

Required fields are shown with yellow backgrounds and asterisks.

Filing by MIAX PEARL, LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<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) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

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

**Description**

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

Proposal to amend, reorganize and enhance the Exchange's membership, registration and qualification rules and consolidate these rules into new Chapter XXXI, Registration, Qualification and Continuing Education.

**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 * Michael	Last Name * Slade
Title * Counsel	
E-mail * mslade@miami-holdings.com	
Telephone * (609) 897-8499	Fax

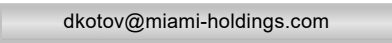
**Signature**

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 \*)

Date 01/09/2020	Assistant Vice President, Associate Counsel
By Dimitriy Kotov	
(Name *)	



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 Proposed Rule Change**

(a) MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”), pursuant to the provisions of 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 (the “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 hereto as Exhibit 1, and the text of the proposed rule change is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the MIAX PEARL Board of Directors on January 31, 2019. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Michael Slade, Counsel, at (609) 897-8499.

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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

The Exchange proposes to reorganize and enhance its membership, registration and qualification rules, make conforming changes to certain other rules, and organize the proposed changes into a new chapter of rules in the MIAX PEARL Rulebook. All of the proposed rules and changes to existing Exchange rules are based on existing rules of other options exchanges.<sup>3</sup> The proposed rules are intended to amend, reorganize and enhance the Exchange’s membership, registration and qualification requirements rules to align with recent similar changes by the Exchange’s affiliate, MIAX,<sup>4</sup> as well as the Nasdaq Stock Market and FINRA. MIAX PEARL proposes to adopt new Chapter XXXI<sup>5</sup> to the Exchange’s rules.

#### **Overview**

The Exchange adopted registration requirements to ensure that associated persons<sup>6</sup> attain and maintain specified levels of competence and knowledge pertinent to their function. In

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<sup>3</sup> See Miami International Securities Exchange, LLC (“MIAX”) Rules, Chapter XIX, Registration, Qualification and Continuing Education; The Nasdaq Stock Market LLC (“Nasdaq Stock Market”) Rules, General 9, Regulation; Financial Industry Regulatory Authority, Inc. (“FINRA”) Rules, Rule 1000, Member Application and Associated Person Registration.

<sup>4</sup> See Securities Exchange Act Release No. 87830 (December 20, 2019), 84 FR 72025 (December 30, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules and Consolidate These Rules Into New Chapter XIX Registration, Qualification and Continuing Education) (SR-MIAX-2019-50).

<sup>5</sup> The Exchange proposes to reserve Chapters XIX through XXX for anticipated future use.

<sup>6</sup> The term “associated person” or “person associated with a Member” means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member. See Exchange Rule 100. In accordance with other proposed changes in this filing, and as

general, the Exchange's current rules require that persons engaged in a Member's<sup>7</sup> securities business who are to function as representatives<sup>8</sup> or principals<sup>9</sup> register with the Exchange in each category of registration appropriate to their functions by passing one or more qualification examinations<sup>10</sup> and exempt specified associated persons from the registration requirements.<sup>11</sup> They also prescribe ongoing continuing education requirements for registered persons.<sup>12</sup> The Exchange proposes to amend, reorganize and enhance its rules regarding registration, qualification examinations and continuing education, as described below.

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further described below, the Exchange proposes to amend the terms "associated person" or "person associated with a Member."

<sup>7</sup> The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an "Electronic Exchange Member" or "Market Maker." Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>8</sup> 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. See proposed Exchange Rule 3101.

<sup>9</sup> 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. See proposed Exchange Rule 3101.

<sup>10</sup> See proposed Exchange Rule 3101, Registration Categories, and Exchange Rule 1302, Registration of Representatives.

<sup>11</sup> See proposed Exchange Rule 3102, Associated Persons Exempt from Registration.

<sup>12</sup> See proposed Exchange Rule 3103, Continuing Education Requirements.

In 2017, the Commission approved a Financial Industry Regulatory Authority, Inc. (“FINRA”) proposed rule change consolidating and adopting prior National Association of Securities Dealers, Inc. (“NASD”) rules and rules incorporated from the New York Stock Exchange (“NYSE”) relating to qualification and registration requirements into the Consolidated FINRA Rulebook,<sup>13</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>14</sup> On December 20, 2019, the Commission noticed a proposal by the Exchange’s affiliate, MIAX, to amend, reorganize and

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<sup>13</sup> The current FINRA rulebook consists of: (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from the 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>14</sup> See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR-FINRA-2017-007) (Order Approving Proposed Rule Change to Adopt Consolidated Registration Rules, Restructure the Representative-Level Qualification Examination Program, Allow Permissive Registration, Establish Exam Waiver Process for Persons Working for Financial Services Affiliate of Member, and Amend the Continuing Education Requirements). 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.

enhance MIAX's own membership, registration and qualification requirements rules in response to the FINRA Rule Changes.<sup>15</sup>

The Exchange now proposes to amend, reorganize and enhance its own membership, registration and qualification requirements rules in response to the changes by the Exchange's affiliate, MIAX, as well as the FINRA Rule Changes. In addition, 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 rule change.<sup>16</sup>

As part of the Exchange's proposed rule changes, current Exchange Rule 203, Qualification and Registration of Members and Associated Persons, is proposed to be deleted. This current Exchange rule provision is relocated in amended form into the new proposed Chapter XXXI Exchange rules.

Additionally, the Exchange proposes to amend Exchange Rule 100, Definitions, Exchange Rule 601, Registered Option Traders, Exchange Rule 1000, Disciplinary Jurisdiction, and Exchange Rule 1014, Imposition of Fines for Minor Rule Violations. These proposed changes correspond to the similar changes made by the Exchange's affiliate, MIAX.

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<sup>15</sup> See supra note 4.

<sup>16</sup> See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (SR-FINRA-2016-007) (Order Approving a Proposed Rule Change to Require Registration as Securities Traders of Associated Persons Primarily Responsible for the Design, Development, Significant Modification of Algorithmic Trading Strategies or Responsible for the Day-to-Day Supervision of Such Activities). In that 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.

In place of the deleted rule, and parts of the amended rules, the Exchange proposes to adopt new Chapter XXXI, Registration, Qualification and Continuing Education, in the Exchange's Rulebook, together with conforming changes to certain existing Exchange rules. In the new Chapter XXXI series of rules, 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>17</sup>

The Exchange notes that the structure of this rule filing, as well as newly proposed Chapter XXXI series of rules, is based on a recent rule filing by the Exchange's affiliate, MIAX, as well as the Nasdaq Stock Market.<sup>18</sup> The similar Nasdaq Stock Market filing also amended, reorganized and enhanced membership, registration and qualification rules for the Nasdaq Stock Market, and was based on the FINRA Rule Changes.<sup>19</sup> The proposed new Chapter XXXI series of rules is also being proposed for adoption by MIAX PEARL's affiliate exchange, MIAX Emerald, LLC as new MIAX Emerald Chapter XIX, in order to facilitate compliance with membership, registration and qualification regulatory requirements by members of two or more of the affiliated exchanges among MIAX, MIAX PEARL and MIAX Emerald. The references throughout this filing to Exchange Rules 301, 1301, 1302, 1306, 1307, 1309, 1310 and 1319 will be construed to refer to the corresponding MIAX Rules for those same rule numbers.

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<sup>17</sup> See id.

<sup>18</sup> See Securities Exchange Act Release No. 84386 (October 9, 2018), 83 FR 51988 (October 15, 2018) (SR-NASDAQ-2018-078) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules). See also supra note 4.

<sup>19</sup> See id.



## **New Proposed Rules and Proposed Changes to Current Exchange Rules**

### **A. Registration Requirements (Proposed Exchange Rule 3100)**

Exchange Rule 203(a) currently requires individuals and associated persons engaged, or to be engaged, in the securities business of a Member to be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange.<sup>20</sup>

Proposed Exchange Rule 3100 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 Exchange Rule 3101, unless exempt from registration pursuant to proposed Exchange Rule 3102.<sup>21</sup> Proposed Exchange Rule 3100 also provides that such person is not qualified to

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<sup>20</sup> In general the 3100 Series would conform the Exchange's rules to FINRA's rules as revised in the FINRA Rule Changes, with modifications tailored to the business of the Exchange. However, the Exchange also proposes to adopt Exchange Rule 3900, Interpretation and Policy .12, based upon a current Nasdaq Stock Market rule. See Nasdaq Stock Market, General 9, Section 1, Rule 1.1210, Supplementary Material .12; see also Securities Exchange Act Release No. 84386 (October 9, 2018), 83 FR 51988 (October 15, 2018) (SR-NASDAQ-2018-078). These provisions govern the process for applying for registration and amending the registration application, as well as for notifying the Exchange of termination of the Member's association with a person registered with the Exchange. The Exchange proposes to adopt Exchange Rule 3900, Interpretation and Policy .12, in order to have uniform processes and requirements in this area across the Exchange.

<sup>21</sup> 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 Exchange Rules 3100, Interpretations and Policies .03 and .10 of Exchange Rule 3100, Exchange Rules 3101 and 3103, and also by omitting as unnecessary from proposed Exchange Rule 3101, a limitation on the qualification of a General Securities Sales Supervisor to supervise the origination and structuring of an underwriting.

function in any registered capacity other than that for which the person is registered, unless otherwise stated in the rules.

**B. Minimum Number of Registered Principals (Proposed Exchange Rule 3100, Interpretation and Policy .01)**

Exchange Rule 203, Interpretation and Policy .07, requires Members to register with the Exchange in a heightened capacity each individual acting in any of the following capacities: (a) officer; (b) partner; (c) director; (d) supervisor of proprietary trading, market making or brokerage activities; and/or (e) supervisor of those engaged in proprietary trading, market-making or brokerage activities with respect to those activities. Each Member or Member organization must register with the Exchange at least two individuals acting in one or more of these capacities (the “two-principal requirement”). The Exchange may waive this requirement if a Member demonstrates conclusively that only one individual acting in one or more of these capacities should be required to register. A Member or Member organization that conducts proprietary trading only and has 25 or fewer registered persons may be required to have one officer or partner who is registered in this capacity.<sup>22</sup>

The Exchange proposes to delete these requirements and in their place adopt new Exchange Rule 3100, Interpretation and Policy .01. The proposed rule would provide firms that limit the scope of their business with flexibility in satisfying the two-principal requirement. In particular, proposed Exchange Rule 3100, Interpretation and Policy .01, would require each Member, except a Member with only one associated person, to have at least two officers or

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<sup>22</sup> Currently, Exchange Rule 203, Interpretation and Policy .08, describes when a Member is considered to be conducting only proprietary trading of the Member. Because the Exchange now proposes to delete Exchange Rule 203 in its entirety, Interpretation and Policy .08 of that rule would be reworded and relocated to Exchange Rule 100, Definitions, as a defined term.

partners who are registered as 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>23</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. Additionally, proposed Exchange Rule 3100, Interpretation and Policy .01, would provide that any Member with only one associated person is excluded from the two principal requirement. Proposed Exchange Rule 3100, Interpretation and Policy .01, would provide that existing Members as well as new applicants may request a waiver of the two-principal requirement, consistent with current Exchange Rule 203, Interpretation and Policy .07. Finally, the Exchange proposes to retain the existing provision in Exchange Rule 203 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>24</sup>

### **C. Permissive Registrations (Proposed Exchange Rule 3100, Interpretation and Policy .02)**

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<sup>23</sup> The principal registration categories are described in greater detail below.

<sup>24</sup> The Exchange does not propose to adopt provisions comparable to FINRA Rule 1210.01, which requires that all FINRA members have a Principal Financial Officer and a Principal Operations Officer, because the Exchange believes that its proposed Exchange Rule 3101(b)(3), Financial and Operations Principal, is sufficient. As described herein, proposed Exchange Rule 3101(b)(3), requires Member firms operating pursuant to certain provisions of the Commission's rules to designate at least one Financial and Operations Principal. Further, the Exchange does not propose to adopt FINRA Rule 1210.01, which requires 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 propose to recognize the Investment Banking Principal or the Research Principal registration categories, and the Registered Options Principal registration requirement is set forth in proposed Exchange Rule 3101(b)(7), and its inclusion is therefore unnecessary in proposed Exchange Rule 3100.

Current Exchange Rule 203(a) prohibits a Member from maintaining a registration with the Exchange for any person (1) who is no longer active in the Member's securities business, (2) who is no longer functioning in the registered capacity, or (3) where the sole purpose is to avoid the examination requirement. Current Exchange Rule 203(a) further prohibits a Member from making an application for the registration of any person where there is no intent to employ that person in the Member's securities business. A Member may, however, maintain or make application for the registration of an individual who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the Member, or a person who performs administrative support functions for registered personnel, or a person engaged in the securities business of a foreign securities affiliate or subsidiary of the Member.

The Exchange proposes to replace these provisions with proposed Exchange Rule 3100, Interpretation and Policy .02. The Exchange also proposes to expand the scope of permissive registrations and to clarify a Member's obligations regarding individuals who are maintaining such registrations.

Specifically, proposed Exchange Rule 3100, Interpretation and Policy .02, would allow any associated person to apply for or 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 Exchange Rule 3100, Interpretation and Policy .02, would allow 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 proposes 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>25</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 direct supervisor is not required to be a registered person. Members would be required to assign a registered supervisor to this person who would 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 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>26</sup>

**D. Qualification Examinations and Waivers of Examinations (Proposed Exchange Rule 3100, Interpretation and Policy .03)**

Current Exchange Rule 203(a) provides that before a registration can become effective, the individual Member or individual associated person shall submit the appropriate application for registration, pass the Securities Industry Essentials Examination ("SIE"), pass a qualification examination appropriate to the category of registration as prescribed by the Exchange and submit any required registration and examination fees. The Exchange proposes to replace this rule language with new Exchange Rule 3100, Interpretation and Policy .03, Qualification Examinations and Waivers of Examinations.

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<sup>25</sup> FINRA Rule 1210.02 specifically cites FINRA's supervisory system rule, FINRA Rule 3110, by number. Proposed Exchange Rule 3100, Interpretation and Policy .02, refers generally to the Exchange's supervision rules rather than identifying them by number.

<sup>26</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. See proposed Exchange Rule 3100, Interpretation and Policy .02.

As part of the FINRA Rule Changes, FINRA adopted a restructured representative-level qualification examination program whereby representative-level registrants would be required to take a general knowledge examination (the SIE) and a specialized knowledge examination appropriate to the representative's job functions at the firm with which he or she is associating.<sup>27</sup> Therefore, proposed Exchange Rule 3100, Interpretation and Policy .03, provides that before the registration of a person as a representative can become effective under proposed Exchange Rule 3100, such person must pass the SIE and an appropriate representative-level qualification examination as specified in proposed Exchange Rule 3101(c). Proposed Exchange Rule 3100, Interpretation and Policy .03, also provides that before the registration of a person as a principal can become effective under proposed Exchange Rule 3100, such person must pass an appropriate principal-level qualification examination as specified in proposed Rule 3101(b).

Further, proposed Exchange Rule 3100, Interpretation and Policy .03, provides that if the job functions of a registered 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>28</sup> Thus under the proposed rule change, individuals seeking registration in two or

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<sup>27</sup> See supra note 14.

<sup>28</sup> FINRA 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 Exchange Rule 3100, Interpretation and Policy .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 3100, Interpretation and Policy .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 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

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 permitted under the existing 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 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

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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 Exchange Rule 3100, Interpretation and Policy .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.



operative date of the proposed rule change, could do so by taking only the appropriate specialized knowledge examination.<sup>29</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>30</sup>

In addition, individuals 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.

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<sup>29</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>30</sup> As discussed below, the Exchange proposes a four-year expiration period for the SIE.

Finally, under current Exchange Rule 203, Interpretation and Policy .05, the Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications for registration. The Exchange proposes to replace Exchange Rule 203, Interpretation and Policy .05, with proposed Exchange Rule 3100, Interpretation and Policy .03, with changes that track FINRA Rule 1210.03. 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-level or principal-level registration category. Moreover, proposed Exchange Rule 3100, Interpretation and Policy .03, states that the Exchange will consider waivers of the SIE alone or the SIE and the representative-level and principal-level examination(s) for such individuals.

**E. Requirements for Registered Persons Functioning as Principals for a Limited Period (Proposed Exchange Rule 3100, Interpretation and Policy .04)**

The Exchange proposes to adopt new Exchange Rule 3100, Interpretation and Policy .04, which provides that subject to the requirements of proposed Exchange Rule 3101, Interpretation and Policy .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, 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 prerequisite registration, fee and examination requirements prior to designation as principal. These requirements 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>31</sup> Similarly, the proposed rule would permit a Member to 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 proposed Rule 3101.<sup>32</sup> This provision, which has no counterpart in the Exchange's current rules, is intended to provide flexibility to Members in meeting their principal requirements on a temporary basis.

**F. Rules of Conduct for Taking Examinations and Confidentiality of Examinations (Proposed Exchange Rule 3100, Interpretation and Policy .05)**

Before taking an examination, FINRA currently requires each candidate to agree to the SIE 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. The 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 qualification examination, the FINRA Sanction Guidelines recommend barring the individual.<sup>33</sup>

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<sup>31</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.

<sup>32</sup> Proposed Exchange Rule 3100, Interpretation and Policy .04, omits the reference in FINRA Rule 1210.04 to Foreign Associates, which is a registration category not recognized by the Exchange, but otherwise tracks the language of FINRA Rule 1210.04.

<sup>33</sup> See FINRA Sanction Guidelines (March 2019), VII. Qualification and Membership, pg. 38, at [https://www.finra.org/sites/default/files/Sanctions\\_Guidelines.pdf](https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf).

Effective October 1, 2018, FINRA 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 proposed Exchange Rule 3100, Interpretation and Policy .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 301.<sup>34</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 Exchange Rule 3100, Interpretation and Policy .05, also 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 shall be prohibited and shall be

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<sup>34</sup> Exchange Rule 301, Just and Equitable Principles of Trade, prohibits Members from engaging in acts or practices inconsistent with just and equitable principles of trade. Persons associated with Members have the same duties and obligations as Members under Exchange Rule 301.

