



## 8011-01

### SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-81098; File No. SR-FINRA-2017-007)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; 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

July 7, 2017

#### I. Introduction

On March 28, 2017, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt rules relating to qualification and registration requirements in the Consolidated FINRA Rulebook,<sup>3</sup> restructure the current representative-level qualification examinations, create a general knowledge examination and specialized knowledge examinations, allow permissive registration, establish an exam waiver process for persons working for a financial services affiliate of a member, and amend certain Continuing Education (“CE”) requirements. The proposed rule change was published for comment in the Federal Register on April 10, 2017.<sup>4</sup>

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

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

<sup>3</sup> The current FINRA rulebook consists of: (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from the NYSE (“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. The FINRA rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

<sup>4</sup> Securities Exchange Act Release No. 80371 (April 4, 2017), 82 FR 17336 (“Notice”).

The Commission received 18 comments in response to the proposed rule change.<sup>5</sup> On May 12, 2017, FINRA extended the time period for the Commission to act on the proposal to July 7, 2017. On June 26, 2017, FINRA submitted a response to the commenter letters.<sup>6</sup> This order approves the proposed rule change.

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<sup>5</sup> See letter from Inigo J. Bengoechea, Director, Program Recognition, and Daniel J. Larocco, Manager, Program Recognition, CFA Institute, dated March 30, 2017 (“CFA Letter”); letter from Nathaniel Downes, CFA Society, Los Angeles, dated April 4, 2017 (“CFA Los Angeles Letter”); letter from Roman Iwachiw, CFA Society, Washington, DC, dated April 7, 2017 (“CFA DC Letter”); letter from Pat Swanson, President, CFA Societies Texas, dated April 10, 2017 (“CFA Texas Letter”); letter from John Skinner, Atlanta Society of Finance and Investment Professionals, dated April 18, 2017 (“CFA Atlanta Letter”); letter from Matthew O’Hara, CFA Society, San Francisco, dated April 20, 2017 (“CFA San Francisco Letter”); letter from Douglas Jackman and Shannon Curley, CFA Society, Chicago, dated April 26, 2017 (“CFA Chicago Letter”); letter from Philip J. Taylor, New York Society of Security Analysts, Inc., dated April 28, 2017 (“CFA New York Letter”); letter from Jeanne W. Wolf, CFA Society, Boston, dated April 28, 2017 (“CFA Boston Letter”); letter from David T. Bellaire, Executive Vice President & General Counsel, Financial Services Institute, dated May 1, 2017 (“FSI Letter”); letter from Michelle Van Tassel, President, Association of Registration Management, Inc., dated May 1, 2017 (“ARM Letter”); letter from Kevin Zambrowicz, Managing Director & Associate General Counsel, Securities Industry and Financial Markets Association, dated May 1, 2017 (“SIFMA Letter”); letter from Mike Rothman, President, North American Securities Administrators Association, Inc., dated May 1, 2017 (“NASAA Letter”); letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, dated May 1, 2017 (“Wells Fargo Letter”); letter from Norman L. Ashkenas, Richard J. O’Brien, and Jason Linde, Fidelity Investments, dated May 1, 2017 (“Fidelity Letter”); letter from Erwin J. Dugas, Jr., Managing Counsel, Nationwide (“Nationwide Letter”); letter from Eric Arnold & Clifford Kirsch, Eversheds Sutherland (US) LLP, on behalf of the Committee of Annuity Insurers, dated May 1, 2017 (“CAI Letter”); and letter from Daniel Kosowsky, Chief Compliance Officer, Morgan Stanley & Co. LLC, and Rose-Anne Richter, Chief Compliance Officer, Morgan Stanley Smith Barney LLC, dated June 5, 2017 (“Morgan Stanley Letter”).

<sup>6</sup> See letter from Afshin Atabaki, Associate General Counsel, FINRA, to Brent J. Fields, Secretary, Commission, dated June 26, 2017 (“FINRA Response Letter”).

## II. Description of the Proposal<sup>7</sup>

FINRA proposes to adopt with amendments the NASD and Incorporated NYSE rules relating to qualification and registration as FINRA rules in the Consolidated FINRA Rulebook. In addition, FINRA proposes to restructure the current representative-level qualification examinations, create a general knowledge examination and specialized knowledge examinations and amend the CE requirements, among other changes.<sup>8</sup>

### A. Registration Requirements

Proposed Rule 1210 provides that each person engaged in the investment banking or securities business of a member must register with FINRA as a representative or principal in each category of registration appropriate to the person's functions and responsibilities as specified in proposed Rule 1220, unless exempt from registration pursuant to proposed Rule 1230. Proposed Rule 1210 also provides that such person is not qualified to function in any registered capacity other than that for which the person is registered, unless otherwise stated in the rules.

