

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87941; File No. SR-PEARL-2020-01)

January 10, 2020

Self-Regulatory Organizations; MIAX PEARL, LLC; 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 XXXI Registration, Qualification and Continuing Education

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on 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 and II below, which Items have been prepared by the self-regulatory organization. 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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

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.³ 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,⁴ as well as the Nasdaq Stock Market and FINRA. MIAX PEARL proposes to adopt new Chapter XXXI⁵ to the Exchange’s rules.

Overview

The Exchange adopted registration requirements to ensure that associated persons⁶ attain and maintain specified levels of competence and knowledge pertinent to their function. In

³ 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.

⁴ 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).

⁵ The Exchange proposes to reserve Chapters XIX through XXX for anticipated future use.

⁶ 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

general, the Exchange’s current rules require that persons engaged in a Member’s⁷ securities business who are to function as representatives⁸ or principals⁹ register with the Exchange in each category of registration appropriate to their functions by passing one or more qualification examinations¹⁰ and exempt specified associated persons from the registration requirements.¹¹ They also prescribe ongoing continuing education requirements for registered persons.¹² The Exchange proposes to amend, reorganize and enhance its rules regarding registration, qualification examinations and continuing education, as described below.

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.”

⁷ 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.

⁸ 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.

⁹ 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.

¹⁰ See proposed Exchange Rule 3101, Registration Categories, and Exchange Rule 1302, Registration of Representatives.

¹¹ See proposed Exchange Rule 3102, Associated Persons Exempt from Registration.

¹² 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,¹³ 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”).¹⁴ On December 20, 2019, the Commission noticed a proposal by the Exchange’s affiliate, MIAX, to amend, reorganize and

¹³ 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.

¹⁴ 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.¹⁵

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.¹⁶

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.

¹⁵ See supra note 4.

¹⁶ 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.¹⁷

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.¹⁸ 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.¹⁹ 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.

¹⁷ See id.

¹⁸ 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.

¹⁹ 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.²⁰

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 3102.²¹ 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.

²⁰ 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.

²¹ 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.

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.²²

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

²² 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.

in a principal category that corresponds to the scope of the Member's activities.²³ 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.²⁴

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)

²³ The principal registration categories are described in greater detail below.

²⁴ 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.

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.²⁵ With respect to an individual who solely maintains a permissive registration, such as an individual working

²⁵ 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.

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.²⁶

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.²⁷ Therefore, proposed Exchange Rule 3100, Interpretation and Policy .03, provides that before the

²⁶ 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.

²⁷ See supra note 14.

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.²⁸ 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.

²⁸ 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.

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

²⁹ 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.

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.³⁰

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

³⁰ As discussed below, the Exchange proposes a four-year expiration period for the SIE.

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.³¹ 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 3101.³² 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.

³¹ 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.

³² 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.

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.³³

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

³³ See FINRA Sanction Guidelines (March 2019), VII. Qualification and Membership, pg. 38, at https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

and equitable principles of trade, such as Exchange Rule 301.³⁴ 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 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.³⁵

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

³⁴ 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.

³⁵ 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.

the person's last attempt to pass that examination.³⁶ 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.³⁷

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.³⁸ 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

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

³⁷ 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.

³⁸ 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.

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 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 Member³⁹ would be able to terminate their registrations with the Member and be granted a waiver

³⁹ 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.

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.⁴⁰ 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.⁴¹

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.⁴² 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

⁴⁰ 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.

⁴¹ See supra note 14.

⁴² 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.

initial designation⁴³ 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.⁴⁴

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

⁴³ 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.

⁴⁴ 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.

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 request to the Exchange,⁴⁵ 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

⁴⁵ 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.⁴⁶ 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.⁴⁷ 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

⁴⁶ 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.

⁴⁷ 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.⁴⁸

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.

⁴⁸ 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 .08.⁴⁹

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

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

registration of a person as representative or principal where the Member does not intend to 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 3100.⁵⁰

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.⁵¹

1. Definitions (Proposed Exchange Rule 3101(a))⁵²

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

⁵⁰ 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.

⁵¹ 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.

⁵² 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.⁵³ 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

⁵³ 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.⁵⁴ 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

⁵⁴ 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.⁵⁵ 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.⁵⁶

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.⁵⁷

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

⁵⁶ 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).

⁵⁷ 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.⁵⁸

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

exception more accurately than activities that “include.”

⁵⁸ 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.⁵⁹

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

⁵⁹ 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.⁶⁰

⁶⁰ 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

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

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.

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)⁶¹ 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.⁶² 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

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

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

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.⁶³

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

⁶³ 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.

to become registered pursuant to proposed Exchange Rule 3101(c)(1) as a General Securities Representative and pass the Registered Options Principal qualification examination.⁶⁴

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.⁶⁵ 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

⁶⁴ 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.

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

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.⁶⁶

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.⁶⁷

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))

⁶⁶ 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.

⁶⁷ 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 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))

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.⁶⁸

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.

⁶⁸ 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.

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).⁶⁹ 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

⁶⁹ 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.

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.⁷⁰

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.⁷¹ 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,

⁷⁰ 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).

⁷¹ See supra note 16.

and inadequate risk management controls – could be reduced or prevented, in part, through improved education regarding securities regulations for the specified individuals involved in the algorithm design and development process.

The proposal is intended to ensure the registration of one or more associated persons that possesses knowledge of, and responsibility for, both the design of the intended trading strategy and the technological implementation of the strategy, sufficient to evaluate whether the resulting product is designed to achieve regulatory compliance in addition to business objectives. For example, a lead developer who liaises with a head trader regarding the head trader's desired algorithmic trading strategy and is primarily responsible for the supervision of the development of the algorithm to meet such objectives must be registered under the proposal as the associated person primarily responsible for the development of the algorithmic trading strategy and supervising or directing the team of developers. Individuals under the lead developer's supervision would not be required to register under the proposal if they are not primarily responsible for the development of the algorithmic trading strategy or are not responsible for the 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.⁷² 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

⁷² 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.

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 consistent with this analytical framework.⁷³ 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.⁷⁴ 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

⁷³ 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.

⁷⁴ 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.

activities with or for any citizen, national or resident of the United States need not register with the Exchange.⁷⁵

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.⁷⁶

1. Regulatory Element

⁷⁵ 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.

⁷⁶ 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.

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 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.⁷⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷⁸ 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)⁷⁹ 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

⁷⁷ 15 U.S.C. 78f(b).

⁷⁸ 15 U.S.C. 78f(b)(5).

⁷⁹ Id.

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 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, MIAX, 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 from the date on which it was filed, or such shorter time as the

Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸⁰ and Rule 19b-4(f)(6) thereunder.⁸¹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁸² normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)⁸³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. According to the Exchange, the proposal is part of a larger effort to create uniform rules relating to registration, qualification examinations and continuing education of associated persons of Members among the Exchange and its affiliates, MIAX and MIAX Emerald, LLC. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.⁸⁴

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

⁸⁰ 15 U.S.C. 78s(b)(3)(A).

⁸¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

⁸² 17 CFR 240.19b-4(f)(6).

⁸³ 17 CFR 240.19b-4(f)(6)(iii).

⁸⁴ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PEARL-2020-01 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-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.⁸⁵

J. Matthew DeLesDernier
Assistant Secretary

⁸⁵ 17 CFR 200.30-3(a)(12).