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 Exchange Rule 3100, Interpretation and Policy .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>35</sup>

**G. Waiting Periods for Retaking a Failed Examination (Proposed Exchange Rule 3100, Interpretation and Policy .06)**

The Exchange proposes to adopt new Exchange Rule 3100, Interpretation and Policy .06, which provides that any person who fails to pass a qualification examination prescribed by the Exchange may retake that examination again after a period of 30 calendar days from the date of the person's last attempt to pass that examination.<sup>36</sup> Proposed Exchange Rule 3100, Interpretation and Policy .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 has elapsed from the date of the person's last attempt to pass that examination. These waiting periods would apply to the SIE and the representative and principal examinations.<sup>37</sup>

**H. Continuing Education ("CE") Requirements (Proposed Exchange Rule 3100, Interpretation and Policy .07)**

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<sup>35</sup> The Exchange does not propose to adopt portions of FINRA Rule 1210.05, which apply to non-associated persons, over whom the Exchange would in any event have no jurisdiction.

<sup>36</sup> Proposed Exchange Rule 3100, Interpretation and Policy .06, has no counterpart in existing Exchange rules.

<sup>37</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 does not propose to include this language in proposed Exchange Rule 3100, Interpretation and Policy .06, as the Exchange will not apply the proposed 3100 Series of rules in any event to individuals who are not associated persons of Members.

The Exchange proposes to delete Exchange Rule 203, Interpretation and Policy .04, which CE requirements the Exchange proposes to reorganize, renumber and adopt as proposed Exchange Rule 3103. 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 proposes to adopt Exchange Rule 3100, Interpretation and Policy .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 Exchange Rule 3103, as discussed below.<sup>38</sup> 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 Exchange Rule 3100, Interpretation and Policy .07, would also provide that if a person registered with a Member has a CE deficiency with respect to that registration, such person shall not be permitted to be registered in another registration category with the Exchange under proposed Exchange Rule 3101 with that Member or to be registered in any registration category with the Exchange under proposed Exchange Rule 3101 with another Member, until the person has satisfied the deficiency.

**I. Lapse of Registration and Expiration of SIE (Proposed Exchange Rule 3100, Interpretation and Policy .08)**

Current Exchange Rule 203(h) states that any person whose registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration has been terminated

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<sup>38</sup> The Exchange proposes to delete Exchange Rule 203, Interpretation and Policy .04, in connection with the adoption of proposed Exchange Rule 3100, Interpretation and Policy .07.

for two or more years immediately preceding the date of receipt by the Exchange of a new application shall be required to pass a qualification examination appropriate to the category of registration as prescribed by the Exchange. 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. The two year period is calculated from the termination date to the date the Exchange receives a new application for registration. The Exchange proposes to delete Exchange Rule 203(h), and replace it with proposed Exchange Rule 3100, Interpretation and Policy .08, Lapse of Registration and Expiration of SIE.

Proposed Exchange Rule 3100, Interpretation and Policy .08, contains language comparable to that of Exchange Rule 203(h) but also 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 Exchange Rule 3100, Interpretation and Policy .08, also sets forth the expiration period of the SIE. Based on the content covered on the SIE, the Exchange proposes 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-level and principal-level registrations. The representative-level 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 Exchange Rule 3100, Interpretation and Policy .09)**

The Exchange proposes to adopt Exchange Rule 3100, Interpretation and Policy .09, to provide a process whereby individuals working for a financial services industry affiliate of a Member<sup>39</sup> would be able to terminate their registrations with the Member and 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>40</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

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<sup>39</sup> Proposed Exchange Rule 3100, Interpretation and Policy .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 Commission, Commodity Futures Trading Commission (“CFTC”), state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

<sup>40</sup> There is no counterpart to proposed Exchange Rule 3100, Interpretation and Policy .09, in the Exchange’s existing rules. FINRA Rule 1210.09 was adopted as a new waiver process for FINRA registration, as part of the FINRA Rule Changes. See supra note 14.



by the affiliate(s) without the individuals having to requalify by examination each time they return to the firm.<sup>41</sup>

Under the waiver process in proposed Exchange Rule 3100, Interpretation and Policy .09, 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>42</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>43</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>44</sup>

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<sup>41</sup> See supra note 14.

<sup>42</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>43</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>44</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 also proposes to make corresponding changes in proposed Exchange Rule 3103.

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

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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.

request to the Exchange,<sup>45</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 otherwise been subject to a statutory disqualification while the individual was designated as an FSA-eligible person with a Member.

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<sup>45</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.

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>46</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 Exchange Rule 3100, Interpretation and Policy .10)**

The Exchange proposes to adopt Exchange Rule 3100, Interpretation and Policy .10, Status of Persons Serving in the Armed Forces of the United States.<sup>47</sup> Proposed Exchange Rule 3100, Interpretation and Policy .10(a), would 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 placed, after proper notification to the Exchange, on inactive status. The registered person would not need to be re-registered by such Member upon his or her return to active employment with the Member. The registered person would remain eligible to receive transaction-related compensation, including continuing commissions, and the employing Member may allow the registered person to

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<sup>46</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.

<sup>47</sup> There is no counterpart to proposed Exchange Rule 3100, Interpretation and Policy .10, in the Exchange's current rules.

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 would be inactive, they could not perform any of the functions and responsibilities performed by a registered person, nor would they be required to complete either the continuing education Regulatory Element or Firm Element set forth in proposed Exchange Rule 3103 during the pendency of such inactive status.<sup>48</sup>

Pursuant to proposed Exchange Rule 3100, Interpretation and Policy .10(b), 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, would not be required to pay dues or assessments during the pendency of such inactive status and would not be required to pay an admission fee upon return to active participation in the securities business. This relief would be available only to a sole proprietor Member and only while the person remains on active military duty, and the sole proprietor would be required to promptly notify the Exchange of his or her return to active participation in the securities business.

Pursuant to proposed Exchange Rule 3100, Interpretation and Policy .10(c), if a person who was formerly registered with a Member volunteers for or is called into active duty in the

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<sup>48</sup> The relief provided in proposed Exchange Rule 3100, Interpretation and Policy .10(a), would be available to a registered person 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. The relief would apply 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 would be required to promptly notify the Exchange of such person's return to active employment with the Member.

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 proposed Exchange Rule 3100, Interpretation and Policy .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 would 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 proposed Exchange Rule 3100, Interpretation and Policy .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.

Further, under proposed Exchange Rule 3100, Interpretation and Policy .10(c), 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 would defer the lapse of registration requirements set forth in proposed Exchange Rule 3100, Interpretation and Policy .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 would 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 would terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person did not re-register with a Member within 90 days following completion of active service, 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 would 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 proposed Exchange Rule 3100, Interpretation and Policy .08.<sup>49</sup>

**L. Impermissible Registrations (Proposed Exchange Rule 3100, Interpretation and Policy .11)**

Current Exchange Rule 203(a) prohibits a Member from maintaining a registration with the Exchange for any person (1) who is no longer active in the Member's securities business, (2) who is no longer functioning in the registered capacity, or (3) where the sole purpose is to avoid an examination requirement. This rule also prohibits a Member from applying for the registration of a person as representative or principal where the Member does not intend to

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<sup>49</sup> See Nasdaq Stock Market, General 9, Regulation, Section 1 Registration, Qualification and Continuing Education, Rule 1.1210.10(c).

employ the person in its securities business. These prohibitions do not apply to the current permissive registration categories identified in Exchange Rule 203(a).

In light of proposed Exchange Rule 3100, Interpretation and Policy .02, Permissive Registrations, discussed above, the Exchange proposes to delete these provisions of current Exchange Rule 203(a) and instead adopt proposed Exchange Rule 3100, Interpretation and Policy .11, prohibiting a Member from registering or maintaining the registration of a person unless the registration is consistent with the requirements of proposed Exchange Rule 3100.<sup>50</sup>

### **M. Registration Categories (Proposed Exchange Rule 3101)**

The Exchange proposes to adopt new and revised registration category rules and related definitions in proposed Exchange Rule 3101, Registration Categories.<sup>51</sup>

#### **1. Definitions (Proposed Exchange Rule 3101(a))<sup>52</sup>**

The Exchanges proposes to adopt Exchange Rule 3101(a) to define certain registration categories and terms used throughout the Exchange's new proposed 3100s Series of rules. First, the Exchange proposes to adopt a definition for the term "actively engaged in the management of the Member's securities business," which is used to describe the functions of a "principal," as

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<sup>50</sup> As discussed above, the Exchange also proposes to adopt Exchange Rule 3100, Interpretation and Policy .12, Application for Registration and Jurisdiction, which is not included in FINRA Rule 1210. Proposed Exchange Rule 3100, Interpretation and Policy .12, is based upon portions of current Exchange Rules 203 and 1301. See also supra note 20.

<sup>51</sup> For ease of reference, the Exchange proposes to adopt as Exchange Rule 3101, Interpretation and Policy .07, in chart form, a Summary of Qualification Requirements for each of the Exchange's permitted registration categories discussed below.

<sup>52</sup> The Exchange notes that proposed Exchange Rule 3101 differs from the Nasdaq Stock Market rule filing in that the Exchange has consolidated the definitions for various registration categories into one section, proposed Exchange Rule 3101(a), whereas the Nasdaq Stock Market filing includes the registration category definition in each individual section pertaining to that specific registration category type. See supra note 18.



more fully discussed below.<sup>53</sup> The Exchange proposes that the term “actively engaged in the management of the Member’s securities business” means 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.

Next, the Exchange proposes to adopt a definition for the term “Financial and Operations Principal,” which the Exchange proposes to 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.

Next, the Exchange proposes to adopt a definition for the term “principal” and include it in newly proposed Exchange Rule 3101(a). The Exchange proposes to adopt a definition of “principal,” which would mean 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

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<sup>53</sup> See also supra note 9.

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). The term "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.

Finally, the Exchange proposes to adopt a definition for the term "representative" in proposed Exchange Rule 3101(a). Currently, the Exchange's rules do not define the term "representative." Proposed Exchange Rule 3101(a) 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.

## **2. Principal Registration Categories (Proposed Exchange Rule 3101(b))**

### **i. General Securities Principal (Proposed Rule 3101(b)(1))**

The Exchange currently does not impose a General Securities Principal registration obligation. The Exchange proposes to adopt Exchange Rule 3101(b)(1), which would establish an obligation to register as a General Securities Principal, subject to certain exceptions.<sup>54</sup> Proposed Exchange Rule 3101(b)(1) states that each principal is required to register with the Exchange as a General Securities Principal, except that if a principal's activities are limited to the functions of a Compliance Official, a Financial and Operations Principal, a Securities Trader

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<sup>54</sup> There is no counterpart to proposed Exchange Rule 3101(b)(1) in the Exchange's current rules.

Principal, a Securities Trader Compliance Officer, or a Registered Options Principal, then the principal shall appropriately register in one or more of those categories.<sup>55</sup> Proposed Exchange Rule 3101(b)(1)(i)(C) 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, however, that if the principal is engaged in options sales activities, he or she would be required to register as a General Securities Sales Supervisor or as a Registered Options Principal.<sup>56</sup>

Proposed Exchange Rule 3101(b)(1)(ii) 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.

The Exchange does not propose to adopt FINRA Rule 1220(a)(2)(B), which permits 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.<sup>57</sup>

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<sup>55</sup> The Exchange proposes to recognize the General Securities Principal registration category for the first time in this proposed rule change.

<sup>56</sup> See Nasdaq Stock Market, General 9, Regulation, Section 1, Registration, Qualification and Continuing Education, Rule 1.1220(a)(2)(A)(i)-(iv). Proposed Exchange Rule 3901(b)(1) deviates somewhat from the counterpart FINRA rule in that it does not offer various limited registration categories provided for in FINRA Rule 1220(a)(2)(A). The Exchange therefore proposes to reserve Exchange Rules 3901(b)(1)(i)(B) and (D).

<sup>57</sup> Proposed Exchange Rule 3101(b)(1) 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

## ii. Compliance Official (Proposed Exchange Rule 3101(b)(2))

Currently, Exchange Rule 203(f) requires each Member and Member organization that is a registered broker-dealer to designate a Chief Compliance Officer on Schedule A of Form BD and requires individuals designated as a Chief Compliance Officer to register with the Exchange and pass the appropriate heightened qualification examination(s) as prescribed by the Exchange.<sup>58</sup>

The Exchange proposes to delete Exchange Rule 203(f) and adopt Exchange Rule 3101(b)(2) in its place. Proposed Exchange Rule 3101(b)(2) would provide 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 would be required, prior to or concurrent with such registration, to pass the Compliance Official qualification examination.

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FINRA does not. Additionally, proposed Rule 3101(b)(1)(i)(A) 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."

<sup>58</sup> Exchange Rule 203(f) further provides that 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: (1) any statutory disqualification as defined in Section 3(a)(39) of the Act; (2) a suspension; (3) the imposition of a fine of \$5,000 or more for a violation of any provision of any securities law or regulation, or any agreement with, rule or standard of conduct of any securities governmental agency, or securities self-regulatory organization; or (4) the imposition of a fine of \$5,000 or more by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; shall be required to register in this heightened category of registration as prescribed by the Exchange, but shall be exempt from the requirement to pass the heightened qualification examination as prescribed by the Exchange.

However, pursuant to Exchange Rule 3101(b)(2)(iii), 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 proposed Exchange Rule 3101(b) that corresponds to the limited scope of the Member's business.

Additionally, proposed Exchange Rule 3101(b)(2)(iv) would provide 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 (c)(3) as a Securities Trader, and to pass the Compliance Official qualification exam.<sup>59</sup>

### **iii. Financial and Operations Principal (Proposed Exchange Rule 3101(b)(3))**

Current Exchange Rule 203(e) provides that each Member subject to Rule 15c3-1 of the Act must designate a Financial/Operations Principal. It specifies that the duties of a

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<sup>59</sup> Proposed Exchange Rule 3101(b)(2) differs from FINRA Rule 1220(a)(3), Compliance Officer, as 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 Exchange Rule 3101(b)(2), 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.

Financial/Operations Principal shall include taking appropriate actions to assure that the Member complies with applicable financial and operational requirements under the Rules and the Act, including but not limited to those requirements relating to the submission of financial reports and the maintenance of books and records. It requires Financial/Operations Principal to have successfully completed the Financial and Operations Principal Examination (Series 27 Exam). It further provides that each Financial/Operations Principal designated by a Member shall be registered in that capacity with the Exchange as prescribed by the Exchange, and that a Financial/Operations Principal of a Member may be a full-time employee, a part-time employee or independent contractor of the Member.

The Exchange proposes to delete Exchange Rule 203(e) and adopt in its place Exchange Rule 3101(b)(3). Under the new rule, every Member of the Exchange that is operating pursuant to the provisions of Rules 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8) of the Commission, shall designate at least one Financial and Operations Principal who shall be responsible for performing the duties described in paragraph (a) of proposed Exchange Rule 3101. In addition, each person associated with a Member who performs such duties shall be required to register as a Financial and Operations Principal with the Exchange.

Proposed Exchange Rule 3101(b)(3)(ii) would require all individuals registering as a Financial and Operations Principal to pass the Financial and Operations Principal qualification examination before such registration may become effective. Finally, proposed Exchange Rule 3101(b)(3)(iii) would prohibit a person registered solely as a Financial and Operations Principal

from functioning in a principal capacity with responsibility over any area of business activity not described in paragraph (a) of the rule for a Financial and Operations Principal.<sup>60</sup>

**iv. Investment Banking Principal (Proposed Exchange Rule 3101(b)(4))**

The Exchange does not recognize the Investment Banking Principal registration category and proposes to reserve Exchange Rule 3101(b)(4), retaining the caption solely to facilitate comparison with FINRA's rules.

**v. Research Principal (Proposed Exchange Rule 3101(b)(5))**

The Exchange does not recognize the Research Principal registration category and proposes to reserve Exchange Rule 3101(b)(5), retaining the caption solely to facilitate comparison with FINRA's rules.

**vi. Securities Trader Principal (Proposed Exchange Rule 3101(b)(6))**

Current Exchange Rule 203(c) provides that Members that are individuals and associated persons of Members included within the definition of Option Principal in Exchange Rule 100 and who will have supervisory responsibility over the securities trading activities described in Exchange Rule 203(d) 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 1302(e) and pass the SIE and General Securities Principal qualification examination (Series 24). A person who is qualified and registered as a

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<sup>60</sup> FINRA Rule 1220(a)(4) differs from proposed Exchange Rule 3101(b)(3) in that it includes an Introducing Broker-Dealer Financial and Operations Principal registration requirement. Additionally, proposed Exchange Rule 3101(b)(3) 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 does not propose to adopt a Principal Financial Officer or Principal Operations Officer requirement similar to FINRA Rule 1220(a)(4)(B), as it believes the Financial and Operations Principal requirement is sufficient.

Securities Trader Principal under this provision may only have supervisory responsibility over the Securities Trader activities specified in Exchange Rule 203(d), unless such person is separately qualified and registered in another appropriate principal registration category, such as the General Securities Principal registration category. Current Exchange Rule 203(c)(2) provides that a person who is registered as a General Securities Principal shall not be qualified to supervise the trading activities described in Exchange Rule 203(d), unless such person has also become qualified and registered as a Securities Trader under Exchange Rule 1302(e) and become registered as a Securities Trader Principal.

The Exchange proposes to delete Exchange Rule 203(c) and adopt in its place Exchange Rule 3101(b)(6), Securities Trader Principal. Proposed Exchange Rule 3101(b)(6) would require that a principal responsible for supervising the securities trading activities specified in proposed Exchange Rule 3101(c)(3)<sup>61</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.

**vii. Registered Options Principal (Proposed Exchange Rule 3101(b)(7))**

The Exchange proposes to adopt Exchange Rule 3101(b)(7), Registered Options Principal, which would require that each Member that is engaged in transactions in options with the public have at least one Registered Options Principal.<sup>62</sup> Currently, Exchange Rule 100, Definitions, provides a definition for an “Options Principal.” In accordance with the proposal to

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<sup>61</sup> Proposed Exchange Rule 3101(c)(3), discussed below, provides for representative-level registration in the “Securities Trader” category.