### B. Minimum Number of Registered Principals

Proposed Rule 1210.01 provides that each member, except a member with only one associated person, shall have at least two officers or partners who are registered as General Securities Principals, provided that, a member whose activities are limited in scope, may instead have two officers or partners who are registered in a principal category that corresponds to the

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<sup>7</sup> FINRA states that the proposed rule change combines the proposals set forth in Regulatory Notices 09-70 (December 2009) and 15-20 (May 2015) with a few changes, including those made in response to comments. See Notice, supra note 4.

<sup>8</sup> In addition, FINRA proposes to delete certain Incorporated NYSE rules. FINRA states that these rules are substantially similar to the proposed rules, otherwise incorporated in the proposed rules, rendered obsolete by the proposed rules, or addressed by other rules. See id.

scope of the member's activities. The requirement that a member have a minimum of two principals shall apply to broker-dealers seeking to become FINRA members, as well as existing members.<sup>9</sup>

The proposed Rule also provides that an applicant for membership or existing member shall have at least one person: (i) registered as a Financial and Operations Principal or an Introducing Broker-Dealer Financial and Operations Principal; (ii) designated as a Principal Financial Officer; and (iii) designated as a Principal Operations Officer. An applicant for membership or existing member, if the nature of its business so requires, shall also have at least one person registered as: (1) an Investment Banking Principal; (2) a Research Principal; (3) a Securities Trader Principal; and (4) a Registered Options Principal.

C. Permissive Registrations

Proposed Rule 1210.02 provides that a member may make application for, or maintain the registration as a representative or principal of, any associated person of the member and any individual engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member. The proposed Rule also provides that individuals maintaining permissive registrations shall be considered registered persons and subject to all FINRA rules, to the extent relevant to their activities.

In addition, proposed Rule 1210.02 provides that, consistent with the requirements of Rule 3110, members shall have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions. The proposed rule further provides that, with respect to an individual

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<sup>9</sup> Proposed Rule 1210.01 also provides that, pursuant to the Rule 9600 Series, FINRA may waive the requirement that a member have a minimum of two principals in situations that indicate conclusively that only one person associated with an applicant for membership or existing member should be required to register as a principal.

who solely maintains a permissive registration(s), the individual's direct supervisor shall not be required to be a registered person. However, for purposes of compliance with Rule 3110(a)(5), a member shall assign a registered supervisor who shall be responsible for periodically contacting such individual's direct supervisor to verify that the individual is not acting outside the scope of his assigned functions. If such individual is permissively registered as a representative, the registered supervisor shall be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor shall be registered as a principal. However, the registered supervisor of an individual who solely maintains a permissive registration(s) shall not be required to be registered in the same registration category as the permissively-registered individual.

Proposed Rule 1210.02 expands the scope of permissive registrations by allowing any associated person (and any individual engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary) of a member to obtain and maintain any registration permitted by the member.<sup>10</sup> Individuals maintaining a permissive registration under the proposed rules would be considered registered persons and subject to all FINRA rules.<sup>11</sup>

#### D. Qualification Examinations and Waivers of Examinations

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<sup>10</sup> FINRA states that it is proposing to permit the registration of such individuals for several reasons. First, a member may foresee a need to move a former representative or principal who has not been registered for two or more years back into a position that would require such person to be registered. Second, FINRA believes the proposal would allow members to develop a depth of associated persons with registrations in the event of unanticipated personnel changes. Third, FINRA believes that allowing registration in additional categories will encourage greater regulatory understanding. Fourth, FINRA states 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 are equally engaged in the member's business. See Notice, supra note 4.

<sup>11</sup> FINRA states that it is also considering enhancements to the CRD system and BrokerCheck to identify whether a registered person is maintaining only a permissive registration and to disclose the significance of such permissive registration to the general public. See id.

Proposed Rule 1210.03 provides that, before the registration of a person as a representative can become effective under proposed Rule 1210, the person must pass the Securities Industry Essentials (“SIE”) and an appropriate representative qualification examination as specified in proposed Rule 1220(b). In addition, before the registration of a person as a principal can become effective under proposed Rule 1210, the person must pass an appropriate principal qualification examination as specified in proposed Rule 1220(a).

The proposed Rule further provides that, if the job functions of a registered representative, other than an individual registered as an Order Processing Assistant Representative or a Foreign Associate, change so as to require the person to register in another representative category, the person shall not be required to pass the SIE. Rather, the registered person would need to pass only an appropriate representative qualification exam as specified in proposed Rule 1220(b).

