied the requirements of this subparagraph. Every person engaged in the supervision of options and security futures sales practices, including a person designated pursuant to NASD Rule 3010(a)(2) shall be registered as a Registered Options and Security Futures Principal.

(2) Each person required by subparagraph (g)(1) to be a Registered Options and Security Futures Principal shall pass the appropriate Qualification Examination for Registered Options and Security Futures Principal, or an equivalent examination acceptable to Nasdaq, for the purpose of demonstrating an adequate knowledge of options and security

futures trading generally, the Rules of Nasdaq applicable to trading of option and security futures contracts and the rules of registered clearing agencies for options and security futures, and be registered as such before engaging in the duties or accepting the responsibilities of a Registered Options and Security Futures Principal.

(3) Each person required to register and qualify as a Registered Options and Security Futures Principal must, prior to or concurrent with such registration, be or become qualified pursuant to the Rule 1030 Series, as either a General Securities Representative or a Limited Representative—Corporate Securities and a Registered Options and Security Futures Representative.

(4) A person registered solely as a Registered Options and Security Futures Principal shall not be qualified to function in a principal capacity with responsibility over any area of business activity not prescribed in subparagraph (1).

(5) Any person who is registered as a Registered Options and Security Futures Principal, or who becomes registered as a Registered Options and Security Futures Principal before a revised examination that includes security futures products is offered, must complete a firm-element continuing education program that addresses security futures and a principal's responsibilities for security futures before such person can supervise security futures activities. After a revised examination that includes security futures products is offered, a person associated with a member who passes such a revised Qualification Examination for Registered Options and Security Futures Principal (or any other examination covering security futures that is acceptable to Nasdaq) is not required to complete a firm-element continuing education program that addresses security futures and a principal's responsibilities for security futures to supervise activities in such products, except as otherwise required by Rule 1120 generally or by the member firm. Any Registered Options and Securities Futures Principal who intends to qualify to supervise security futures activities by completing a firm-element continuing education program must complete such a program by December 31, 2009. Any Registered Options and Securities Futures Principal who has not completed a firm-element continuing education program by that date will be required to pass an appropriate qualification examination covering security futures to supervise security futures activities.

(h) Limited Representative—Options and Security Futures

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1031 may register with Nasdaq as a Limited Representative—Options and Security Futures if:

(A) such person's activities in the investment banking or securities business of the member involve the solicitation or sale of option or security futures contracts, including option contracts on government securities as that term is defined in Section 3(a)(42)(D) of the Act, for the account of a broker, dealer or public customer; and



(B) such person passes an appropriate qualification examination for Limited Representative—Options and Security Futures.

(2) Each person seeking to register and qualify as a Limited Representative—Options and Security Futures must, concurrent with or before such registration may become effective, become registered with Nasdaq or another SRO as either as a Limited Representative—Corporate Securities or Limited Representative—Government Securities.

(3) A person registered as a Limited Representative—Options and Security Futures shall not be qualified to function in any area not described in subparagraph (1)(A) hereof.

(4) Any person who is registered with Nasdaq as a Limited Representative—Options and Security Futures, or who becomes registered as a Limited Representative—Options and Security Futures before a revised examination that includes security futures is offered, must complete a firm-element continuing education program that addresses security futures. After a revised examination that includes security futures products is offered, a person associated with a member who passes such a revised Qualification Examination for Limited Representative—Options and Security Futures (or any other examination covering security futures that is acceptable to Nasdaq) is not required to complete a firm-element continuing education program that addresses security futures to act as a limited representative with regard to such products, except as otherwise required by Rule 1120 generally or by the member firm. Any Limited Representative—Options and Security Futures who intends to qualify as a Limited Representative with regard to security futures products by completing a firm-element continuing education program must complete such a program by December 31, 2009. Any Limited Representative—Options and Security Futures who has not completed a firm-element continuing education program by that date will be required to pass an appropriate qualification examination covering security futures to engage in security futures activities.

#### **Commentary .01. Limited Principal—Registered Options and Security Futures**

Members having a single Registered Options and Security Futures Principal are required promptly to notify Nasdaq in the event such person is terminated, resigns, becomes incapacitated or is otherwise unable to perform the duties of an Options and Security Futures Principal.

Following receipt of such notification, Nasdaq will require members to agree, in writing, to refrain from engaging in any options- or security futures-related activities that would necessitate the prior or subsequent approval of an Options and Security Futures Principal including, among other things, the opening of new options or security futures accounts or the execution of discretionary orders for option or security futures contracts until such time as a new Registered Options and Security Futures Principal has been qualified.

Members failing to qualify a new Registered Options and Security Futures Principal within two weeks following the loss of their sole Registered Options and Security Futures Principal, or by the earliest available date for administration of the Registered Options

and Security Futures Principal examination, whichever is longer, shall be required to cease doing an options and security futures business; provided, however, they may effect closing transactions in options and offsetting transactions in security futures to reduce or eliminate existing open options or security futures positions in their own account as well as the accounts of their customers.]

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## **Chapter XI Doing Business with the Public**

\* \* \* \* \*

### **Sec. 2 Registration of Options Principals**

[(a) ]No OEF shall be approved to transact options business with the public until those associated persons who are designated as Options Principals have been approved by and registered with the Exchange. Persons engaged in the management and supervision of the OEF's business pertaining to options contracts shall be designated as Options Principals and shall have responsibility for the overall oversight of the OEF's options related activities on the Exchange.

[(b) In connection with their registration, Options Principals shall file an application with the Secretary on a form prescribed by the Exchange, shall successfully complete an examination prescribed by the Exchange for the purpose of demonstrating an adequate knowledge of the options business, and shall sign an agreement to abide by the Rules of the Exchange and the Rules of the Clearing Corporation; provided, however, that Options Principals of Participants that are members of another national securities exchange or association that has standards of approval acceptable to the Exchange may be deemed to be approved by and registered with the Exchange, so long as such Options Principals are approved by and registered with such other exchange or association.

(c) Termination of employment or affiliation of any Options Principal in such capacity shall be reported promptly to the Exchange together with a copy of the Uniform Termination Notice for Securities Industry Registration ("Form U-5") filed with respect thereto and a statement of the reason for such termination.]

### **Sec. 3 Registration of Representatives**

(a) No OEF shall be approved to transact business with the public until those persons associated with it who are designated representatives have been approved by and registered with the Exchange.

(b) Persons who perform duties for the OEF which are customarily performed by sales representatives or branch office managers shall be designated as representatives of the OEF. A person accepting orders from non-member customers (unless such customer is a broker-dealer registered with the Securities and Exchange Commission) is required to

register with the Exchange and to be qualified by passing the General Securities Registered Representative Examination (Series 7).

[(c) In connection with their registration, designated representatives shall file an application on a form prescribed by the Exchange, shall successfully complete an examination prescribed by the Exchange for the purpose of demonstrating an adequate knowledge of the securities business and options transactions, and shall sign an agreement to abide by the Rules of the Exchange and the Rules of the Clearing Corporation; provided, however, that designated representatives of OEFs who are Participants of another national securities exchange or association that has standards of approval comparable and acceptable to the Exchange may be deemed to be approved by and registered with the Exchange, so long as such designated representatives are approved by and registered with such other exchange or association.]

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