<sup>62</sup> Proposed Exchange Rule 3101(b)(7) differs from FINRA Rule 1220(a)(8) in that it omits certain references to other specific FINRA rules.



adopt Exchange Rule 3101(b)(7), Registered Options Principal, the Exchange proposes to delete the definition for “Options Principal” in Exchange Rule 100, Definitions. As discussed below, the Exchange proposes to adopt a corresponding definition for a “Registered Options Principal” in Exchange Rule 100, which would refer to proposed Exchange Rule 3101(b)(7). In addition, each principal as defined in proposed Exchange Rule 3101(a) who is responsible for supervising a Member’s options sales practices with the public would be required to register with the Exchange as a Registered Options Principal, with one exception, as follows. 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 (b)(9) of this Rule in lieu of registering as a Registered Options Principal.<sup>63</sup>

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<sup>63</sup> Current Exchange Rule 1301(a) provides that no Member 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 supervision of options sales practices or a person to whom the designated general partner or executive officer (pursuant to Exchange Rule 1308) or another Registered Options Principal delegates the authority to supervise options sales practices shall be designated as Options Principals. Exchange Rule 1301(b) provides that individuals who are delegated responsibility pursuant to Exchange Rule 1308 for the acceptance of discretionary accounts, for approving exceptions to a Member’s criteria or standards for uncovered options accounts, and for approval of communications, shall be designated as Options Principals and are required to qualify as an Options Principal by passing the SIE, the General Securities Representative qualification examination (Series 7) and the Registered Options Principal Qualification Examination (Series 4). The foregoing provisions of Exchange Rule 1301 are specific to conducting an options business with the public and are not proposed to be amended in this proposed rule change, other than conforming all references to “Options Principal” with “Registered Options Principal,” as more fully discussed herein. Exchange Rule 203(g), which merely serves as a cross-reference to Exchange Rules 1301 and 1302, is unnecessary and is therefore proposed to be deleted with the rest of Exchange Rule 203.

Pursuant to proposed Exchange Rule 3101(b)(7)(ii), subject to the lapse of registration provisions in proposed Exchange Rule 3100, Interpretation and Policy .08, each person registered with the Exchange 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 would 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 would, prior to or concurrent with such registration, be required to become registered pursuant to proposed Exchange Rule 3101(c)(1) as a General Securities Representative and pass the Registered Options Principal qualification examination.<sup>64</sup>

**viii. Government Securities Principal (Proposed Exchange Rule 3101(b)(8))**

The Exchange does not recognize the Government Securities Principal registration category and proposes to reserve Exchange Rule 3101(b)(8), retaining the caption solely to facilitate comparison with FINRA's rules.

**ix. General Securities Sales Supervisor (Proposed Exchange Rules 3101(b)(9) and Interpretation and Policy .04)**

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<sup>64</sup> Although the Exchange does not currently list security futures products, it also proposes to adopt Exchange Rule 3101, Interpretation and Policy .02, which provides that each person who is registered with the Exchange as a General Securities Representative, Registered Options Principal, or General Securities Sales Supervisor shall be eligible to engage in security futures activities as a principal provided that such individual completes a Firm Element program as set forth in proposed Exchange Rule 3103 that addresses security futures products before such person engages in security futures activities. Unlike FINRA Rule 1220.02, proposed Exchange Rule 3101, Interpretation and Policy .02, omits references to United Kingdom Securities Representatives and Canada Securities Representatives, which are registration categories the Exchange does not recognize. In addition, the Exchange also proposes to adopt Exchange Rule 3101, Interpretation and Policy .03, which requires notification to the Exchange in the event a Member's sole Registered Options Principal is terminated, resigns, becomes incapacitated or is otherwise unable to perform the duties of a Registered Options Principal, and imposes certain restrictions on the Member's options business in that event.

The Exchange proposes to adopt Exchange Rule 3101(b)(9), General Securities Sales Supervisor, as well as Interpretation and Policy .04 to Exchange Rule 3101, which explains the purpose of the General Securities Sales Supervisor registration category.<sup>65</sup> Proposed Exchange Rule 3101(b)(9) provides that each principal, as defined in proposed paragraph (a) 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. Further, a person registered solely as a General Securities Sales Supervisor would not be qualified to perform any of the following activities: (i) supervision of market making commitments; (ii) supervision of the custody of broker-dealer or customer funds or securities for purposes of Exchange Act Rule 15c3-3; or (iii) supervision of overall compliance with financial responsibility rules for broker-dealers promulgated pursuant to the provisions of the Exchange Act.<sup>66</sup>

Each person seeking to register as a General Securities Sales Supervisor would be required, prior to or concurrent with such registration, to become registered pursuant to proposed

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<sup>65</sup> Proposed Exchange Rule 3101(b)(9) has no counterpart in the Exchange's current rules.

<sup>66</sup> Proposed Exchange Rule 3101(b)(9), however, omits the FINRA Rule 1220(a)(10) prohibition against supervision of the origination and structuring of underwritings as unnecessary, as this kind activity does not fall within the scope of "securities trading" covered by the Exchange's new 3100 Series of rules.

Exchange Rule 3101(c)(1) of the rule as a General Securities Representative and pass the General Securities Sales Supervisor qualification examinations.<sup>67</sup>

**x. Investment Company and Variable Contracts Products Principal (Proposed Exchange Rule 3101(b)(10))**

The Exchange does not recognize the Investment Company and Variable Contracts Products Principal category and is reserving proposed Exchange Rule 3101(b)(10), retaining the caption solely to facilitate comparison with FINRA's rules.

**xi. Direct Participation Programs Principal (Proposed Exchange Rule 3101(b)(11))**

The Exchange does not recognize the Direct Participation Programs Principal registration category and is reserving proposed Exchange Rule 3101(b)(11), retaining the caption solely to facilitate comparison with FINRA's rules.

**xii. Private Securities Offerings Principal (Proposed Exchange Rule 3101(b)(12))**

The Exchange does not recognize the Private Securities Offerings Principal registration category and is reserving proposed Exchange Rule 3101(b)(12), retaining the caption solely to facilitate comparison with FINRA's rules.

**xiii. Supervisory Analyst (Proposed Exchange Rule 3101(b)(13))**

The Exchange does not recognize the Supervisory Analyst registration category and is reserving proposed Exchange Rule 3101(b)(13), retaining the caption solely to facilitate comparison with FINRA's rules.

**3. Representative Registration Categories (Proposed Exchange Rule 3101(c))**

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<sup>67</sup> Unlike FINRA Rule 1220.04, proposed Exchange Rule 3101, Interpretation and Policy .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.

**i. General Securities Representative (Proposed Exchange Rule 3101(c)(1))**

The Exchange proposes to adopt Exchange Rule 3101(c)(1), General Securities Representative. Proposed Exchange Rule 3101(c)(1)(i) would state that each representative as defined in proposed Exchange Rule 3101(a) is required to register with the Exchange as a General Securities Representative, subject to the exception 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 Exchange Rule 3101(c)(1)(ii) would require that individuals registering as General Securities Representatives pass the SIE and the General Securities Representative examination except that individuals registered as a General Securities Representatives within two years prior to October 1, 2018 would be qualified to register as General Securities Representatives without passing any additional qualification examinations.<sup>68</sup>

In addition, the Exchange proposes to adopt Exchange Rule 3101, Interpretation and Policy .01, to provide certain individuals who are associated persons of firms and who hold specific 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. In particular, pursuant to proposed Exchange Rule 3101, Interpretation and Policy .01, individuals who are in good standing as representatives with the Financial Conduct Authority in

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<sup>68</sup> Proposed Exchange Rule 3101(c)(1)(i) differs from FINRA Rule 1220(b)(2)(A) in that it omits references to various registration categories which FINRA recognizes but which the Exchange does not propose to recognize.

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. This proposed rule would provide individuals with a United Kingdom or Canadian qualification more flexibility to obtain an Exchange representative-level registration.

**ii. Operations Professional (Proposed Exchange Rule 3101(c)(2))**

The Exchange does not recognize the Operations Professional registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(2), Operations Professional, and related Interpretation and Policy .05 to proposed Exchange Rule 3101, Scope of Operations Professional Requirement, retaining the caption solely to facilitate comparison with FINRA's rules.

**iii. Securities Trader (Proposed Exchange Rule 3101(c)(3))**

Pursuant to current Exchange Rule 203(d)(1) and (2), Members that are individuals and associated persons of Members must register with the Exchange 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, 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 proposes to delete Exchange Rule 203(d), and replace it with proposed Exchange Rule 3101(c)(3).<sup>69</sup> Proposed Exchange Rule 3101(c)(3) would require each representative as defined in paragraph (a) of this Rule 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 Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by, or is under common control with a Member.

Additionally, proposed Exchange Rule 3101(c)(3)(i) 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>70</sup>

For purposes of this proposed new registration requirement an “algorithmic trading strategy” would be an automated system that generates or routes orders (or order-related

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<sup>69</sup> Proposed Exchange Rule 3101(c)(3)(i) 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>70</sup> As noted above, this new registration requirement was 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) (SR-FINRA-2016-007) (Order Approving a Proposed Rule Change to Require Registration as Securities Traders of Associated Persons Primarily Responsible for the Design, Development, Significant Modification of Algorithmic Trading Strategies or Responsible for the Day-to-Day Supervision of Such Activities).

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 – whether independently or via a linked router – would not constitute an algorithmic trading strategy.<sup>71</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, 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

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<sup>71</sup> See supra note 16.



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 Exchange Rule 3101(c)(3)(ii), 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, to pass the SIE and the Securities Trader qualification examination.

Further, the Exchange proposes to adopt Exchange Rule 3101(c)(3), which defines the requirements and qualifications for a Securities Trader, as well as its proposal to amend Exchange Rule 100 to insert definitions for “proprietary trading” and “proprietary trading firm,” as described below.

**iv. Investment Banking Representative (Proposed Exchange Rule 3101(c)(4))**

The Exchange does not recognize the Investment Banking Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(4), Investment Banking Representative, retaining the caption solely to facilitate comparison with FINRA’s rules.

**v. Research Analyst (Proposed Exchange Rule 3101(c)(5))**

The Exchange does not recognize the Research Analyst registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(5), Research Analyst, retaining the caption solely to facilitate comparison with FINRA’s rules.

**vi. Investment Company and Variable Products Representative (Proposed Exchange Rule 3101(c)(6))**

The Exchange does not recognize the Investment Company and Variable Products Representative registration category for its associated persons. The Exchange therefore proposes

to reserve Exchange Rule 3101(c)(6), Investment Company and Variable Products

Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

**vii. Direct Participation Programs Representative (Proposed Exchange Rule 3101(c)(7))**

The Exchange does not recognize the Direct Participation Programs Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(7), Direct Participation Programs Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

**viii. Private Securities Offerings Representative (Proposed Exchange Rule 3101(c)(8))**

The Exchange does not recognize the Private Securities Offerings Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(8), Private Securities Offerings Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

**4. Eliminated Registration Categories (Proposed Exchange Rule 3101, Interpretation and Policy .06)**

Proposed Exchange Rule 3101, Interpretation and Policy .06, has no practical relevance to the Exchange, but is included because the Exchange proposes to adopt rules similar to FINRA's 1200 Series, on a near uniform basis. Accordingly, proposed Exchange Rule 3101, Interpretation and Policy .06, provides that, subject to the lapse of registration provisions in proposed Exchange Rule 3100, Interpretation and Policy .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 such categories terminate their registration with the Exchange and the

registration remains terminated for two or more years, they would not be able to re-register in that category.

### **5. Grandfathering Provisions**

In addition to the grandfathering provisions in proposed Exchange Rule 3101(b)(1)(ii) (relating to General Securities Principals) and proposed Exchange Rule 3101, Interpretation and Policy .06 (relating to the eliminated registration categories), the Exchange proposes to include grandfathering provisions in proposed Exchange Rule 3101(b)(7) (Registered Options Principal), Exchange Rule 3101(c)(1) (General Securities Representative), and Exchange Rule 3101(c)(3) (Securities Trader). Specifically, the proposed grandfathering provisions provide that, subject to the lapse of registration provisions in proposed Exchange Rule 3100, Interpretation and Policy .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 Exchange Rules 3902 and Interpretation and Policy .01)**

Current Exchange Rule 203(b) currently provides that the following individual Members and individual associated persons of Members are not required to register:

- (1) individual associated persons whose functions are solely and exclusively clerical or ministerial;
- (2) individual Members and individual associated persons who are not actively engaged in the securities business;

(3) individual associated persons whose functions are related solely and exclusively to the Member's need for nominal corporate officers or for capital participation; (4) individual associated persons whose functions are related solely and exclusively to:

(i) transactions in commodities;

(ii) transactions in security futures; and/or

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

The Exchange proposes to delete Exchange Rule 203(b) and adopt provisions of Exchange Rule 203(b) in the newly proposed Exchange Rule 3102, subject to certain changes. Current Exchange Rule 203(b)(2) exempts from registration those individual Members and individual associated persons of Members who are not actively engaged in the securities business. Exchange Rule 203(b)(3) 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>72</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 individual Members and individual associated persons who are not "actively engaged" in a Member's 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

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<sup>72</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.

consistent with this analytical framework.<sup>73</sup> The Exchange therefore proposes to delete these exemptions. Exchange Rule 203(b)(4)(iii) 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 Exchange Rule 3102 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>74</sup> Additionally, the Exchange proposes to adopt paragraph (c) of proposed Exchange Rule 3102, 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>75</sup>

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<sup>73</sup> The Exchange also proposes to delete Exchange Rule 203, Interpretation and Policy .06, which specifies circumstances in which the Exchange considers an individual Member or an individual associated person to be engaged in the securities business of a Member or Member organization. The Exchange believes these determinations may be made on case by case basis, depending upon facts and circumstances.

<sup>74</sup> Proposed Exchange Rule 3102 differs from FINRA Rule 1230 in that it contains a number of additional exemptions, based upon current Nasdaq Stock Market Rule 1.1230, which are not included in FINRA Rule 1230. See Nasdaq Stock Market, General 9, Regulations, Section 1, Registration, Qualification and Continuing Education, Rule 1.1230.

<sup>75</sup> Individuals described by paragraph (c) of proposed Exchange Rule 3102 who are associated with FINRA members may be registered with FINRA as Foreign Associates pursuant to FINRA Rule 1220.06. FINRA eliminated this registration category effective October 1, 2018, and the Exchange never recognized it.

The Exchange proposes to adopt Exchange Rule 3102, Interpretation and Policy .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 Continuing Education Requirements (Proposed Exchange Rule 3103)**

Continuing education for registered persons 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 proposes to adopt Exchange Rule 3103 to better organize the continuing education requirements.<sup>76</sup>

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

The Exchange proposes to adopt the term “covered person” in proposed Exchange Rule 3103(a). For purposes of the Regulatory Element, the Exchange proposes to define the term “covered person” in proposed Exchange Rule 3103(a)(5), as any person registered pursuant to proposed Exchange Rule 3100, including any person who is permissively registered pursuant to proposed Exchange Rule 3100, Interpretation and Policy .02, and any person who is designated as

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<sup>76</sup> Proposed Exchange Rule 3103 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.

eligible for an FSA waiver pursuant to proposed Exchange Rule 3100, Interpretation and Policy .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 Exchange Rule 3100, Interpretation and Policy .09. In addition, consistent with proposed Exchange Rule 3100, Interpretation and Policy .09, proposed Exchange Rule 3103(a)(1) 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 proposes 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 Exchange Rule 3103(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.

## **2. Firm Element**

The Exchange believes that training in ethics and professional responsibility should apply to all covered registered persons. Therefore, proposed Exchange Rule 3103(b)(2)(ii), 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 Requirements for Uniform Rules (Proposed Exchange Rule 3104)**

Current Exchange Rule 203, Interpretations and Policies .01 - .03, state that each individual required to register shall electronically file a Uniform Application for Securities Industry Registration ("Form U4") through the Central Registration Depository system ("Web CRD") operated by FINRA and to electronically submit to Web CRD any required amendments to Form U4. Further, any Member or Member organization that discharges or terminates the employment or retention of an individual required to register must comply with certain termination filing requirements, which include the filing of a Form U5.

The Exchange proposes to delete current Exchange Rule 203, Interpretations and Policies .01 - .03, and to replace them with proposed Exchange Rule 3104, Electronic Filing Requirements for Uniform Forms, which will consolidate Form U4 and Form U5 electronic filing requirements into a single rule. The proposed rule provides that all forms required to be filed under the Exchange's registration rules including the Exchange Rule 3100 Series shall be filed through an electronic process or such other process as the Exchange may prescribe to the Central Registration Depository. It also would impose certain new requirements.

Under proposed Exchange Rule 3104(b), each Member would be required to designate registered principal(s) or corporate officer(s) who are responsible for supervising a firm's electronic filings. The registered principal(s) or corporate officer(s) who has or have the responsibility to review and approve the forms filed pursuant to the rule would be required to acknowledge, electronically, that he or she is filing this information on behalf of the Member and the Member's associated persons. Under proposed Exchange Rule 3104, Interpretation and

Policy .01, the registered principal(s) or corporate officer(s) could delegate filing responsibilities to an associated person (who need not be registered) but could not delegate any of the supervision, review, and approval responsibilities mandated in proposed Exchange Rule 3104(b). The registered principal(s) or corporate officer(s) would be required to take reasonable and appropriate action to ensure that all delegated electronic filing functions were properly executed and supervised.

Pursuant to proposed Exchange Rule 3104(c)(1), every initial and transfer electronic Form U4 filing and any amendments to the disclosure information on Form U4 must be based on a manually signed Form U4 provided to the Member or applicant for membership by the person on whose behalf the Form U4 is being filed. As part of the Member's recordkeeping requirements, it would be required to 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) under the Act and make them available promptly upon regulatory request. An applicant for membership must also retain every manually signed Form U4 it receives during the application process and make them available promptly upon regulatory request. Proposed Exchange Rule 3104(c)(2) and Interpretations and Policies .03 and .04 to proposed Exchange Rule 3104, provide for the electronic filing of Form U4 amendments without the individual's manual signature, subject to certain safeguards and procedures.