Proposed Rule 1210.03 reflects the proposed restructuring of the representative-level qualification exam program, whereby representative-level registrants would be required to take a general knowledge exam (the SIE) and a specialized knowledge exam appropriate to their job functions at the firm with which they are associating.<sup>12</sup> FINRA states that it will file the SIE and the specialized knowledge exams, including the content outlines for each examination, with the Commission separately.<sup>13</sup> FINRA also states that individuals who are registered on the effective

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<sup>12</sup> Proposed Rule 1220 sets forth each registration category and applicable qualification exam. For a more in depth discussion of the SIE and the revised representative-level qualification exams, see Notice, supra note 4.

<sup>13</sup> See id. FINRA states that it is also evaluating the structure of the principal-level examinations and may propose to streamline this examination structure at a later time. See id.

date of the proposed rule change will be eligible to maintain those registrations without being subject to any additional requirements.<sup>14</sup>

In addition, proposed Rule 1210.03 expands the pool of individuals eligible to take the SIE by providing that all persons are eligible to take the SIE.<sup>15</sup> Passing the SIE alone, however, would not qualify an individual for registration with FINRA; the individual would also have to pass an applicable representative or principal qualification exam and complete the other requirements of the registration process.<sup>16</sup>

E. Requirements for Registered Persons Functioning as Principals for a Limited Period

Proposed Rule 1210.04 provides that a member may designate any person currently registered, or who becomes registered, with the member as a representative to function as a principal for a period of 120 calendar days before passing an appropriate principal qualification exam, provided that such person has at least 18 months of experience functioning as a registered representative within the five-year period immediately preceding the designation and has fulfilled all applicable prerequisite registration and exam requirements, as well as paid applicable fees, before designation as a principal. However, in no event may such person function as a principal beyond the initial 120 calendar day period without having successfully passed an appropriate principal qualification exam. The requirements above apply to designations to any

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<sup>14</sup> For a more detailed discussion of the effect of the proposal on individuals registered before the effective date of the proposed rule change, see id.

<sup>15</sup> FINRA believes 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 before submitting a job application and would allow for more flexibility and career mobility within the securities industry. See id.

<sup>16</sup> Proposed Rule 1210.03 also provides that, pursuant to the Rule 9600 Series, FINRA may, in exceptional cases and where good cause is shown, waive the applicable qualification exam(s) and accept other standards as evidence of an applicant's qualifications for registration, subject to certain conditions.

principal category, including those categories that are not subject to a prerequisite representative registration requirement. Further, a person registered as an Order Processing Assistant Representative or a Foreign Associate shall not be eligible to be designated as a principal under the rule.

In addition, proposed Rule 1210.04 provides that a member may designate any person currently registered, or who becomes registered, with the member as a principal to function in another principal category for a period of 120 calendar days before passing an appropriate principal qualification exam. However, in no event may such person function in such other principal category beyond the initial 120 calendar day period without having successfully passed an appropriate qualification exam.

F. Rules of Conduct for Taking Exams and Confidentiality of Exams

Proposed Rule 1210.05 provides that associated persons taking the SIE shall be subject to the SIE Rules of Conduct and associated persons taking any representative or principal exam shall be subject to the Rules of Conduct for representative and principal examinations. A violation of the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations by an associated person shall be deemed to be a violation of proposed Rule 2010. If FINRA 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 exam and may be subject to disciplinary action by FINRA.

In addition, the proposed Rule provides that individuals taking the SIE who are not associated persons shall agree to be subject to the SIE Rules of Conduct. If FINRA determines that such individuals cheated on the SIE or that they misrepresented their qualifications to the

public subsequent to passing the SIE, they may forfeit the results of the examination and may be prohibited from retaking the SIE.

Further, proposed Rule 1210.05 provides that (i) FINRA considers all of its qualification examinations content to be highly confidential; (ii) the removal of exam content from an exam center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such qualification exam, or any other use that would compromise the effectiveness of the exams and the use in any manner and at any time of the questions or answers to the exams is prohibited and deemed to be a violation of proposed Rule 2010; and (iii) an applicant cannot receive assistance while taking the exam and shall certify that no assistance was given to or received by the applicant during the exam.

G. Waiting Periods for Retaking a Failed Examination

Proposed Rule 1210.06 provides that any person who fails to pass a qualification exam prescribed by FINRA shall be permitted to take that exam again after a period of 30 calendar days has elapsed from the date of the person's last attempt to pass that exam, except that any person who fails to pass an exam three or more times in succession within a two-year period shall be prohibited from again taking that exam until 180 calendar days has elapsed from the date of the person's last attempt to pass that exam. The proposed Rule provides that the waiting periods for retaking a failed exam apply to the SIE and the representative and principal exams, and that individuals taking the SIE who are not associated persons must agree to be subject to the same waiting periods for retaking the SIE.