Proposed Exchange Rule 3104(d) provides that upon filing an electronic Form U4 on behalf of a person applying for registration, a Member must promptly submit fingerprint information for that person and that the Exchange may make a registration effective pending receipt of the fingerprint information. It further provides that if a Member fails to submit the fingerprint information within 30 days after filing of an electronic Form U4, the person's

registration will be deemed inactive, requiring the person to immediately cease all activities requiring registration or performing any duties and functioning in any capacity requiring registration. Under this proposed rule, the Exchange must administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated could reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of proposed Exchange Rule 3101. Upon application and a showing of good cause, the Exchange could extend the 30-day period.

Proposed Exchange Rule 3104(e) would require initial filings and amendments of Form U5 to be submitted electronically. As part of the Member's recordkeeping requirements, it would be required to retain such records for a period of not less than three years, the first two years in an easily accessible place, in accordance with Rule 17a-4 under the Act, and to make such records available promptly upon regulatory request.

Finally, under proposed Exchange Rule 3104, Interpretation and Policy .02, a Member could 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 would remain responsible for complying with the requirements of the Rule.

#### **Q. Exchange Rule 100, Definitions**

The Exchange proposes to amend Exchange Rule 100, Definitions, to amend the term "associated person" or "person associated with a Member." Currently, the term associated person or person associated with a Member means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person

directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member.

The Exchange proposes to amend the term associated person or person associated with a Member to insert, at the end of the definition, the phrase “except that any person associated with a Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Rules.” With the proposed change, the definition for associated person or person associated with a Member would be as follows:

The term “associated person” or “person associated with a Member” means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member, except that any person associated with a Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Rules.

Additionally, the Exchange proposes to amend Exchange Rule 100, Definitions to adopt definitions for the following terms: person, proprietary trading, and proprietary trading firm. The Exchange proposes that the term “person” shall refer to a natural person, corporation, partnership (general or limited), limited liability company, association, joint stock company, trust, trustee of a trust fund, or any organized group of persons whether incorporated or not and a government or agency or political subdivision thereof.

The Exchange proposes that the term “proprietary trading” for the purpose of proposed Exchange Rule 3100, means trading done by a Member having the following characteristics: (i) the Member is not required by Section 15(b)(8) of the Act to become a FINRA member but is a Member of another registered securities exchange not registered solely under Section 6(g) of the Act; (ii) all funds used or proposed to be used by the Member are the trading member's own capital, traded through the Member's own accounts; (iii) the Member does not, and will not, have

customers; and (iv) all persons registered on behalf of the Member acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Member.

The Exchange proposes that the term “proprietary trading firm” for the purpose of proposed Exchange Rule 3100, means a Member organization or applicant with the following characteristics: (i) the applicant is not required by Section 15(b)(8) of the Act to become a FINRA Member but is a Member of another registered securities exchange not registered solely under Section 6(g) of the Act; (ii) all funds used or proposed to be used by the applicant for trading are the applicant's own capital, traded through the applicant's own accounts; (iii) the applicant does not, and will not have customers; and (iv) all principals and representatives of the applicant acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the applicant.

As described above, in connection with the Exchange’s proposal to adopt Exchange Rule 3101(b)(7), Registered Options Principal, the Exchange proposes to delete the definition for “Options Principal” from Exchange Rule 100 in order to provide consistency and clarity within the rule text. In proposed Exchange Rule 3101(b)(7), the Exchange sets forth the requirements and qualifications for a “Registered Options Principal,” which incorporates, and adds to, the rule text for the Exchange’s current definition for “Options Principal.” Accordingly, the Exchange proposes to delete the term “Options Principal” and replace all references in the rule text to “Options Principal” with the new proposed term “Registered Options Principal.” The Exchange also proposes to adopt a definition for a “Registered Options Principal” in Exchange Rule 100, that will provide a cross-reference to Exchange Rule 3101(b)(7).

## **R. Exchange Rule 601, Registered Options Traders**

In accordance with the proposed change to delete Exchange Rule 203 in its entirety, revise and relocate the provisions of Exchange Rule 203 to the newly proposed 3100 Series, the Exchange proposes to amend a cross-reference in Exchange Rule 601(b)(2). Currently, Exchange Rule 601(b)(2) has a cross-reference to Exchange Rule 203(a). The Exchange proposes to amend that cross-reference to proposed Exchange Rule 3100.

#### **S. Exchange Rule 1000, Disciplinary Jurisdiction**

The Exchange proposes to amend a cross-reference in Exchange Rule 1000(c). Currently, Exchange Rule 1000(c) has a cross-reference to Exchange Rule 1302. The Exchange proposes to amend that cross-reference to proposed Exchange Rule 3100, Interpretation and Policy .12.

#### **T. Exchange Rule 1014, Imposition of Fines for Minor Rule Violations**

The Exchange proposes to amend the cross-references in Exchange Rule 1014(d)(14) that are to current Exchanges Rules 1301, 1302 and 1303. The Exchange proposes to amend the cross-references in Exchange 1014(d)(14) that are to Exchange Rules 1301, 1302 and 1303 to the newly proposed Exchange Rule 3104, which incorporates that deleted rule text. Accordingly, the Exchange proposes to amend the cross-reference in Exchange Rule 1014(d)(14) to now be to proposed Exchange Rule 3104.

##### **b. Statutory Basis**

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>77</sup> Specifically, the Exchange believes the proposed rule change is

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<sup>77</sup> 15 U.S.C. 78f(b).

consistent with the Section 6(b)(5)<sup>78</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>79</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule changes will streamline, and bring consistency and uniformity to, the Exchange's registration rules. The Exchange believes that this will, in turn, assist Members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule changes 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 changes 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 changes 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

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

<sup>79</sup> Id.

specified levels of competence and knowledge while working in areas ancillary to the securities business. The proposed rule changes 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.

The proposed rule changes, including additional definitions and changes to cross-references, make organizational changes to the Exchange's registration and qualification rules, in order to prevent unnecessary regulatory burdens and to 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 changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are 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 3100 Series of rules, which are similar in many respects to the registration-related requirements adopted by FINRA effective October 1, 2018, as well as the Exchange's affiliate, MIAAX, 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 Exchange, thereby promoting uniformity of regulation across markets. The proposed 3100 Series of rules should in fact remove administrative burdens that currently exist for Members seeking to register associated persons on the Exchange featuring varying registration-related requirements. Additionally, all similarly-situated associated persons of Members will be treated similarly under the new 3100 Series of rules in terms of standards of training, experience and competence for persons associated with Exchange Members.

With respect in particular to registration of developers of algorithmic trading strategies, 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 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)**

Pursuant to Section 19(b)(3)(A) of the Act<sup>80</sup> and Rule 19b-4(f)(6)<sup>81</sup> thereunder, the Exchange has designated this proposal as one that 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

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<sup>80</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>81</sup> 17 CFR 240.19b-4(f)(6).

after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that this proposal would 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 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, Nasdaq Stock Market and MIAX rules as well as to the FINRA Rule Changes that became effective October 1, 2018. Aligning the Exchange's rules in this area with those of FINRA 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. 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.

Further, the Exchange believes its proposed changes to add certain definitions and amend cross-references do not significantly affect the protection of investors or the public interest because the proposed changes clarify the Exchange's proposed 3100 Series of rules and fix incorrect cross-references in light of the new reorganized rules. The Exchange believes the proposed changes do not impose any significant burden on competition because they apply evenly to all Exchange participants and do not raise any new or novel regulatory issues.

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. Furthermore, a proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

As described above, the Exchange's proposed rule changes are similar to the recent rule changes by the Exchange's affiliate, MIAX, FINRA and the Nasdaq Stock Market. Accordingly, because the proposed rule changes are based on the rules of other Self-Regulatory Organizations and thus do not introduce any new or novel regulatory issues, the Exchange has filed this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>82</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>83</sup>

The Exchange respectfully requests that the Commission waive the 30-day operative period. Waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the Exchange's proposal seeks to provide consistency and uniformity throughout its rules relating to registration, qualification examinations and continuing education of associated persons of Members with the same rules of the Exchange's affiliate, MIAX and MIAX Emerald. Additionally, the Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal will reduce confusion among investors by creating uniform membership, registration and qualification rules among the Exchange and its affiliates, MIAX and MIAX Emerald. The

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<sup>82</sup> 17 CFR 240.19b-4.

<sup>83</sup> 17 CFR 240.19b-4(f)(6).

Exchange's proposal will harmonize its rules applicable to membership, registration and qualification with those of the Exchange's affiliates, MIAX and MIAX Emerald.

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

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

The proposed changes are based on the rules of MIAX, FINRA and Nasdaq Stock Market, as described above.

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

Not applicable.

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

Not applicable.

**11. Exhibits**

1. Completed 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. 34- ; File No. SR-PEARL-2020-01)

January \_\_, 2020

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC to Amend, Reorganize and Enhance its Membership, Registration and Qualification Rules and Consolidate these Rules into New Chapter XXXI Registration, Qualification and Continuing Education

Pursuant to the provisions of 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 January 9, 2020 MIAX PEARL, LLC (“MIAX PEARL” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a 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 is filing a proposal 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://www.miaxoptions.com/rule-filings/pearl> at MIAX PEARL’s principal office, and at the Commission’s Public Reference Room.

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

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

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

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

The Exchange proposes to reorganize and enhance its membership, registration and qualification rules, make conforming changes to certain other rules, and organize the proposed changes into a new chapter of rules in the MIAX PEARL Rulebook. All of the proposed rules and changes to existing Exchange rules are based on existing rules of other options exchanges.<sup>3</sup> The proposed rules are intended to amend, reorganize and enhance the Exchange's membership, registration and qualification requirements rules to align with recent similar changes by the Exchange's affiliate, MIAX,<sup>4</sup> as well as the Nasdaq Stock Market and FINRA. MIAX PEARL proposes to adopt new Chapter XXXI<sup>5</sup> to the Exchange's rules.

**Overview**

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<sup>3</sup> See Miami International Securities Exchange, LLC ("MIAX") Rules, Chapter XIX, Registration, Qualification and Continuing Education; The Nasdaq Stock Market LLC ("Nasdaq Stock Market") Rules, General 9, Regulation; Financial Industry Regulatory Authority, Inc. ("FINRA") Rules, Rule 1000, Member Application and Associated Person Registration.

<sup>4</sup> See Securities Exchange Act Release No. 87830 (December 20, 2019), 84 FR 72025 (December 30, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules and Consolidate These Rules Into New Chapter XIX Registration, Qualification and Continuing Education) (SR-MIAX-2019-50).

<sup>5</sup> The Exchange proposes to reserve Chapters XIX through XXX for anticipated future use.

The Exchange adopted registration requirements to ensure that associated persons<sup>6</sup> attain and maintain specified levels of competence and knowledge pertinent to their function. In general, the Exchange's current rules require that persons engaged in a Member's<sup>7</sup> securities business who are to function as representatives<sup>8</sup> or principals<sup>9</sup> register with the Exchange in each category of registration appropriate to their functions by passing one or more qualification examinations<sup>10</sup> and exempt specified associated persons from the registration requirements.<sup>11</sup> They also prescribe ongoing continuing education requirements for registered persons.<sup>12</sup> The

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<sup>6</sup> The term "associated person" or "person associated with a Member" means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member. See Exchange Rule 100. In accordance with other proposed changes in this filing, and as further described below, the Exchange proposes to amend the terms "associated person" or "person associated with a Member."

<sup>7</sup> The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an "Electronic Exchange Member" or "Market Maker." Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>8</sup> 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. See proposed Exchange Rule 3101.

<sup>9</sup> 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. See proposed Exchange Rule 3101.

<sup>10</sup> See proposed Exchange Rule 3101, Registration Categories, and Exchange Rule 1302, Registration of Representatives.

<sup>11</sup> See proposed Exchange Rule 3102, Associated Persons Exempt from Registration.

<sup>12</sup> See proposed Exchange Rule 3103, Continuing Education Requirements.



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

In 2017, the Commission approved a Financial Industry Regulatory Authority, Inc. (“FINRA”) proposed rule change consolidating and adopting prior National Association of Securities Dealers, Inc. (“NASD”) rules and rules incorporated from the New York Stock Exchange (“NYSE”) relating to qualification and registration requirements into the Consolidated FINRA Rulebook,<sup>13</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>14</sup> On December 20, 2019, the

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<sup>13</sup> The current FINRA rulebook consists of: (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from the 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>14</sup> See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR-FINRA-2017-007) (Order Approving Proposed Rule Change to Adopt Consolidated Registration Rules, Restructure the Representative-Level Qualification Examination Program, Allow Permissive Registration, Establish Exam Waiver Process for Persons Working for Financial Services Affiliate of Member, and Amend the Continuing Education Requirements). 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.

Commission noticed a proposal by the Exchange's affiliate, MIAX, to amend, reorganize and enhance MIAX's own membership, registration and qualification requirements rules in response to the FINRA Rule Changes.<sup>15</sup>

The Exchange now proposes to amend, reorganize and enhance its own membership, registration and qualification requirements rules in response to the changes by the Exchange's affiliate, MIAX, as well as the FINRA Rule Changes. In addition, 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 rule change.<sup>16</sup>

As part of the Exchange's proposed rule changes, current Exchange Rule 203, Qualification and Registration of Members and Associated Persons, is proposed to be deleted. This current Exchange rule provision is relocated in amended form into the new proposed Chapter XXXI Exchange rules.

Additionally, the Exchange proposes to amend Exchange Rule 100, Definitions, Exchange Rule 601, Registered Option Traders, Exchange Rule 1000, Disciplinary Jurisdiction, and Exchange Rule 1014, Imposition of Fines for Minor Rule Violations. These proposed changes correspond to the similar changes made by the Exchange's affiliate, MIAX.

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<sup>15</sup> See supra note 4.

<sup>16</sup> See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (SR-FINRA-2016-007) (Order Approving a Proposed Rule Change to Require Registration as Securities Traders of Associated Persons Primarily Responsible for the Design, Development, Significant Modification of Algorithmic Trading Strategies or Responsible for the Day-to-Day Supervision of Such Activities). In that 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.

In place of the deleted rule, and parts of the amended rules, the Exchange proposes to adopt new Chapter XXXI, Registration, Qualification and Continuing Education, in the Exchange's Rulebook, together with conforming changes to certain existing Exchange rules. In the new Chapter XXXI series of rules, 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>17</sup>

The Exchange notes that the structure of this rule filing, as well as newly proposed Chapter XXXI series of rules, is based on a recent rule filing by the Exchange's affiliate, MIAX, as well as the Nasdaq Stock Market.<sup>18</sup> The similar Nasdaq Stock Market filing also amended, reorganized and enhanced membership, registration and qualification rules for the Nasdaq Stock Market, and was based on the FINRA Rule Changes.<sup>19</sup> The proposed new Chapter XXXI series of rules is also being proposed for adoption by MIAX PEARL's affiliate exchange, MIAX Emerald, LLC as new MIAX Emerald Chapter XIX, in order to facilitate compliance with membership, registration and qualification regulatory requirements by members of two or more of the affiliated exchanges among MIAX, MIAX PEARL and MIAX Emerald. The references throughout this filing to Exchange Rules 301, 1301, 1302, 1306, 1307, 1309, 1310 and 1319 will be construed to refer to the corresponding MIAX Rules for those same rule numbers.

### **New Proposed Rules and Proposed Changes to Current Exchange Rules**

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<sup>17</sup> See id.

<sup>18</sup> See Securities Exchange Act Release No. 84386 (October 9, 2018), 83 FR 51988 (October 15, 2018) (SR-NASDAQ-2018-078) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules). See also supra note 4.

<sup>19</sup> See id.

### **A. Registration Requirements (Proposed Exchange Rule 3100)**

Exchange Rule 203(a) currently requires individuals and associated persons engaged, or to be engaged, in the securities business of a Member to be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange.<sup>20</sup>

Proposed Exchange Rule 3100 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 Exchange Rule 3101, unless exempt from registration pursuant to proposed Exchange Rule 3102.<sup>21</sup> Proposed Exchange Rule 3100 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.

### **B. Minimum Number of Registered Principals (Proposed Exchange Rule 3100, Interpretation and Policy .01)**

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<sup>20</sup> In general the 3100 Series would conform the Exchange's rules to FINRA's rules as revised in the FINRA Rule Changes, with modifications tailored to the business of the Exchange. However, the Exchange also proposes to adopt Exchange Rule 3900, Interpretation and Policy .12, based upon a current Nasdaq Stock Market rule. See Nasdaq Stock Market, General 9, Section 1, Rule 1.1210, Supplementary Material .12; see also Securities Exchange Act Release No. 84386 (October 9, 2018), 83 FR 51988 (October 15, 2018) (SR-NASDAQ-2018-078). These provisions govern the process for applying for registration and amending the registration application, as well as for notifying the Exchange of termination of the Member's association with a person registered with the Exchange. The Exchange proposes to adopt Exchange Rule 3900, Interpretation and Policy .12, in order to have uniform processes and requirements in this area across the Exchange.

<sup>21</sup> 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 Exchange Rules 3100, Interpretations and Policies .03 and .10 of Exchange Rule 3100, Exchange Rules 3101 and 3103, and also by omitting as unnecessary from proposed Exchange Rule 3101, a limitation on the qualification of a General Securities Sales Supervisor to supervise the origination and structuring of an underwriting.

Exchange Rule 203, Interpretation and Policy .07, requires Members to register with the Exchange in a heightened capacity each individual acting in any of the following capacities: (a) officer; (b) partner; (c) director; (d) supervisor of proprietary trading, market making or brokerage activities; and/or (e) supervisor of those engaged in proprietary trading, market-making or brokerage activities with respect to those activities. Each Member or Member organization must register with the Exchange at least two individuals acting in one or more of these capacities (the “two-principal requirement”). The Exchange may waive this requirement if a Member demonstrates conclusively that only one individual acting in one or more of these capacities should be required to register. A Member or Member organization that conducts proprietary trading only and has 25 or fewer registered persons may be required to have one officer or partner who is registered in this capacity.<sup>22</sup>

The Exchange proposes to delete these requirements and in their place adopt new Exchange Rule 3100, Interpretation and Policy .01. The proposed rule would provide firms that limit the scope of their business with flexibility in satisfying the two-principal requirement. In particular, proposed Exchange Rule 3100, Interpretation and Policy .01, would require each Member, except a Member with only one associated person, to have at least two officers or partners who are registered as 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>23</sup> For instance, if

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<sup>22</sup> Currently, Exchange Rule 203, Interpretation and Policy .08, describes when a Member is considered to be conducting only proprietary trading of the Member. Because the Exchange now proposes to delete Exchange Rule 203 in its entirety, Interpretation and Policy .08 of that rule would be reworded and relocated to Exchange Rule 100, Definitions, as a defined term.