H. Continuing Education Requirements

Proposed Rule 1210.07 provides that all registered persons, including those individuals who solely maintain permissive registrations pursuant to proposed Rule 1210.02, shall satisfy the Regulatory Element of CE<sup>17</sup> as specified in proposed Rule 1240(a).

In addition, the proposed Rule provides that if a person registered with a member has a CE deficiency with respect to that registration as provided under proposed Rule 1240(a), such person shall not be permitted to be registered in another registration category under proposed Rule 1220 with that member or to be registered in any registration category under proposed Rule 1220 with another member, until the person has satisfied the deficiency.

FINRA is proposing to adopt Rule 1210.07 to codify current practice and to clarify that all registered persons, including those who solely maintain a permissive registration, are required to satisfy the Regulatory Element of CE, as specified in proposed Rule 1240.<sup>18</sup> FINRA is also proposing to make corresponding changes to proposed Rule 1240. FINRA states that individuals who have passed the SIE but not a representative- or principal-level exam and do not hold a registered position would not be subject to any CE requirements.

#### I. Lapse of Registration and Expiration of SIE

As is currently the case, proposed Rule 1210.08 provides that the representative- and principal-level registrations would be subject to a two-year expiration period. It also establishes a four-year expiration period for the SIE.

Proposed Rule 1210.08 also provides that any person whose registration has been revoked pursuant to Rule 8310 shall be required to pass a principal or representative qualification

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<sup>17</sup> Pursuant to Rule 1250, the CE requirements applicable to registered persons consist of a Regulatory Element and a Firm Element. As discussed below, as part of this proposal, FINRA is proposing to renumber Rule 1250 as Rule 1240.

<sup>18</sup> FINRA states that it believes 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. See Notice, supra note 4.

examination appropriate to his category of registration as specified in proposed Rule 1220(a) or Rule 1220(b), respectively, to be eligible for registration with FINRA.

J. Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member

Proposed Rule 1210.09 provides that, upon request by a member, FINRA shall waive the applicable qualification exam(s) for an individual designated with FINRA as working for a financial services industry affiliate of a member if the following conditions are met: (i) before the individual's initial designation, the individual was registered as a representative or principal with FINRA for a total of five years within the most recent 10-year period, including for the most recent year with the member that initially designated the individual; (ii) the waiver request is made within seven years of the individual's initial designation; (iii) the initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5; (iv) the individual continuously worked for the financial services industry affiliate(s) of a member since the individual's last Form U5 filing; (v) the individual has complied with the Regulatory Element of CE as specified in proposed Rule 1240(a); and (vi) the individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4, and has not otherwise been subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act while the individual was designated as eligible for a waiver. As used in proposed Rule 1210.09, a "financial services industry affiliate of a member" is a legal entity that controls, is controlled by, or is under common control with a member and is regulated by the Commission, Commodity Futures Trading Commission, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

FINRA states that the proposed Rule will provide a process whereby individuals who would be working for a financial services industry affiliate of a member would terminate their registrations with the member and would be granted a waiver of their requalification requirements upon re-registering with a member, provided the firm that is requesting the waiver and the individual satisfy the criteria for the waiver as set forth in the rule.<sup>19</sup>

Under the proposed waiver process, the first time a registered person is designated as eligible for a waiver based on the criteria set forth in the rule, the member with which the individual is registered would notify FINRA of the designation and concurrently file a full Form U5 terminating the individual's registration. 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. An individual designated as eligible for the waiver would be subject to the Regulatory Element of CE while working for a financial services industry affiliate of a member.

Upon registering an eligible person pursuant to the waiver process set forth in the rule, a firm would file a Form U4 requesting the appropriate registration(s) for the individual and submit an exam waiver request to FINRA,<sup>20</sup> which would include a representation that the individual is eligible for a waiver based on the conditions set forth in the rule. FINRA would review the waiver request and make a determination of whether to grant the request within 30

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<sup>19</sup> FINRA states that the purpose of this 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 can gain organizational skills and better knowledge of products developed by the affiliate(s) without the individuals having to requalify by exam each time they return to the firm. See id.

<sup>20</sup> FINRA states that it would consider a waiver of the representative-level qualification examination(s), the principal-level qualification examination(s) and the SIE, as applicable. See id.

calendar days of receiving the request.<sup>21</sup> A member other than the member that initially designated an individual as an eligible person may request a waiver for the individual, more than one member may request a waiver for an individual during the seven-year period, and a member may submit multiple waiver requests for the same individual during the course of the seven-year period.<sup>22</sup>

K. Status of Persons Serving in the Armed Forces of the United States

Proposed Rule 1210.10 addresses the status of current and former registered persons serving on active duty in the Armed Forces of the United States (“U.S. Armed Forces”). Among other things, the rule permits a registered person of a member who volunteers for or is called to active duty in the U.S. Armed Forces to be registered in an inactive status and remain eligible to receive ongoing transaction-related compensation. In addition, the proposed rule provides that FINRA will defer the lapse of registration requirements and the SIE for a person who was formerly registered with a member that volunteers for or is called to active duty in the U.S. Armed Forces at any time within two years after the date the person ceased to be registered with a member or for a person that is placed on inactive status while serving in the U.S. Armed Forces who ceases to be registered with a member.

L. Impermissible Registrations

Proposed Rule 1210.11 provides that members shall not register or maintain the registration of any person unless consistent with the requirements of proposed Rule 1210. FINRA states that proposed Rule 1210.11 replaces certain provisions of current NASD Rules

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<sup>21</sup> See id.

<sup>22</sup> FINRA provides examples in the Notice to illustrate how the waiver provision would work. See id.

1021(a) and 1031(a) that prohibited a member from maintaining certain registrations and that would conflict with the permissive registration regime under proposed Rule 1210.02.<sup>23</sup>

M. Registration Categories

FINRA is proposing to integrate the various registration categories and related definitions contained in the NASD rules into a single rule, proposed Rule 1220,<sup>24</sup> subject to the changes described below.

1. Definition of Principal

Proposed Rule 1220(a)(1) defines a “principal” as 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 investment banking or securities business,<sup>25</sup> 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 the FINRA rules.

2. General Securities Principal

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<sup>23</sup> See id.

<sup>24</sup> FINRA is proposing to renumber Rule 1230 as Rule 1220.

<sup>25</sup> Proposed Rule 1220(a)(1) provides that the term “actively engaged in the management of the member’s investment banking or securities business” includes the management of, and the implementation of corporate policies related to, such business. The term also includes managerial decision-making authority with respect to the member’s investment banking or 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.

Proposed Rule 1220(a)(2) provides that each principal (as defined in Rule 1220(a)(1)) shall be required to register as a General Securities Principal, subject to the following exceptions:

- if a principal's activities include the functions of a Compliance Officer, a Financial and Operations Principal (or an Introducing Broker-Dealer Financial and Operations Principal, as applicable), a Principal Financial Officer, a Principal Operations Officer, an Investment Banking Principal, a Research Principal, a Securities Trader Principal, or a Registered Options Principal, then such person shall appropriately register in one or more of those categories;
- if a principal's activities are limited solely to the functions of a Government Securities Principal, an Investment Company and Variable Contracts Products Principal, a Direct Participation Programs Principal, or a Private Securities Offerings Principal, then such person may appropriately register in one or more of those categories in lieu of registering as a General Securities Principal;
- if a principal's activities are limited solely to the functions of a General Securities Sales Supervisor, then such person may appropriately register in that category in lieu of registering as a General Securities Principal, provided, however, that if such person is engaged in options sales activities, such person shall be required to register as a Registered Options Principal or as a General Securities Sales Supervisor; and
- if a principal's activities are limited solely to the functions of a Supervisory Analyst, then such person may appropriately register in that category in lieu of registering as a General Securities Principal, provided, however, that if such person is responsible for approving the content of a member's research report on

equity securities, such person shall be required to register as a Research Principal or as a Supervisory Analyst.

The proposed rule provides that all individuals registering as General Securities Principals after the effective date of the proposed rule change shall, before or concurrent with such registration, become registered as a General Securities Representative and either (i) pass the General Securities Principal qualification exam or (ii) register as a General Securities Sales Supervisor and pass the General Securities Principal Sales Supervisor Module qualification exam.<sup>26</sup>

### 3. Compliance Officer

Proposed Rule 1220(a)(3) provides that each person designated as a Chief Compliance Officer on Schedule A of Form BD as specified in FINRA Rule 3130(a) shall be required to register as a Compliance Officer. Notwithstanding the foregoing, the proposed rule provides that an individual designated as a Chief Compliance Officer on Schedule A of Form BD of a member that is engaged in limited investment banking or securities business may be registered in a principal category under proposed Rule 1220(a) that corresponds to the limited scope of the member's business instead of being required to register as a Compliance Officer.

The proposed rule provides that all individuals registering as Compliance Officers after the effective date of the proposed rule change, shall, before or concurrent with such registration: (i) become registered as a General Securities Representative and pass the General Securities Principal qualification exam; or (ii) pass the Compliance Official qualification exam.

### 4. Financial and Operations Principal, Introducing Broker-Dealer Financial and Operations Principal, Principal Financial Officer and Principal Operations Officer

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<sup>26</sup> FINRA is proposing to eliminate the Corporate Securities Representative registration category, as further described below.