<sup>23</sup> The principal registration categories are described in greater detail below.

a firm's business is limited to securities trading, the firm may have two Securities Trader Principals, instead of two General Securities Principals. Additionally, proposed Exchange Rule 3100, Interpretation and Policy .01, would provide that any Member with only one associated person is excluded from the two principal requirement. Proposed Exchange Rule 3100, Interpretation and Policy .01, would provide that existing Members as well as new applicants may request a waiver of the two-principal requirement, consistent with current Exchange Rule 203, Interpretation and Policy .07. Finally, the Exchange proposes to retain the existing provision in Exchange Rule 203 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>24</sup>

**C. Permissive Registrations (Proposed Exchange Rule 3100, Interpretation and Policy .02)**

Current Exchange Rule 203(a) prohibits a Member from maintaining a registration with the Exchange for any person (1) who is no longer active in the Member's securities business, (2) who is no longer functioning in the registered capacity, or (3) where the sole purpose is to avoid the examination requirement. Current Exchange Rule 203(a) further prohibits a Member from

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<sup>24</sup> The Exchange does not propose to adopt provisions comparable to FINRA Rule 1210.01, which requires that all FINRA members have a Principal Financial Officer and a Principal Operations Officer, because the Exchange believes that its proposed Exchange Rule 3101(b)(3), Financial and Operations Principal, is sufficient. As described herein, proposed Exchange Rule 3101(b)(3), requires Member firms operating pursuant to certain provisions of the Commission's rules to designate at least one Financial and Operations Principal. Further, the Exchange does not propose to adopt FINRA Rule 1210.01, which requires 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 propose to recognize the Investment Banking Principal or the Research Principal registration categories, and the Registered Options Principal registration requirement is set forth in proposed Exchange Rule 3101(b)(7), and its inclusion is therefore unnecessary in proposed Exchange Rule 3100.

making an application for the registration of any person where there is no intent to employ that person in the Member's securities business. A Member may, however, maintain or make application for the registration of an individual who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the Member, or a person who performs administrative support functions for registered personnel, or a person engaged in the securities business of a foreign securities affiliate or subsidiary of the Member.

The Exchange proposes to replace these provisions with proposed Exchange Rule 3100, Interpretation and Policy .02. The Exchange also proposes to expand the scope of permissive registrations and to clarify a Member's obligations regarding individuals who are maintaining such registrations.

Specifically, proposed Exchange Rule 3100, Interpretation and Policy .02, would allow any associated person to apply for or 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 Exchange Rule 3100, Interpretation and Policy .02, would allow 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 proposes 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>25</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 direct supervisor is not required to be a registered person. Members would be required to assign a registered supervisor to this person who would 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

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<sup>25</sup> FINRA Rule 1210.02 specifically cites FINRA's supervisory system rule, FINRA Rule 3110, by number. Proposed Exchange Rule 3100, Interpretation and Policy .02, refers generally to the Exchange's supervision rules rather than identifying them by number.



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>26</sup>

**D. Qualification Examinations and Waivers of Examinations (Proposed Exchange Rule 3100, Interpretation and Policy .03)**

Current Exchange Rule 203(a) provides that before a registration can become effective, the individual Member or individual associated person shall submit the appropriate application for registration, pass the Securities Industry Essentials Examination (“SIE”), pass a qualification examination appropriate to the category of registration as prescribed by the Exchange and submit any required registration and examination fees. The Exchange proposes to replace this rule language with new Exchange Rule 3100, Interpretation and Policy .03, Qualification Examinations and Waivers of Examinations.

As part of the FINRA Rule Changes, FINRA adopted a restructured representative-level qualification examination program whereby representative-level registrants would be required to take a general knowledge examination (the SIE) and a specialized knowledge examination appropriate to the representative’s job functions at the firm with which he or she is associating.<sup>27</sup> Therefore, proposed Exchange Rule 3100, Interpretation and Policy .03, provides that before the registration of a person as a representative can become effective under proposed Exchange Rule 3100, such person must pass the SIE and an appropriate representative-level qualification examination as specified in proposed Exchange Rule 3101(c). Proposed Exchange Rule 3100, Interpretation and Policy .03, also provides that before the registration of a person as a principal

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<sup>26</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. See proposed Exchange Rule 3100, Interpretation and Policy .02.

<sup>27</sup> See supra note 14.

can become effective under proposed Exchange Rule 3100, such person must pass an appropriate principal-level qualification examination as specified in proposed Rule 3101(b).

Further, proposed Exchange Rule 3100, Interpretation and Policy .03, provides that if the job functions of a registered 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>28</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 permitted under the existing 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

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<sup>28</sup> FINRA 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 Exchange Rule 3100, Interpretation and Policy .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 3100, Interpretation and Policy .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 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 Exchange Rule 3100, Interpretation and Policy .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.

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 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, could do so by taking only the appropriate specialized knowledge examination.<sup>29</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>30</sup>

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<sup>29</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>30</sup> As discussed below, the Exchange proposes a four-year expiration period for the SIE.

In addition, individuals 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, under current Exchange Rule 203, Interpretation and Policy .05, the Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications for registration. The Exchange proposes to replace Exchange Rule 203, Interpretation and Policy .05, with proposed Exchange Rule 3100, Interpretation and Policy .03, with changes that track FINRA Rule 1210.03. 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-level or principal-level registration category. Moreover, proposed Exchange Rule 3100, Interpretation and Policy .03, states that the Exchange will consider waivers of the SIE alone or the SIE and the representative-level and principal-level examination(s) for such individuals.

**E. Requirements for Registered Persons Functioning as Principals for a Limited Period (Proposed Exchange Rule 3100, Interpretation and Policy .04)**

The Exchange proposes to adopt new Exchange Rule 3100, Interpretation and Policy .04, which provides that subject to the requirements of proposed Exchange Rule 3101, Interpretation and Policy .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, 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 prerequisite registration, fee and examination requirements prior to designation as principal. These requirements 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>31</sup> Similarly, the proposed rule would permit a Member to 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 proposed Rule 3101.<sup>32</sup> This provision, which has no counterpart in the Exchange's current rules, is intended to provide flexibility to Members in meeting their principal requirements on a temporary basis.

**F. Rules of Conduct for Taking Examinations and Confidentiality of Examinations (Proposed Exchange Rule 3100, Interpretation and Policy .05)**

Before taking an examination, FINRA currently requires each candidate to agree to the SIE Rules of Conduct for taking a qualification examination. Among other things, the

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<sup>31</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.

<sup>32</sup> Proposed Exchange Rule 3100, Interpretation and Policy .04, omits the reference in FINRA Rule 1210.04 to Foreign Associates, which is a registration category not recognized by the Exchange, but otherwise tracks the language of FINRA Rule 1210.04.

examination Rules of Conduct require each candidate to attest that he or she is in fact the person who is taking the examination. The 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 qualification examination, the FINRA Sanction Guidelines recommend barring the individual.<sup>33</sup>

Effective October 1, 2018, FINRA 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 proposed Exchange Rule 3100, Interpretation and Policy .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 301.<sup>34</sup> Further, if the Exchange determines that an associated person has violated the SIE Rules of Conduct or the Rules of

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<sup>33</sup> See FINRA Sanction Guidelines (March 2019), VII. Qualification and Membership, pg. 38, at [https://www.finra.org/sites/default/files/Sanctions\\_Guidelines.pdf](https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf).

<sup>34</sup> Exchange Rule 301, Just and Equitable Principles of Trade, prohibits Members from engaging in acts or practices inconsistent with just and equitable principles of trade. Persons associated with Members have the same duties and obligations as Members under Exchange Rule 301.

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 Exchange Rule 3100, Interpretation and Policy .05, also 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 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. Finally, proposed Exchange Rule 3100, Interpretation and Policy .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>35</sup>

**G. Waiting Periods for Retaking a Failed Examination (Proposed Exchange Rule 3100, Interpretation and Policy .06)**

The Exchange proposes to adopt new Exchange Rule 3100, Interpretation and Policy .06, which provides that any person who fails to pass a qualification examination prescribed by the Exchange may retake that examination again after a period of 30 calendar days from the date of the person's last attempt to pass that examination.<sup>36</sup> Proposed Exchange Rule 3100, Interpretation and Policy .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

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<sup>35</sup> The Exchange does not propose to adopt portions of FINRA Rule 1210.05, which apply to non-associated persons, over whom the Exchange would in any event have no jurisdiction.

<sup>36</sup> Proposed Exchange Rule 3100, Interpretation and Policy .06, has no counterpart in existing Exchange rules.

examination until 180 calendar days has elapsed from the date of the person's last attempt to pass that examination. These waiting periods would apply to the SIE and the representative and principal examinations.<sup>37</sup>

#### **H. Continuing Education ("CE") Requirements (Proposed Exchange Rule 3100, Interpretation and Policy .07)**

The Exchange proposes to delete Exchange Rule 203, Interpretation and Policy .04, which CE requirements the Exchange proposes to reorganize, renumber and adopt as proposed Exchange Rule 3103. 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 proposes to adopt Exchange Rule 3100, Interpretation and Policy .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 Exchange Rule 3103, as discussed below.<sup>38</sup> 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 Exchange Rule 3100, Interpretation and Policy .07, would also provide that if a person registered with a Member has a CE deficiency with respect to that registration, such person shall not be permitted to be registered in another registration category with the

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<sup>37</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 does not propose to include this language in proposed Exchange Rule 3100, Interpretation and Policy .06, as the Exchange will not apply the proposed 3100 Series of rules in any event to individuals who are not associated persons of Members.

<sup>38</sup> The Exchange proposes to delete Exchange Rule 203, Interpretation and Policy .04, in connection with the adoption of proposed Exchange Rule 3100, Interpretation and Policy .07.



Exchange under proposed Exchange Rule 3101 with that Member or to be registered in any registration category with the Exchange under proposed Exchange Rule 3101 with another Member, until the person has satisfied the deficiency.

**I. Lapse of Registration and Expiration of SIE (Proposed Exchange Rule 3100, Interpretation and Policy .08)**

Current Exchange Rule 203(h) states that any person whose registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration has been terminated for two or more years immediately preceding the date of receipt by the Exchange of a new application shall be required to pass a qualification examination appropriate to the category of registration as prescribed by the Exchange. 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. The two year period is calculated from the termination date to the date the Exchange receives a new application for registration. The Exchange proposes to delete Exchange Rule 203(h), and replace it with proposed Exchange Rule 3100, Interpretation and Policy .08, Lapse of Registration and Expiration of SIE.

Proposed Exchange Rule 3100, Interpretation and Policy .08, contains language comparable to that of Exchange Rule 203(h) but also 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 Exchange Rule 3100, Interpretation and Policy .08, also sets forth the expiration period of the SIE. Based on the content covered on the SIE, the Exchange proposes 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-level and principal-level registrations. The representative-level 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 Exchange Rule 3100, Interpretation and Policy .09)**

The Exchange proposes to adopt Exchange Rule 3100, Interpretation and Policy .09, to provide a process whereby individuals working for a financial services industry affiliate of a Member<sup>39</sup> would be able to terminate their registrations with the Member and 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

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<sup>39</sup> Proposed Exchange Rule 3100, Interpretation and Policy .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 Commission, Commodity Futures Trading Commission (“CFTC”), state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

(“FSA”) waiver.<sup>40</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 return to the firm.<sup>41</sup>

Under the waiver process in proposed Exchange Rule 3100, Interpretation and Policy .09, 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>42</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>43</sup> provided that the other conditions of the waiver, as described below, have

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<sup>40</sup> There is no counterpart to proposed Exchange Rule 3100, Interpretation and Policy .09, in the Exchange’s existing rules. FINRA Rule 1210.09 was adopted as a new waiver process for FINRA registration, as part of the FINRA Rule Changes. See supra note 14.

<sup>41</sup> See supra note 14.

<sup>42</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>43</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.

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>44</sup>

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

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<sup>44</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.

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.

having to retake an examination). The Exchange also proposes to make corresponding changes in proposed Exchange Rule 3103.

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>45</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

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<sup>45</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.

(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>46</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 Exchange Rule 3100, Interpretation and Policy .10)**

The Exchange proposes to adopt Exchange Rule 3100, Interpretation and Policy .10, Status of Persons Serving in the Armed Forces of the United States.<sup>47</sup> Proposed Exchange Rule 3100, Interpretation and Policy .10(a), would 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 placed, after proper notification to the Exchange, on inactive status. The registered person would not need to be re-registered by such Member upon his or her return to active employment with the

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<sup>46</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.

<sup>47</sup> There is no counterpart to proposed Exchange Rule 3100, Interpretation and Policy .10, in the Exchange's current rules.

Member. The registered person would remain eligible to receive transaction-related compensation, including continuing commissions, and the employing Member may allow the registered 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 would be inactive, they could not perform any of the functions and responsibilities performed by a registered person, nor would they be required to complete either the continuing education Regulatory Element or Firm Element set forth in proposed Exchange Rule 3103 during the pendency of such inactive status.<sup>48</sup>

Pursuant to proposed Exchange Rule 3100, Interpretation and Policy .10(b), 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, would not be required to pay dues or assessments during the pendency of such inactive status and would not be required to pay an admission fee upon return to active participation in the securities business. This relief would be available only to a sole proprietor Member and only while the person remains on active military duty, and the sole proprietor would be required to promptly notify the Exchange of his or her return to active participation in the securities business.

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<sup>48</sup> The relief provided in proposed Exchange Rule 3100, Interpretation and Policy .10(a), would be available to a registered person 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. The relief would apply 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 would be required to promptly notify the Exchange of such person's return to active employment with the Member.

Pursuant to proposed Exchange Rule 3100, Interpretation and Policy .10(c), 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 proposed Exchange Rule 3100, Interpretation and Policy .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 would 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 proposed Exchange Rule 3100, Interpretation and Policy .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.

Further, under proposed Exchange Rule 3100, Interpretation and Policy .10(c), 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 would defer the lapse of registration requirements set



forth in proposed Exchange Rule 3100, Interpretation and Policy .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 would 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 would terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person did not re-register with a Member within 90 days following completion of active service, 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 would 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 proposed Exchange Rule 3100, Interpretation and Policy .08.<sup>49</sup>

**L. Impermissible Registrations (Proposed Exchange Rule 3100, Interpretation and Policy .11)**

Current Exchange Rule 203(a) prohibits a Member from maintaining a registration with the Exchange for any person (1) who is no longer active in the Member's securities business, (2) who is no longer functioning in the registered capacity, or (3) where the sole purpose is to avoid an examination requirement. This rule also prohibits a Member from applying for the registration of a person as representative or principal where the Member does not intend to

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<sup>49</sup> See Nasdaq Stock Market, General 9, Regulation, Section 1 Registration, Qualification and Continuing Education, Rule 1.1210.10(c).

employ the person in its securities business. These prohibitions do not apply to the current permissive registration categories identified in Exchange Rule 203(a).

In light of proposed Exchange Rule 3100, Interpretation and Policy .02, Permissive Registrations, discussed above, the Exchange proposes to delete these provisions of current Exchange Rule 203(a) and instead adopt proposed Exchange Rule 3100, Interpretation and Policy .11, prohibiting a Member from registering or maintaining the registration of a person unless the registration is consistent with the requirements of proposed Exchange Rule 3100.<sup>50</sup>

### **M. Registration Categories (Proposed Exchange Rule 3101)**

The Exchange proposes to adopt new and revised registration category rules and related definitions in proposed Exchange Rule 3101, Registration Categories.<sup>51</sup>

#### **1. Definitions (Proposed Exchange Rule 3101(a))<sup>52</sup>**

The Exchanges proposes to adopt Exchange Rule 3101(a) to define certain registration categories and terms used throughout the Exchange's new proposed 3100s Series of rules. First, the Exchange proposes to adopt a definition for the term "actively engaged in the management of the Member's securities business," which is used to describe the functions of a "principal," as

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<sup>50</sup> As discussed above, the Exchange also proposes to adopt Exchange Rule 3100, Interpretation and Policy .12, Application for Registration and Jurisdiction, which is not included in FINRA Rule 1210. Proposed Exchange Rule 3100, Interpretation and Policy .12, is based upon portions of current Exchange Rules 203 and 1301. See also supra note 20.

<sup>51</sup> For ease of reference, the Exchange proposes to adopt as Exchange Rule 3101, Interpretation and Policy .07, in chart form, a Summary of Qualification Requirements for each of the Exchange's permitted registration categories discussed below.

<sup>52</sup> The Exchange notes that proposed Exchange Rule 3101 differs from the Nasdaq Stock Market rule filing in that the Exchange has consolidated the definitions for various registration categories into one section, proposed Exchange Rule 3101(a), whereas the Nasdaq Stock Market filing includes the registration category definition in each individual section pertaining to that specific registration category type. See supra note 18.

more fully discussed below.<sup>53</sup> The Exchange proposes that the term “actively engaged in the management of the Member’s securities business” means 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.

Next, the Exchange proposes to adopt a definition for the term “Financial and Operations Principal,” which the Exchange proposes to 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.

Next, the Exchange proposes to adopt a definition for the term “principal” and include it in newly proposed Exchange Rule 3101(a). The Exchange proposes to adopt a definition of “principal,” which would mean 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

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<sup>53</sup> See also supra note 9.

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). The term "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.

Finally, the Exchange proposes to adopt a definition for the term "representative" in proposed Exchange Rule 3101(a). Currently, the Exchange's rules do not define the term "representative." Proposed Exchange Rule 3101(a) 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.