Proposed Rule 1220(a)(4)(A) provides that each member that is operating pursuant to the provisions of Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8) under the Exchange Act shall designate a Financial and Operations Principal. In addition, each member subject to the requirements of Rule 15c3-1, other than a member operating pursuant to Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), shall designate either a Financial and Operations Principal or an Introducing Broker-Dealer Financial and Operations Principal.<sup>27</sup>

In addition, proposed Rule 1220(a)(4)(B) provides that each member shall designate a: (i) Principal Financial Officer with primary responsibility for financial filings and those books and records related to such filings; and (ii) Principal Operations Officer with primary responsibility for the day-to-day operations of the member's business, including overseeing the receipt and delivery of securities and funds, safeguarding customer and member assets, calculation and collection of margin from customers and processing dividend receivables and payables and reorganization redemptions and those books and records related to such activities. Each member that self-clears, or that clears for other members, shall be required to designate separate persons to function as Principal Financial Officer and Principal Operations Officer; such persons may also carry out the other responsibilities of a Financial and Operations Principal and an Introducing Broker-Dealer Financial and Operations Principal.<sup>28</sup> A member that is an introducing member may designate the same person to function as Financial and Operations Principal (or Introducing Broker-Dealer Financial and Operations Principal), Principal Financial

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<sup>27</sup> The proposed rule sets forth a list of duties that a Financial and Operations Principal and an Introducing Broker-Dealer Financial and Operations Principal will be responsible for performing. See proposed Rule 1220(a)(4).

<sup>28</sup> The proposed rule provides that a self-clearing member that is limited in size and resources may, pursuant to the Rule 9600 Series, request a waiver of the requirement to designate separate persons to function as Principal Financial Officer and Principal Operations Officer.

Officer and Principal Operations Officer. Each person designated as a Principal Financial Officer or Principal Operations Officer must register as a Financial and Operations Principal or an Introducing Broker-Dealer Financial and Operations Principal.

The proposed rule provides that each person seeking to register as a Financial and Operations Principal shall, before or concurrent with such registration, pass the Financial and Operations Principal qualification exam. Each person seeking to register as an Introducing Broker-Dealer Financial and Operations Principal shall, before or concurrent with such registration, pass the Financial and Operations Principal qualification exam or the Introducing Broker-Dealer Financial and Operations Principal qualifications exam.

5. Investment Banking Principal

Proposed Rule 1220(a)(5) requires each principal who is responsible for supervising the investment banking activities specified in proposed Rule 1220(b)(5) to register as an Investment Banking Principal. The proposed rule provides that all individuals registering as Investment Banking Principals after the effective date of the proposed rule change shall, before or concurrent with such registration, become registered as an Investment Banking Representative and pass the General Securities Principal qualification exam.

6. Research Principal

Proposed Rule 1220(a)(6) requires each principal who is responsible for approving the content of a member's research reports on equity securities, or who, with respect to equity research, is responsible for supervising the overall conduct of a Research Analyst or a Supervisory Analyst to register as a Research Principal, subject to the following exceptions:

- if a principal's activities are limited solely to approving the content of a member's research reports on equity securities, then the person may register as a Supervisory Analyst in lieu of registering as a Research Principal;
- if a principal's activities are limited solely to reviewing a member's research reports on equity securities only for compliance with the disclosure provisions of Rule 2241, then the person may register as a General Securities Principal in lieu of registering as a Research Principal; and
- if a principal's activities are limited solely to approving the content of a member's research reports on debt securities or the content of third-party research reports, then the person may register as a General Securities Principal or as a Supervisory Analyst in lieu of registering as a Research Principal.

Pursuant to the proposed rule, all individuals registering as Research Principals after the effective date of the proposed rule change must, before or concurrent with such registration: (i) become registered as a Research Analyst and pass the General Securities Principal qualification exam; or (ii) become registered as a Supervisory Analyst and pass the General Securities Principal qualification exam.

#### 7. Securities Trader Principal

Proposed Rule 1220(a)(7) requires each principal who is responsible for supervising the securities trading activities specified in proposed Rule 1220(b)(4) to register as a Securities Trader Principal. Further, each person seeking to register as a Securities Trader Principal must, before or concurrent with such registration, become registered as a Securities Trader and pass the General Securities Principal qualification exam.

#### 8. Registered Options Principal

Proposed Rule 1220(a)(8) requires each member engaged in transactions in options with the public to have at least one Registered Options Principal. In addition, the proposed Rule requires each principal who is responsible for supervising a member's options sales practices with the public, including a person designated pursuant to Rule 3110(a)(2), to register as a Registered Options Principal. Notwithstanding the foregoing, if a principal's options activities are limited solely to those activities that may be supervised by a General Securities Sales Supervisor as specified in Rule 2360, then such person may register as a General Securities Sales Supervisor in lieu of registering as a Registered Options Principal.

The proposed rule provides that all individuals registering as Registered Options Principals after the effective date of the proposed rule change shall, before or concurrent with such registration, become registered as a General Securities Representative and pass the Registered Options Principal qualification exam.

Proposed Rule 1220.02 provides specific requirements relating to persons engaging in security futures activities. Proposed Rule 1220.03 provides specific requirements relating to members with one Registered Options Principal.

#### 9. Government Securities Principal

Proposed Rule 1220(a)(9) requires a principal to register as a Government Securities Principal if his activities include certain activities relating to the management or supervision of the member's government securities business. If a principal's functions include the activities specified in the rule, then the individual may register as a General Securities Principal in lieu of registering as a Government Securities Principal.

The proposed rule provides that all individuals registering as Government Securities Principals after the effective date of the proposed rule change shall, before or concurrent with such registration, become registered as a General Securities Representative.

10. General Securities Sales Supervisor

Proposed Rule 1220(a)(10) provides that each principal may register as a General Securities Sales Supervisor if the Principal's supervisory responsibilities in the investment banking or securities business of a member are limited to the securities sales activities of the member. The proposed rule precludes a person registered solely as a General Securities Sales Supervisor from performing the following activities: (a) supervision of the origination and structuring of underwritings; (b) supervision of market making commitments; (c) supervision of the custody of broker-dealer or customer funds or securities for purposes of Rule 15c3-3 under the Exchange Act; or (d) supervision of overall compliance with financial responsibility rules for broker-dealers promulgated pursuant to the Exchange Act.

The proposed rule provides that each person seeking to register as a General Securities Sales Supervisor shall, before or concurrent with such registration, become registered as a General Securities Representative and pass the General Securities Sales Supervisor qualification exams.

Proposed Rule 1220.04 sets forth additional information relating to the General Securities Sales Supervisor registration category.

11. Investment Company and Variable Contracts Products Principal and Direct Participation Programs Principal

Proposed Rule 1220(a)(11) provides that a principal may register as an Investment Company and Variable Contracts Products Principal if the person's activities in the investment banking or securities business of a member are limited to the activities specified in proposed

Rule 1220(b)(7). Each person seeking to register as an Investment Company and Variable Contracts Products Principal shall, before or concurrent with such registration: (i) become registered as a General Securities Representative and pass the Investment Company and Variable Contracts Products Principal qualification exam; or (ii) become registered as an Investment Company and Variable Contracts Products Representative and pass the Investment Company and Variable Contracts Products Principal qualification exam.

Proposed Rule 1220(a)(12) provides that a principal may register with FINRA as a Direct Participation Program Principal if the person's activities in the investment banking or securities business of a member are limited to the activities specified in proposed Rule 1220(b)(8). Each person seeking to register as a Direct Participation Program Principal shall, before or concurrent with such registration: (i) become registered as a General Securities Representative and pass the Direct Participation Program Principal qualification exam; or (ii) become registered as a Direct Participation Programs Representative and pass the Direct Participation Program Principal qualification exam.

#### 12. Private Securities Offerings Principal

Proposed Rule 1220(a)(12) provides that a principal may register as a Private Securities Offerings Principal if the person's activities in the investment banking or securities business of a member are limited to the activities specified in proposed Rule 1220(b)(9). All individuals registering as Private Securities Offerings Principals after the effective date of the proposed rule change shall, before or concurrent with such registration, become registered as a Private Securities Offerings Representative and pass the General Securities Principal qualification exam.

FINRA proposes to create this limited principal registration category for principals whose activities are limited solely to the supervision of the private securities offerings specified in

proposed Rule 1220(b)(9) (current NASD Rule 1032(h)) in order to provide firms with greater flexibility in designing their supervisory structures.<sup>29</sup> FINRA states that the proposed change is consistent with the limited registration categories for Investment Company and Variable Contracts Products Principals and Direct Participation Programs Principals.<sup>30</sup>

### 13. Supervisory Analyst

Proposed Rule 1220(a)(14) provides that a principal may register as a Supervisory Analyst if the Principal's activities are limited to approving the following: (a) the content of a member's research reports on equity securities; (b) the content of a member's research reports on debt securities; (c) the content of third-party research reports; (d) retail communications as described in Rule 2241(a)(11)(A); or (e) other research communications that do not meet the definition of "research report" under Rule 2241, provided that the Supervisory Analyst has technical expertise in the particular product area. The activities of a Supervisory Analyst engaged in equity research must be supervised by a Research Principal. Each person seeking to register as a Supervisory Analyst shall, before or concurrent with such registration, pass the Supervisory Analyst qualification exam.<sup>31</sup>

### 14. Definition of Representative

Proposed Rule 1220(b)(1) defines a "representative" as any person associated with a member, including assistant officers other than principals, who is engaged in the member's

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<sup>29</sup> See Notice, supra note 4.