## **2. Principal Registration Categories (Proposed Exchange Rule 3101(b))**

### **i. General Securities Principal (Proposed Rule 3101(b)(1))**

The Exchange currently does not impose a General Securities Principal registration obligation. The Exchange proposes to adopt Exchange Rule 3101(b)(1), which would establish an obligation to register as a General Securities Principal, subject to certain exceptions.<sup>54</sup> Proposed Exchange Rule 3101(b)(1) states that each principal is required to register with the Exchange as a General Securities Principal, except 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

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<sup>54</sup> There is no counterpart to proposed Exchange Rule 3101(b)(1) in the Exchange's current rules.

principal shall appropriately register in one or more of those categories.<sup>55</sup> Proposed Exchange Rule 3101(b)(1)(i)(C) 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, however, that if the principal is engaged in options sales activities, he or she would be required to register as a General Securities Sales Supervisor or as a Registered Options Principal.<sup>56</sup>

Proposed Exchange Rule 3101(b)(1)(ii) 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.

The Exchange does not propose to adopt FINRA Rule 1220(a)(2)(B), which permits 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.<sup>57</sup>

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<sup>55</sup> The Exchange proposes to recognize the General Securities Principal registration category for the first time in this proposed rule change.

<sup>56</sup> See Nasdaq Stock Market, General 9, Regulation, Section 1, Registration, Qualification and Continuing Education, Rule 1.1220(a)(2)(A)(i)-(iv). Proposed Exchange Rule 3901(b)(1) deviates somewhat from the counterpart FINRA rule in that it does not offer various limited registration categories provided for in FINRA Rule 1220(a)(2)(A). The Exchange therefore proposes to reserve Exchange Rules 3901(b)(1)(i)(B) and (D).

<sup>57</sup> Proposed Exchange Rule 3101(b)(1) 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 3101(b)(1)(i)(A) 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

## ii. Compliance Official (Proposed Exchange Rule 3101(b)(2))

Currently, Exchange Rule 203(f) requires each Member and Member organization that is a registered broker-dealer to designate a Chief Compliance Officer on Schedule A of Form BD and requires individuals designated as a Chief Compliance Officer to register with the Exchange and pass the appropriate heightened qualification examination(s) as prescribed by the Exchange.<sup>58</sup>

The Exchange proposes to delete Exchange Rule 203(f) and adopt Exchange Rule 3101(b)(2) in its place. Proposed Exchange Rule 3101(b)(2) would provide 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 would be required, prior to or concurrent with such registration, to pass the Compliance Official qualification examination. However, pursuant to Exchange Rule 3101(b)(2)(iii), 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 proposed Exchange Rule

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exception more accurately than activities that “include.”

<sup>58</sup> Exchange Rule 203(f) further provides that 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: (1) any statutory disqualification as defined in Section 3(a)(39) of the Act; (2) a suspension; (3) the imposition of a fine of \$5,000 or more for a violation of any provision of any securities law or regulation, or any agreement with, rule or standard of conduct of any securities governmental agency, or securities self-regulatory organization; or (4) the imposition of a fine of \$5,000 or more by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; shall be required to register in this heightened category of registration as prescribed by the Exchange, but shall be exempt from the requirement to pass the heightened qualification examination as prescribed by the Exchange.

3101(b) that corresponds to the limited scope of the Member's business.

Additionally, proposed Exchange Rule 3101(b)(2)(iv) would provide 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 (c)(3) as a Securities Trader, and to pass the Compliance Official qualification exam.<sup>59</sup>

### **iii. Financial and Operations Principal (Proposed Exchange Rule 3101(b)(3))**

Current Exchange Rule 203(e) provides that each Member subject to Rule 15c3-1 of the Act must designate a Financial/Operations Principal. It specifies that the duties of a Financial/Operations Principal shall include taking appropriate actions to assure that the Member complies with applicable financial and operational requirements under the Rules and the Act, including but not limited to those requirements relating to the submission of financial reports and

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<sup>59</sup> Proposed Exchange Rule 3101(b)(2) differs from FINRA Rule 1220(a)(3), Compliance Officer, as 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 Exchange Rule 3101(b)(2), 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.

the maintenance of books and records. It requires Financial/Operations Principal to have successfully completed the Financial and Operations Principal Examination (Series 27 Exam). It further provides that each Financial/Operations Principal designated by a Member shall be registered in that capacity with the Exchange as prescribed by the Exchange, and that a Financial/Operations Principal of a Member may be a full-time employee, a part-time employee or independent contractor of the Member.

The Exchange proposes to delete Exchange Rule 203(e) and adopt in its place Exchange Rule 3101(b)(3). Under the new rule, every Member of the Exchange that is operating pursuant to the provisions of Rules 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8) of the Commission, shall designate at least one Financial and Operations Principal who shall be responsible for performing the duties described in paragraph (a) of proposed Exchange Rule 3101. In addition, each person associated with a Member who performs such duties shall be required to register as a Financial and Operations Principal with the Exchange.

Proposed Exchange Rule 3101(b)(3)(ii) would require all individuals registering as a Financial and Operations Principal to pass the Financial and Operations Principal qualification examination before such registration may become effective. Finally, proposed Exchange Rule 3101(b)(3)(iii) would prohibit a person registered solely as a Financial and Operations Principal from functioning in a principal capacity with responsibility over any area of business activity not described in paragraph (a) of the rule for a Financial and Operations Principal.<sup>60</sup>

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<sup>60</sup> FINRA Rule 1220(a)(4) differs from proposed Exchange Rule 3101(b)(3) in that it includes an Introducing Broker-Dealer Financial and Operations Principal registration requirement. Additionally, proposed Exchange Rule 3101(b)(3) 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 does not propose to adopt a Principal Financial Officer or Principal Operations Officer requirement similar to FINRA Rule 1220(a)(4)(B), as it believes the Financial and Operations Principal requirement is sufficient.



**iv. Investment Banking Principal (Proposed Exchange Rule 3101(b)(4))**

The Exchange does not recognize the Investment Banking Principal registration category and proposes to reserve Exchange Rule 3101(b)(4), retaining the caption solely to facilitate comparison with FINRA's rules.

**v. Research Principal (Proposed Exchange Rule 3101(b)(5))**

The Exchange does not recognize the Research Principal registration category and proposes to reserve Exchange Rule 3101(b)(5), retaining the caption solely to facilitate comparison with FINRA's rules.

**vi. Securities Trader Principal (Proposed Exchange Rule 3101(b)(6))**

Current Exchange Rule 203(c) provides that Members that are individuals and associated persons of Members included within the definition of Option Principal in Exchange Rule 100 and who will have supervisory responsibility over the securities trading activities described in Exchange Rule 203(d) 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 1302(e) and pass the SIE and General Securities Principal qualification examination (Series 24). A person who is qualified and registered as a Securities Trader Principal under this provision may only have supervisory responsibility over the Securities Trader activities specified in Exchange Rule 203(d), unless such person is separately qualified and registered in another appropriate principal registration category, such as the General Securities Principal registration category. Current Exchange Rule 203(c)(2) provides that a person who is registered as a General Securities Principal shall not be qualified to supervise the trading activities described in Exchange Rule 203(d), unless such person has also become qualified and registered as a Securities Trader under Exchange Rule 1302(e) and become registered as a Securities Trader Principal.

The Exchange proposes to delete Exchange Rule 203(c) and adopt in its place Exchange Rule 3101(b)(6), Securities Trader Principal. Proposed Exchange Rule 3101(b)(6) would require that a principal responsible for supervising the securities trading activities specified in proposed Exchange Rule 3101(c)(3)<sup>61</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.

**vii. Registered Options Principal (Proposed Exchange Rule 3101(b)(7))**

The Exchange proposes to adopt Exchange Rule 3101(b)(7), Registered Options Principal, which would require that each Member that is engaged in transactions in options with the public have at least one Registered Options Principal.<sup>62</sup> Currently, Exchange Rule 100, Definitions, provides a definition for an “Options Principal.” In accordance with the proposal to adopt Exchange Rule 3101(b)(7), Registered Options Principal, the Exchange proposes to delete the definition for “Options Principal” in Exchange Rule 100, Definitions. As discussed below, the Exchange proposes to adopt a corresponding definition for a “Registered Options Principal” in Exchange Rule 100, which would refer to proposed Exchange Rule 3101(b)(7). In addition, each principal as defined in proposed Exchange Rule 3101(a) who is responsible for supervising a Member’s options sales practices with the public would be required to register with the Exchange as a Registered Options Principal, with one exception, as follows. 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

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<sup>61</sup> Proposed Exchange Rule 3101(c)(3), discussed below, provides for representative-level registration in the “Securities Trader” category.

<sup>62</sup> Proposed Exchange Rule 3101(b)(7) differs from FINRA Rule 1220(a)(8) in that it omits certain references to other specific FINRA rules.

Supervisor pursuant to paragraph (b)(9) of this Rule in lieu of registering as a Registered Options Principal.<sup>63</sup>

Pursuant to proposed Exchange Rule 3101(b)(7)(ii), subject to the lapse of registration provisions in proposed Exchange Rule 3100, Interpretation and Policy .08, each person registered with the Exchange 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 would 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 would, prior to or concurrent with such registration, be required to become registered pursuant to proposed Exchange Rule 3101(c)(1) as a General Securities Representative and pass the Registered Options Principal qualification examination.<sup>64</sup>

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<sup>63</sup> Current Exchange Rule 1301(a) provides that no Member 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 supervision of options sales practices or a person to whom the designated general partner or executive officer (pursuant to Exchange Rule 1308) or another Registered Options Principal delegates the authority to supervise options sales practices shall be designated as Options Principals. Exchange Rule 1301(b) provides that individuals who are delegated responsibility pursuant to Exchange Rule 1308 for the acceptance of discretionary accounts, for approving exceptions to a Member's criteria or standards for uncovered options accounts, and for approval of communications, shall be designated as Options Principals and are required to qualify as an Options Principal by passing the SIE, the General Securities Representative qualification examination (Series 7) and the Registered Options Principal Qualification Examination (Series 4). The foregoing provisions of Exchange Rule 1301 are specific to conducting an options business with the public and are not proposed to be amended in this proposed rule change, other than conforming all references to "Options Principal" with "Registered Options Principal," as more fully discussed herein. Exchange Rule 203(g), which merely serves as a cross-reference to Exchange Rules 1301 and 1302, is unnecessary and is therefore proposed to be deleted with the rest of Exchange Rule 203.

<sup>64</sup> Although the Exchange does not currently list security futures products, it also proposes to adopt Exchange Rule 3101, Interpretation and Policy .02, which provides that each person who is registered with the Exchange as a General Securities Representative, Registered Options Principal, or General Securities Sales Supervisor shall be eligible to engage in security futures activities as a principal provided that such individual completes

**viii. Government Securities Principal (Proposed Exchange Rule 3101(b)(8))**

The Exchange does not recognize the Government Securities Principal registration category and proposes to reserve Exchange Rule 3101(b)(8), retaining the caption solely to facilitate comparison with FINRA's rules.

**ix. General Securities Sales Supervisor (Proposed Exchange Rules 3101(b)(9) and Interpretation and Policy .04)**

The Exchange proposes to adopt Exchange Rule 3101(b)(9), General Securities Sales Supervisor, as well as Interpretation and Policy .04 to Exchange Rule 3101, which explains the purpose of the General Securities Sales Supervisor registration category.<sup>65</sup> Proposed Exchange Rule 3101(b)(9) provides that each principal, as defined in proposed paragraph (a) 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. Further, a person registered solely as a General Securities Sales Supervisor would not be qualified to perform any of the following activities: (i) supervision of market making

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a Firm Element program as set forth in proposed Exchange Rule 3103 that addresses security futures products before such person engages in security futures activities. Unlike FINRA Rule 1220.02, proposed Exchange Rule 3101, Interpretation and Policy .02, omits references to United Kingdom Securities Representatives and Canada Securities Representatives, which are registration categories the Exchange does not recognize. In addition, the Exchange also proposes to adopt Exchange Rule 3101, Interpretation and Policy .03, which requires notification to the Exchange in the event a Member's sole Registered Options Principal is terminated, resigns, becomes incapacitated or is otherwise unable to perform the duties of a Registered Options Principal, and imposes certain restrictions on the Member's options business in that event.

<sup>65</sup> Proposed Exchange Rule 3101(b)(9) has no counterpart in the Exchange's current rules.

commitments; (ii) supervision of the custody of broker-dealer or customer funds or securities for purposes of Exchange Act Rule 15c3-3; or (iii) supervision of overall compliance with financial responsibility rules for broker-dealers promulgated pursuant to the provisions of the Exchange Act.<sup>66</sup>

Each person seeking to register as a General Securities Sales Supervisor would be required, prior to or concurrent with such registration, to become registered pursuant to proposed Exchange Rule 3101(c)(1) of the rule as a General Securities Representative and pass the General Securities Sales Supervisor qualification examinations.<sup>67</sup>

**x. Investment Company and Variable Contracts Products Principal (Proposed Exchange Rule 3101(b)(10))**

The Exchange does not recognize the Investment Company and Variable Contracts Products Principal category and is reserving proposed Exchange Rule 3101(b)(10), retaining the caption solely to facilitate comparison with FINRA's rules.

**xi. Direct Participation Programs Principal (Proposed Exchange Rule 3101(b)(11))**

The Exchange does not recognize the Direct Participation Programs Principal registration category and is reserving proposed Exchange Rule 3101(b)(11), retaining the caption solely to facilitate comparison with FINRA's rules.

**xii. Private Securities Offerings Principal (Proposed Exchange Rule 3101(b)(12))**

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<sup>66</sup> Proposed Exchange Rule 3101(b)(9), however, omits the FINRA Rule 1220(a)(10) prohibition against supervision of the origination and structuring of underwritings as unnecessary, as this kind activity does not fall within the scope of "securities trading" covered by the Exchange's new 3100 Series of rules.

<sup>67</sup> Unlike FINRA Rule 1220.04, proposed Exchange Rule 3101, Interpretation and Policy .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.

The Exchange does not recognize the Private Securities Offerings Principal registration category and is reserving proposed Exchange Rule 3101(b)(12), retaining the caption solely to facilitate comparison with FINRA's rules.

**xiii. Supervisory Analyst (Proposed Exchange Rule 3101(b)(13))**

The Exchange does not recognize the Supervisory Analyst registration category and is reserving proposed Exchange Rule 3101(b)(13), retaining the caption solely to facilitate comparison with FINRA's rules.

**3. Representative Registration Categories (Proposed Exchange Rule 3101(c))**

**i. General Securities Representative (Proposed Exchange Rule 3101(c)(1))**

The Exchange proposes to adopt Exchange Rule 3101(c)(1), General Securities Representative. Proposed Exchange Rule 3101(c)(1)(i) would state that each representative as defined in proposed Exchange Rule 3101(a) is required to register with the Exchange as a General Securities Representative, subject to the exception 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 Exchange Rule 3101(c)(1)(ii) would require that individuals registering as General Securities Representatives pass the SIE and the General Securities Representative examination except that individuals registered as a General Securities Representatives within two years prior to October 1, 2018 would be qualified to register as General Securities Representatives without passing any additional qualification examinations.<sup>68</sup>

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<sup>68</sup> Proposed Exchange Rule 3101(c)(1)(i) differs from FINRA Rule 1220(b)(2)(A) 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 proposes to adopt Exchange Rule 3101, Interpretation and Policy .01, to provide certain individuals who are associated persons of firms and who hold specific 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. In particular, pursuant to proposed Exchange Rule 3101, Interpretation and Policy .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. This proposed rule would provide individuals with a United Kingdom or Canadian qualification more flexibility to obtain an Exchange representative-level registration.

**ii. Operations Professional (Proposed Exchange Rule 3101(c)(2))**

The Exchange does not recognize the Operations Professional registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(2), Operations Professional, and related Interpretation and Policy .05 to proposed Exchange Rule 3101, Scope of Operations Professional Requirement, retaining the caption solely to facilitate comparison with FINRA's rules.

**iii. Securities Trader (Proposed Exchange Rule 3101(c)(3))**

Pursuant to current Exchange Rule 203(d)(1) and (2), Members that are individuals and associated persons of Members must register with the Exchange 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, 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 proposes to delete Exchange Rule 203(d), and replace it with proposed Exchange Rule 3101(c)(3).<sup>69</sup> Proposed Exchange Rule 3101(c)(3) would require each representative as defined in paragraph (a) of this Rule 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 Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by, or is under common control with a Member.

Additionally, proposed Exchange Rule 3101(c)(3)(i) 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>70</sup>

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<sup>69</sup> Proposed Exchange Rule 3101(c)(3)(i) 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>70</sup> As noted above, this new registration requirement was 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) (SR-FINRA-2016-007) (Order Approving a Proposed Rule Change to Require Registration as Securities Traders of Associated Persons Primarily Responsible for the Design, Development, Significant Modification of Algorithmic Trading Strategies or Responsible for the Day-to-Day Supervision of Such Activities).



For purposes of this proposed new registration requirement an “algorithmic trading strategy” would be 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 – whether independently or via a linked router – would not constitute an algorithmic trading strategy.<sup>71</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, 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

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<sup>71</sup> See supra note 16.

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 Exchange Rule 3101(c)(3)(ii), 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, to pass the SIE and the Securities Trader qualification examination.

Further, the Exchange proposes to adopt Exchange Rule 3101(c)(3), which defines the requirements and qualifications for a Securities Trader, as well as its proposal to amend Exchange Rule 100 to insert definitions for “proprietary trading” and “proprietary trading firm,” as described below.

**iv. Investment Banking Representative (Proposed Exchange Rule 3101(c)(4))**

The Exchange does not recognize the Investment Banking Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(4), Investment Banking Representative, retaining the caption solely to facilitate comparison with FINRA’s rules.

**v. Research Analyst (Proposed Exchange Rule 3101(c)(5))**

The Exchange does not recognize the Research Analyst registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(5), Research Analyst, retaining the caption solely to facilitate comparison with FINRA’s rules.

**vi. Investment Company and Variable Products Representative (Proposed Exchange Rule 3101(c)(6))**

The Exchange does not recognize the Investment Company and Variable Products Representative registration category for its associated persons. The Exchange therefore proposes

to reserve Exchange Rule 3101(c)(6), Investment Company and Variable Products

Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

**vii. Direct Participation Programs Representative (Proposed Exchange Rule 3101(c)(7))**

The Exchange does not recognize the Direct Participation Programs Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(7), Direct Participation Programs Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

**viii. Private Securities Offerings Representative (Proposed Exchange Rule 3101(c)(8))**

The Exchange does not recognize the Private Securities Offerings Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 3101(c)(8), Private Securities Offerings Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

**4. Eliminated Registration Categories (Proposed Exchange Rule 3101, Interpretation and Policy .06)**

Proposed Exchange Rule 3101, Interpretation and Policy .06, has no practical relevance to the Exchange, but is included because the Exchange proposes to adopt rules similar to FINRA's 1200 Series, on a near uniform basis. Accordingly, proposed Exchange Rule 3101, Interpretation and Policy .06, provides that, subject to the lapse of registration provisions in proposed Exchange Rule 3100, Interpretation and Policy .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 such categories terminate their registration with the Exchange and the

registration remains terminated for two or more years, they would not be able to re-register in that category.

### **5. Grandfathering Provisions**

In addition to the grandfathering provisions in proposed Exchange Rule 3101(b)(1)(ii) (relating to General Securities Principals) and proposed Exchange Rule 3101, Interpretation and Policy .06 (relating to the eliminated registration categories), the Exchange proposes to include grandfathering provisions in proposed Exchange Rule 3101(b)(7) (Registered Options Principal), Exchange Rule 3101(c)(1) (General Securities Representative), and Exchange Rule 3101(c)(3) (Securities Trader). Specifically, the proposed grandfathering provisions provide that, subject to the lapse of registration provisions in proposed Exchange Rule 3100, Interpretation and Policy .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 Exchange Rules 3902 and Interpretation and Policy .01)**

Current Exchange Rule 203(b) currently provides that the following individual Members and individual associated persons of Members are not required to register:

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

(2) individual Members and individual associated persons who are not actively engaged in the securities business;

(3) individual associated persons whose functions are related solely and exclusively to the Member's need for nominal corporate officers or for capital participation; (4) individual associated persons whose functions are related solely and exclusively to:

(i) transactions in commodities;

(ii) transactions in security futures; and/or

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

The Exchange proposes to delete Exchange Rule 203(b) and adopt provisions of Exchange Rule 203(b) in the newly proposed Exchange Rule 3102, subject to certain changes. Current Exchange Rule 203(b)(2) exempts from registration those individual Members and individual associated persons of Members who are not actively engaged in the securities business. Exchange Rule 203(b)(3) 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>72</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 individual Members and individual associated persons who are not "actively engaged" in a Member's 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

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<sup>72</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.

consistent with this analytical framework.<sup>73</sup> The Exchange therefore proposes to delete these exemptions. Exchange Rule 203(b)(4)(iii) 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 Exchange Rule 3102 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>74</sup> Additionally, the Exchange proposes to adopt paragraph (c) of proposed Exchange Rule 3102, 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>75</sup>

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<sup>73</sup> The Exchange also proposes to delete Exchange Rule 203, Interpretation and Policy .06, which specifies circumstances in which the Exchange considers an individual Member or an individual associated person to be engaged in the securities business of a Member or Member organization. The Exchange believes these determinations may be made on case by case basis, depending upon facts and circumstances.

<sup>74</sup> Proposed Exchange Rule 3102 differs from FINRA Rule 1230 in that it contains a number of additional exemptions, based upon current Nasdaq Stock Market Rule 1.1230, which are not included in FINRA Rule 1230. See Nasdaq Stock Market, General 9, Regulations, Section 1, Registration, Qualification and Continuing Education, Rule 1.1230.

<sup>75</sup> Individuals described by paragraph (c) of proposed Exchange Rule 3102 who are associated with FINRA members may be registered with FINRA as Foreign Associates pursuant to FINRA Rule 1220.06. FINRA eliminated this registration category effective October 1, 2018, and the Exchange never recognized it.

The Exchange proposes to adopt Exchange Rule 3102, Interpretation and Policy .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 Continuing Education Requirements (Proposed Exchange Rule 3103)**

Continuing education for registered persons 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 proposes to adopt Exchange Rule 3103 to better organize the continuing education requirements.<sup>76</sup>

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

The Exchange proposes to adopt the term “covered person” in proposed Exchange Rule 3103(a). For purposes of the Regulatory Element, the Exchange proposes to define the term “covered person” in proposed Exchange Rule 3103(a)(5), as any person registered pursuant to proposed Exchange Rule 3100, including any person who is permissively registered pursuant to proposed Exchange Rule 3100, Interpretation and Policy .02, and any person who is designated as

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<sup>76</sup> Proposed Exchange Rule 3103 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.



eligible for an FSA waiver pursuant to proposed Exchange Rule 3100, Interpretation and Policy .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 Exchange Rule 3100, Interpretation and Policy .09. In addition, consistent with proposed Exchange Rule 3100, Interpretation and Policy .09, proposed Exchange Rule 3103(a)(1) 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 proposes 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 Exchange Rule 3103(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.

## **2. Firm Element**

The Exchange believes that training in ethics and professional responsibility should apply to all covered registered persons. Therefore, proposed Exchange Rule 3103(b)(2)(ii), 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 Requirements for Uniform Rules (Proposed Exchange Rule 3104)**

Current Exchange Rule 203, Interpretations and Policies .01 - .03, state that each individual required to register shall electronically file a Uniform Application for Securities Industry Registration ("Form U4") through the Central Registration Depository system ("Web CRD") operated by FINRA and to electronically submit to Web CRD any required amendments to Form U4. Further, any Member or Member organization that discharges or terminates the employment or retention of an individual required to register must comply with certain termination filing requirements, which include the filing of a Form U5.

The Exchange proposes to delete current Exchange Rule 203, Interpretations and Policies .01 - .03, and to replace them with proposed Exchange Rule 3104, Electronic Filing Requirements for Uniform Forms, which will consolidate Form U4 and Form U5 electronic filing requirements into a single rule. The proposed rule provides that all forms required to be filed under the Exchange's registration rules including the Exchange Rule 3100 Series shall be filed through an electronic process or such other process as the Exchange may prescribe to the Central Registration Depository. It also would impose certain new requirements.

Under proposed Exchange Rule 3104(b), each Member would be required to designate registered principal(s) or corporate officer(s) who are responsible for supervising a firm's electronic filings. The registered principal(s) or corporate officer(s) who has or have the responsibility to review and approve the forms filed pursuant to the rule would be required to acknowledge, electronically, that he or she is filing this information on behalf of the Member and the Member's associated persons. Under proposed Exchange Rule 3104, Interpretation and Policy .01, the registered principal(s) or corporate officer(s) could delegate filing responsibilities

to an associated person (who need not be registered) but could not delegate any of the supervision, review, and approval responsibilities mandated in proposed Exchange Rule 3104(b). The registered principal(s) or corporate officer(s) would be required to take reasonable and appropriate action to ensure that all delegated electronic filing functions were properly executed and supervised.

Pursuant to proposed Exchange Rule 3104(c)(1), every initial and transfer electronic Form U4 filing and any amendments to the disclosure information on Form U4 must be based on a manually signed Form U4 provided to the Member or applicant for membership by the person on whose behalf the Form U4 is being filed. As part of the Member's recordkeeping requirements, it would be required to 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) under the Act and make them available promptly upon regulatory request. An applicant for membership must also retain every manually signed Form U4 it receives during the application process and make them available promptly upon regulatory request. Proposed Exchange Rule 3104(c)(2) and Interpretations and Policies .03 and .04 to proposed Exchange Rule 3104, provide for the electronic filing of Form U4 amendments without the individual's manual signature, subject to certain safeguards and procedures.

Proposed Exchange Rule 3104(d) provides that upon filing an electronic Form U4 on behalf of a person applying for registration, a Member must promptly submit fingerprint information for that person and that the Exchange may make a registration effective pending receipt of the fingerprint information. It further provides that if a Member fails to submit the fingerprint information within 30 days after filing of an electronic Form U4, the person's registration will be deemed inactive, requiring the person to immediately cease all activities requiring registration or performing any duties and functioning in any capacity requiring

registration. Under this proposed rule, the Exchange must administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated could reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of proposed Exchange Rule 3101. Upon application and a showing of good cause, the Exchange could extend the 30-day period.

Proposed Exchange Rule 3104(e) would require initial filings and amendments of Form U5 to be submitted electronically. As part of the Member's recordkeeping requirements, it would be required to retain such records for a period of not less than three years, the first two years in an easily accessible place, in accordance with Rule 17a-4 under the Act, and to make such records available promptly upon regulatory request.

Finally, under proposed Exchange Rule 3104, Interpretation and Policy .02, a Member could 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 would remain responsible for complying with the requirements of the Rule.

#### **Q. Exchange Rule 100, Definitions**

The Exchange proposes to amend Exchange Rule 100, Definitions, to amend the term "associated person" or "person associated with a Member." Currently, the term associated person or person associated with a Member means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member.

The Exchange proposes to amend the term associated person or person associated with a Member to insert, at the end of the definition, the phrase “except that any person associated with a Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Rules.” With the proposed change, the definition for associated person or person associated with a Member would be as follows:

The term “associated person” or “person associated with a Member” means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member, except that any person associated with a Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Rules.

Additionally, the Exchange proposes to amend Exchange Rule 100, Definitions to adopt definitions for the following terms: person, proprietary trading, and proprietary trading firm. The Exchange proposes that the term “person” shall refer to a natural person, corporation, partnership (general or limited), limited liability company, association, joint stock company, trust, trustee of a trust fund, or any organized group of persons whether incorporated or not and a government or agency or political subdivision thereof.

The Exchange proposes that the term “proprietary trading” for the purpose of proposed Exchange Rule 3100, means trading done by a Member having the following characteristics: (i) the Member is not required by Section 15(b)(8) of the Act to become a FINRA member but is a Member of another registered securities exchange not registered solely under Section 6(g) of the Act; (ii) all funds used or proposed to be used by the Member are the trading member's own capital, traded through the Member's own accounts; (iii) the Member does not, and will not, have customers; and (iv) all persons registered on behalf of the Member acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Member.

The Exchange proposes that the term “proprietary trading firm” for the purpose of proposed Exchange Rule 3100, means a Member organization or applicant with the following characteristics: (i) the applicant is not required by Section 15(b)(8) of the Act to become a FINRA Member but is a Member of another registered securities exchange not registered solely under Section 6(g) of the Act; (ii) all funds used or proposed to be used by the applicant for trading are the applicant's own capital, traded through the applicant's own accounts; (iii) the applicant does not, and will not have customers; and (iv) all principals and representatives of the applicant acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the applicant.

As described above, in connection with the Exchange’s proposal to adopt Exchange Rule 3101(b)(7), Registered Options Principal, the Exchange proposes to delete the definition for “Options Principal” from Exchange Rule 100 in order to provide consistency and clarity within the rule text. In proposed Exchange Rule 3101(b)(7), the Exchange sets forth the requirements and qualifications for a “Registered Options Principal,” which incorporates, and adds to, the rule text for the Exchange’s current definition for “Options Principal.” Accordingly, the Exchange proposes to delete the term “Options Principal” and replace all references in the rule text to “Options Principal” with the new proposed term “Registered Options Principal.” The Exchange also proposes to adopt a definition for a “Registered Options Principal” in Exchange Rule 100, that will provide a cross-reference to Exchange Rule 3101(b)(7).

#### **R. Exchange Rule 601, Registered Options Traders**

In accordance with the proposed change to delete Exchange Rule 203 in its entirety, revise and relocate the provisions of Exchange Rule 203 to the newly proposed 3100 Series, the Exchange proposes to amend a cross-reference in Exchange Rule 601(b)(2). Currently,

Exchange Rule 601(b)(2) has a cross-reference to Exchange Rule 203(a). The Exchange proposes to amend that cross-reference to proposed Exchange Rule 3100.

#### **S. Exchange Rule 1000, Disciplinary Jurisdiction**

The Exchange proposes to amend a cross-reference in Exchange Rule 1000(c). Currently, Exchange Rule 1000(c) has a cross-reference to Exchange Rule 1302. The Exchange proposes to amend that cross-reference to proposed Exchange Rule 3100, Interpretation and Policy .12.

#### **T. Exchange Rule 1014, Imposition of Fines for Minor Rule Violations**

The Exchange proposes to amend the cross-references in Exchange Rule 1014(d)(14) that are to current Exchanges Rules 1301, 1302 and 1303. The Exchange proposes to amend the cross-references in Exchange 1014(d)(14) that are to Exchange Rules 1301, 1302 and 1303 to the newly proposed Exchange Rule 3104, which incorporates that deleted rule text. Accordingly, the Exchange proposes to amend the cross-reference in Exchange Rule 1014(d)(14) to now be to proposed Exchange Rule 3104.

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

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>77</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>78</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to

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<sup>77</sup> 15 U.S.C. 78f(b).

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

remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>79</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule changes will streamline, and bring consistency and uniformity to, the Exchange's registration rules. The Exchange believes that this will, in turn, assist Members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule changes 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 changes 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 changes 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 changes 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

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Id.



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.

The proposed rule changes, including additional definitions and changes to cross-references, make organizational changes to the Exchange's registration and qualification rules, in order to prevent unnecessary regulatory burdens and to 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 changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed

rule changes are 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 3100 Series of rules, which are similar in many respects to the registration-related requirements adopted by FINRA effective October 1, 2018, as well as the Exchange's affiliate, MIAA, 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 Exchange, thereby promoting uniformity of regulation across markets. The proposed 3100 Series of rules should in fact remove administrative burdens that currently exist for Members seeking to register associated persons on the Exchange featuring varying registration-related requirements. Additionally, all similarly-situated associated persons of Members will be treated similarly under the new 3100 Series of rules in terms of standards of training, experience and competence for persons associated with Exchange Members.

With respect in particular to registration of developers of algorithmic trading strategies, 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 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

Written comments were neither solicited nor 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>80</sup> and Rule 19b-4(f)(6)<sup>81</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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<sup>80</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>81</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:to-rule-comments@sec.gov). Please include File Number SR-PEARL-2020-01 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-PEARL-2020-01. 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-PEARL-2020-01 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>82</sup>

Vanessa Countryman  
Secretary

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<sup>82</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

New text is underlined;  
Deleted text is in [brackets]

**MIAX PEARL, LLC**

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**CHAPTER I. DEFINITIONS****Rule 100. Definitions**

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**Associated Person or Person Associated with a Member**

The term “**associated person**” or “**person associated with a Member**” means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member, except that any person associated with a Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Rules.

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**[Options Principal**

The term “**Options Principal**” means a person engaged in the management and supervision of the Member’s business pertaining to option contracts that has responsibility for the overall oversight of the Member’s options related activities on the Exchange.]

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**Person**

The term “**person**” shall refer to a natural person, corporation, partnership (general or limited), limited liability company, association, joint stock company, trust, trustee of a trust fund, or any organized group of persons whether incorporated or not and a government or agency or political subdivision thereof.

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**Proprietary Trading**

The term “**proprietary trading**” for purposes of Rule 3100 means trading done by a Member having the following characteristics: (i) the Member is not required by Section 15(b)(8) of the Act to become a FINRA member but is a Member of another registered securities exchange not registered solely under Section 6(g) of the Act; (ii) all funds used or proposed to be used by the

Member are the trading Member's own capital, traded through the Member's own accounts; (iii) the Member does not, and will not, have customers; and (iv) all persons registered on behalf of the Member acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Member.

### **Proprietary Trading Firm**

The term “**proprietary trading firm**” for purposes of Rule 3100 means a Member organization or applicant with the following characteristics: (i) the applicant is not required by Section 15(b)(8) of the Act to become a FINRA Member but is a Member of another registered securities exchange not registered solely under Section 6(g) of the Act; (ii) all funds used or proposed to be used by the applicant for trading are the applicant's own capital, traded through the applicant's own accounts; (iii) the applicant does not, and will not have customers; and (iv) all principals and representatives of the applicant acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the applicant.

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### **Quote or Quotation**

The term “**quote**” or “**quotation**” means a bid or offer entered by a Market Maker as a firm order that updates the Market Maker’s previous bid or offer, if any. When the term order is used in these Rules and a bid or offer is entered by the Market Maker in the option series to which such Market Maker is registered, such order shall, as applicable, constitute a quote or quotation for purposes of these Rules.

### **Registered Options Principal**

The term “**Registered Options Principal**” has the meaning set forth in Rule 3101(b)(7).

### **Responsible Person**

The term “**Responsible Person**” shall mean an individual designated by an organization that is the holder of a Trading Permit to represent the organization with respect to that Trading Permit in all matters relating to the Exchange. The Responsible Person must be a United States-based officer, director or management-level employee of the Trading Permit holder, who is responsible for the direct supervision and control of associated persons of that Trading Permit holder.

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## **Rule 203. Reserved [Qualification and Registration of Members and Associated Persons**

(a) **Registration of Members and Associated Persons Engaged in the Securities Business.** Members that are individuals and associated persons of Members engaged or to be engaged in the securities business of a Member shall be registered with the Exchange in the category of registration appropriate to the function to be performed in a form and manner prescribed by the Exchange. Before the registration can become effective, the individual Member or individual associated person shall submit the appropriate application for registration, pass the Securities Industry Essentials Examination (“SIE”), pass a qualification examination appropriate to the category of registration in a form and manner prescribed by the Exchange and submit any required

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

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

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

(2) individual Members and individual associated persons who are not actively engaged in the securities business;

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

(4) Individual associated persons whose functions are related solely and exclusively to:

(i) transactions in commodities;

(ii) transactions in security futures; and/or

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

**(c) Securities Trader Principal.**

(1) Members that are individuals and associated persons of Members included within the definition of Options Principal in Rule 100 and who will have supervisory responsibility over the securities trading activities described in Rule 203(d) 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 1302(e) and pass the SIE and the General Securities Principal qualification examination (Series 24). A person who is qualified and registered as a Securities Trader Principal under this subparagraph (1) may only have supervisory responsibility over the activities specified in Rule 203(d), unless such person is separately qualified and registered in another appropriate principal registration category, such as the General Securities Principal registration category.



(2) A person who is registered as a General Securities Principal shall not be qualified to supervise the trading activities described in Rule 203(d), unless such person has also become qualified and registered as a Securities Trader under Rule 1302(e) and become registered as a Securities Trader Principal.

**(d) Securities Trader.**

(1) Members that are individuals and associated persons of Members must register with the Exchange 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, 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 become qualified as a Securities Trader under Rule 1302(e).

(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.

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

**(f) Chief Compliance Officer.** Each Member and Member organization that is a registered broker-dealer shall designate a Chief Compliance Officer on Schedule A of Form BD. An individual designated as a Chief Compliance Officer is required to register with the Exchange and pass the appropriate heightened qualification examination(s) as prescribed by the Exchange. A person who has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to January 1, 2002, and who has not been subject within the last ten years to

- (1) any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act;
- (2) a suspension;

(3) the imposition of a fine of \$5,000 or more for a violation of any provision of any securities law or regulation or any agreement with, rule or standard of conduct of any securities governmental agency, or securities self-regulatory organization; or

(4) the imposition of a fine of \$5,000 or more by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding;

shall be required to register in this heightened category of registration as prescribed by the Exchange, but shall be exempt from the requirement to pass the heightened qualification examination as prescribed by the Exchange.

(g) **Registration Required Under Chapter XIII.** Individual associated persons of a Member Organization that conducts a public customer business must also comply with the registration requirements set forth in Chapter XIII. These additional registration categories include: (1) Registered Options Principal; and (2) Registered Representative.

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

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.

### **Interpretations and Policies:**

.01 Each individual required to be registered under this Rule shall electronically file a Uniform Application for Securities Industry Registration (“Form U-4”) through the Central Registration Depository system operated by FINRA (“Web CRD”).

.02 Each individual required to be registered under this Rule shall, electronically submit to Web CRD any required amendments to Form U-4.

.03 Any Member or Member organization that discharges or terminates the employment or retention of an individual required to be registered under this Rule shall comply with the termination filing requirements set forth in Rules 1303(a) and 1303(b).

.04 Each individual required to be registered under this Rule is required to satisfy the continuing education requirements set forth in Rule 1304 as applicable and any other continuing education requirements as prescribed by the Exchange.

.05 The Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications

for registration. Advanced age or physical infirmity will not individually of themselves constitute sufficient grounds to waive a qualification examination. Experience in fields ancillary to the securities business may constitute sufficient grounds to waive a qualification examination.

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

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

(1) proprietary trading;

(2) market-making;

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

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

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

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

.07 Each Member and Member organization must register with the Exchange in a heightened capacity each individual acting in any of the following capacities:

(a) officer;

(b) partner;

(c) director;

(d) supervisor of proprietary trading, market making or brokerage activities; and/or

(e) supervisor of those engaged in proprietary trading, market making or brokerage activities with respect to those activities.

Each Member or Member organization must register with the Exchange at least two individuals acting in one or more of the capacities described in (a) through (e) above. The Exchange may waive this requirement if a Member or Member organization demonstrates conclusively that only one individual acting in one or more of the heightened capacities described in (a) through (e) above

should be required to register. A Member or Member organization that conducts proprietary trading only and has 25 or fewer registered persons may be required to have one officer or partner who is registered in this capacity.

.08 For purposes of these Interpretation and Policies to Rule 203, a Member or Member organization shall be considered to conduct only proprietary trading if the Member or Member organization has the following characteristics:

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

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

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

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

.09 **Summary of Qualification Requirements.** The following summarizes the qualification requirements for each of the required registration categories described in these Rules:

Category of Registration	Qualification Beginning October 1, 2018
General Securities Principal (GP)	Registration and qualification as a General Securities Representative and pass the General Securities Principal qualification examination (Series 24)
Compliance Official (CO)	Pass the Compliance Official Exam (Series 14)
Financial/Operations Principal (FN)	Pass the Financial and Operations Principal qualification examination (Series 27)
Securities Trader Principal (TP)	Registration and qualification as a Securities Trader and pass the General Securities Principal qualification examination (Series 24)
Registered Options Principal (OP)	Registration and qualification as a General Securities Representative and pass the Registered Options Principal qualification examination (Series 4)
General Securities Sales Supervisor (SU)	Registration and qualification as a General Securities Representative and pass the General Securities Sales Supervisor qualification examinations (Series 9 and Series 10)
General Securities Representative (GS)	Pass the SIE and the General Securities Representative qualification examination (Series 7)

Category of Registration	Qualification Beginning October 1, 2018
Securities Trader (TD)	Pass the SIE and the Securities Trader qualification examination (Series 57)
Securities Trader Compliance Officer (CT)	Registration and qualification as a Securities Trader and pass the Compliance Official qualification exam (Series 14)]

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### **Rule 601. Obligations of Market Maker Authorized Traders**

(a) No Change.

(b) **Registration of Market Maker Authorized Traders.** The Exchange may, upon receiving an application in writing from a Market Maker on a form prescribed by the Exchange, register a person as an MMAT.

(1) MMATs may be officers, partners, employees or other associated persons of Members that are registered with the Exchange as Market Makers.

(2) To be eligible for registration as an MMAT, a person must successfully complete proficiency examinations and continuing education requirements applicable to individual Members and individual associated persons of Members, as set forth in Interpretation and Policy [.04] .07 to Rule [203]3100, and any other training and/or certification programs as may be required by the Exchange.

(3) The Exchange may require a Market Maker to provide any and all additional information the Exchange deems necessary to establish whether registration should be granted.

(4) The Exchange may grant a person conditional registration as an MMAT subject to any conditions it considers appropriate in the interests of maintaining a fair and orderly market.

(5) A Market Maker must ensure that an MMAT is properly qualified to perform market making activities, including but not limited to ensuring the MMAT has met the requirements set forth in paragraph (b)(2) of this Rule.

(c) No change.

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### **Rule 1000. Disciplinary Jurisdiction**

(a) – (b) No change.

(c) Any Member or person associated with a Member shall continue to be subject to the disciplinary jurisdiction of the Exchange following such Member's termination or the person's termination of association with a Member with respect to matters that occurred prior to such termination; provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former Member or former associated person within one (1) year of receipt by the Exchange, or such other exchange or association recognized for purposes of Rule [1302] 3100, Interpretation and Policy .12, of the latest written notice of the termination of such person's status as a Member or person associated with a Member. The foregoing notice requirement does not apply to a person who at any time after a termination again subjects himself to the disciplinary jurisdiction of the Exchange by becoming a Member or a person associated with a Member.

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#### **Rule 1014. Imposition of Fines for Minor Rule Violations**

(a) - (c) No change.

(d) (1) - (12) No change.

(13) **Failure to Timely File Amendments to Form U4, Form U5, and Form BD (Rule[s] [1301, 1302, and 1303] 3104).** Any Member and/or Member Organization that is required to file Form U4, Form U5, or Form BD pursuant to the Rules, or the Securities and Exchange Act of 1934, and the rules promulgated thereunder, is required to amend the applicable Form U4, Form U5, or Form BD to keep such forms current at all times. Members and/or Member Organizations shall amend Form U4, Form U5, or Form BD no later than thirty (30) days after the filer knew of or should have known of the need for the amendment.

<b>Number of Cumulative Violations Within Any Twelve Month Rolling Period</b>	<b>Sanction</b>
1 <sup>st</sup> Offense	\$500
2 <sup>nd</sup> Offense	\$1,000
3 <sup>rd</sup> Offense	\$2,000
Subsequent Offense	Formal Disciplinary Action

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#### **CHAPTERS XIX. to XXX Reserved.**

#### **CHAPTER XXXI. REGISTRATION, QUALIFICATION AND CONTINUING EDUCATION**

#### **Rule 3100. 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 3101, unless exempt from registration pursuant to Rule

3102. 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.

### **Interpretations and Policies:**

.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 3101(b)(1), 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 3101(b) 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.

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 3101, 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 3100, such person shall pass the Securities Industry Essentials ("SIE") and an appropriate representative qualification examination as specified in Rule 3101(c). Before the registration of a person as a principal can become effective under Rule 3100, such person shall pass an appropriate principal qualification examination as specified in Rule 3101(b).

If the job functions of a registered 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 3101(c). 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 3101 and satisfy all other applicable prerequisite registration requirements.

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 3101, Interpretation and Policy .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 3101(b), 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 3101(b). The requirements above apply to designations to any principal category, including those categories that are not subject to a prerequisite representative registration requirement.

Subject to the requirements of Rule 3101, Interpretation and Policy .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 3101. 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 3101.

**.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 3101.

**.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 3100, Interpretation and Policy .02, shall satisfy the Regulatory Element of continuing education as specified in Rule 3103(a). If a person registered with a Member has a continuing education deficiency with respect to that registration as provided under Rule 3103(a), such person shall not be permitted to be registered in another registration category with the Exchange under Rule 3101 with that Member or to be registered in any registration category with the Exchange under Rule 3101 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 3101(c). 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 3101(c).

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 3101(b). Any person whose registration has been revoked pursuant to Rule 1011 shall be required to pass a principal or representative qualification examination appropriate to his or her category of registration as specified in Rule 3101(b) or Rule 3101(c), respectively, to be eligible for registration with the Exchange. For purposes of Interpretation and Policy .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: (i) 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; (ii) the waiver request is made within seven years of the individual's initial designation; (iii) the initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5; (iv) the individual continuously worked for the financial services industry affiliate(s) of a Member since the individual's last Form U5 filing; (v) the individual has complied with the Regulatory Element of continuing education as specified in Rule 3103(a); and (vi) 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 Interpretation and Policy .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 3103 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 3100, Interpretation and Policy .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 3100, Interpretation and Policy .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 3100, Interpretation and Policy .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 3100, Interpretation and Policy .08.

.11 **Impermissible Registrations.** Members shall not register or maintain the registration of any person unless consistent with the requirements of Rule 3100.

#### .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: (i) 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 (ii) 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.

### **Rule 3101. Registration Categories**

#### **(a) Definitions.**

##### **Actively Engaged in the Management of the Member's Securities Business**

The term “actively engaged in the management of the Member's securities business” means the management of, and the implementation of corporate policies related to, such business. The term “actively engaged in the management of the Member's securities business” 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.

##### **Financial and Operations Principal**

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.

##### **Principal**

The term “principal” means 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). The term "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.

### **Representative**

The term "representative" means 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.

### **(b) Principal Registration Categories.**

#### **(1) General Securities Principal.**

(i) Requirements. Each principal as defined in paragraph (a) of this Rule shall be required to register with the Exchange as a General Securities Principal, subject to the following exceptions:

(A) if a principal's activities are limited to the functions of a Compliance Officer, a Financial and Operations Principal, a Securities Trader Principal, a Securities Trader Compliance Officer, or a Registered Options Principal as specified in paragraph (b) of this Rule, then such person shall appropriately register in one or more of those categories;

(B) Reserved.

(C) if a principal's activities are limited solely to the functions of a General Securities Sales Supervisor as specified in paragraph (b)(9) 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 (b)(7) of this Rule or as a General Securities Sales Supervisor as specified in paragraph (b)(9) of this Rule; and

(D) Reserved.

(ii) Qualifications. All individuals registering as General Securities Principals after October 1, 2018 shall, prior to or concurrent with such registration, become registered pursuant to paragraph (b)(1) of this Rule as a General Securities Representative and pass the General Securities Principal qualification exam.

#### **(2) Compliance Official.**

(i) **Requirements.** Subject to the exception in paragraph (b)(2)(iii) 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.

(ii) **Qualifications.** All individuals registering as Compliance Official shall, prior to or concurrent with such registration, pass the Compliance Official qualification examination.

(iii) **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 3101(b) that corresponds to the limited scope of the Member's business.

(iv) **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 (c)(3) of this Rule as a Securities Trader and pass the Compliance Official qualification exam.

### (3) **Financial and Operations Principal.**

(i) **Requirements.** 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 paragraph (a) of this Rule. Each person associated with a Member who performs such duties shall be required to register as a Financial and Operations Principal with the Exchange. The requirements of paragraph (b)(3)(i) of this Rule shall not apply to a Member that is exempt from the requirement to designate a Financial and Operations Principal.

(ii) **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.

(iii) 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 paragraph (a) of this Rule for a Financial and Operations Principal.

### (4) **Investment Banking Principal.** Reserved.

### (5) **Research Principal.** Reserved.

**(6) Securities Trader Principal.**

**(i) Requirements.** Each principal as defined in paragraph (a) of this Rule who is responsible for supervising the securities trading activities specified in paragraph (c)(3) of this Rule shall be required to register with the Exchange as a Securities Trader Principal.

**(ii) Qualifications.** Each person seeking to register as a Securities Trader Principal shall, prior to or concurrent with such registration, become registered pursuant to paragraph (c)(3) of this Rule as a Securities Trader and pass the General Securities Principal qualification examination.

**(7) Registered Options Principal.**

**(i) Requirements.** 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) 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 (b)(9) of this Rule in lieu of registering as a Registered Options Principal.

**(ii) Qualifications.** Subject to the lapse of registration provisions in Rule 3100, Interpretation and Policy .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 (c)(1) of this Rule as a General Securities Representative and pass the Registered Options Principal qualification examination.

**(8) Government Securities Principal. Reserved.****(9) General Securities Sales Supervisor.**

**(i) Principals Engaged in Limited Activities.** Each principal as defined in paragraph (a) 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) supervision of market making commitments; (ii) supervision of the custody of broker-dealer or customer funds or securities for purposes of Exchange Act Rule 15c3-3; or (iii) supervision of overall compliance with financial responsibility rules for broker-dealers promulgated pursuant to the provisions of the Exchange Act.



(ii) **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 (c)(1) of this Rule as a General Securities Representative and pass the General Securities Sales Supervisor qualification examinations.

(10) **Investment Company and Variable Contracts Products Principal.** Reserved.

(11) **Direct Participation Programs Principal.** Reserved.

(12) **Private Securities Offerings Principal.** Reserved.

(13) **Supervisory Analyst.** Reserved.

(c) **Representative Registration Categories**

(1) **General Securities Representative.**

(i) **Requirements.** Each representative as defined in paragraph (a) 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.

(ii) **Qualifications.** Subject to the lapse of registration provisions in Rule 3100, Interpretation and Policy .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.

(2) **Operations Professional.** Reserved.

(3) **Securities Trader.**

(i) **Requirements.** Each representative as defined in paragraph (a) 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 Commission pursuant to the Investment Company Act of 1940 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 (c)(3) 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.

(ii) **Qualifications.** Subject to the lapse of registration provisions in Rule 3100, Interpretation and Policy .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.

(4) **Investment Banking Representative.** Reserved.

(5) **Research Analyst.** Reserved.

(6) **Investment Company and Variable Products Representative.** Reserved.

(7) **Direct Participation Programs Representative.** Reserved.

(8) **Private Securities Offerings Representative.** Reserved.

### **Interpretations and Policies:**

.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, 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 3103 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 3100, Interpretation and Policy .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.

**.07 Summary of Qualification Requirements.** The following sets forth the qualification requirements for each of the required registration categories described in Rule 3101:

<b><u>Category of Registration</u></b>	<b><u>Qualification Beginning October 1, 2018</u></b>
<u>General Securities Principal (GP) *</u>	<u>Registration and qualification 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/Operations Principal (FN) *</u>	<u>Pass the Financial and Operations Principal qualification examination (Series 27)</u>
<u>Securities Trader Principal (TP) *</u>	<u>Registration and qualification as a Securities Trader and pass the General Securities Principal qualification examination (Series 24)</u>

<u>Category of Registration</u>	<u>Qualification Beginning October 1, 2018</u>
<u>Registered Options Principal (OP)</u> *	<u>Registration and qualification as a General Securities Representative and pass the Registered Options Principal qualification examination (Series 4)</u>
<u>General Securities Sales Supervisor (SU)</u>	<u>Registration and qualification as a General Securities Representative and pass the General Securities Sales Supervisor qualification examinations (Series 9 and Series 10)</u>
<u>General Securities Representative (GS)</u>	<u>Pass the SIE and the General Securities Representative qualification examination (Series 7)</u>
<u>Securities Trader (TD)</u>	<u>Pass the SIE and the Securities Trader qualification examination (Series 57)</u>
<u>Securities Trader Compliance Officer (CT)</u>	<u>Registration and qualification as a Securities Trader and pass the Compliance Official qualification 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 3100, Interpretation and Policy .04.

### **3102. Associated Persons Exempt from Registration**

The following persons associated with a Member are not required to be registered with the Exchange:

(a) Persons associated with a Member whose functions are solely and exclusively clerical or ministerial;

(b) Persons associated with a Member whose functions are related solely and exclusively to:

(1) effecting transactions on the floor of another national securities exchange and who are appropriately registered with such exchange;

(2) transactions in municipal securities;

(3) transactions in commodities;

(4) transactions in security futures, provided that any such person is registered with FINRA or a registered futures association;

(5) transactions in variable contracts and insurance premium funding programs and other contracts issued by an insurance company;

(6) transactions in direct participation programs;

(7) Reserved;

(8) transactions in government securities; or

(9) 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; or

(c) 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.

### **Interpretations and Policies:**

**.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 3101. 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 the order details submitted by a customer and the registered person contacts the customer to confirm the order details before entering the order.

### **Rule 3103. 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 3100, Interpretation and Policy .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 3100 and 3101. 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 3100, Interpretation and Policy .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 3100, Interpretation and Policy .09, will be required to retake the Regulatory Element and satisfy all of its requirements in the event such person:

(i) is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act;

(ii) 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

(iii) 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 (i) above, or the disciplinary action becoming final, in the case of (ii) and (iii) 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 3100, including any person who is permissively registered pursuant to Rule 3100, Interpretation and Policy .02, and any person who is designated as eligible for a waiver pursuant to Rule 3100, Interpretation and Policy .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.**

(i) 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.

(ii) **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: (A) General investment features and associated risk factors; (B) Suitability and sales practice considerations; and (C) Applicable regulatory requirements.

(iii) 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.

#### **Rule 3104. Electronic Filing Requirements for Uniform Forms**

(a) Filing Requirement. All forms required to be filed under the Exchange's registration rules including the Rule 3100 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 or she 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:

(i) provide the associated person with a copy of the amended disclosure information prior to filing; and

(ii) 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 3101. 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 3101. 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.

### **Interpretations and Policies:**

**.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 3101), 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.