<sup>30</sup> See id.

<sup>31</sup> The proposed rule provides that, upon written request pursuant to the Rule 9600 Series, FINRA shall grant a waiver from the securities analysis portion (Part II) of the Supervisory Analyst qualification exam upon verification that the applicant has passed Level I of the Chartered Financial Analyst Exam.

investment banking or 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.

15. General Securities Representative and Foreign Registrations

Proposed Rule 1220(b)(2) requires a representative (as defined in proposed Rule 1220(b)(1)) to register as a General Securities Representative, subject to the following exceptions: (a) if a representative's activities include the functions of an Operations Professional, a Securities Trader, an Investment Banking Representative, or a Research Analyst, then the person must register in one or more of those categories; and (b) if a representative's activities are limited solely to the functions of an Investment Company and Variable Contracts Products Representative, a Direct Participation Programs Representative, or a Private Securities Offerings Representative, then the person may register in one or more of those categories in lieu of registering as a General Securities Representative.

Pursuant to proposed Rule 1220(b)(2), all individuals registering as General Securities Representatives after the effective date of the proposed rule change shall, before or concurrent with such registration, pass the SIE and the General Securities Representative qualification exam.

Proposed Rule 1220.01 provides that persons who are in good standing as a representative with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator shall be exempt from the requirement to pass the SIE.

FINRA states that, as part of the proposed restructuring of the representative-level exams, it is proposing to eliminate the United Kingdom Securities Representative and Canada Securities Representative registration categories, and associated Series 17, Series 37, and Series 38 exams. As a result, FINRA is proposing to adopt Rule 1220.01 to provide individuals who are associated

persons of firms and hold foreign registrations an alternative, more flexible, process to obtain a FINRA representative-level registration.<sup>32</sup>

16. Operations Professional, Securities Trader, Investment Banking Representative, Research Analyst, Investment Company and Variable Contracts Products Representative, Direct Participation Programs Representative and Private Securities Offerings Representative

Proposed Rules 1220(b)(3), 1220(b)(4), 1220(b)(5), 1220(b)(6), 1220(b)(7), 1220(b)(8) and 1220(b)(9) set forth the registration requirements for Operations Professionals, Securities Traders, Investment Banking Representatives, Research Analysts, Investment Company and Variable Contracts Products Representatives, Direct Participation Programs Representatives, and Private Securities Offerings Representatives, respectively. Proposed Rule 1220.05 sets forth additional information relating to the Operations Professional registration requirement.

FINRA states that, consistent with the restructuring of the representative-level examinations, proposed Rules 1220(b)(3), (b)(4), (b)(5), (b)(6), (b)(7), (b)(8) and (b)(9) will require individuals registering in the respective registration categories to pass the SIE and the applicable representative-level exam(s).

With respect to Research Analysts, FINRA is proposing to replace the General Securities Representative prerequisite registration requirement with the SIE so that individuals registering as Research Analysts would be required to pass the SIE and the Research Analyst exams. In addition, FINRA states that, consistent with existing guidance, it is proposing to clarify that the scope of the Research Analyst registration requirement in proposed Rule 1220(b)(6) is limited to associated persons who produce equity research reports.<sup>33</sup>

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<sup>32</sup> See Notice, supra note 4.

<sup>33</sup> See id. Current NASD Rule 1050 does not apply to persons who produce debt research reports. See Research Rules Frequently Asked Questions, <http://www.finra.org/industry/faq-research-rules-frequently-asked-questions-faq>.

17. Eliminated Registration Categories

FINRA is proposing to eliminate the current registration categories of Order Processing Assistant Representative, Options Representative, Corporate Securities Representative, Government Securities Representative, and Foreign Associate as set forth in NASD Rules 1041, 1032(d), 1032(e), 1032(g), and 1100.<sup>34</sup> FINRA believes the utility of many of these categories has diminished, as evidenced by the low annual volume for the related qualification exams and the relatively low number of individuals who currently hold these registrations.<sup>35</sup> In addition, FINRA believes that Foreign Associates should demonstrate the same level of competence and knowledge required of their counterparts in the United States.<sup>36</sup>

Proposed Rule 1220.06 provides that, subject to the lapse of registration provisions in proposed Rule 1210.08, individuals who are registered as Order Processing Assistant Representatives, United Kingdom Securities Representatives, Canada Securities Representatives, Options Representatives, Corporate Securities Representatives, or Government Securities Representatives on the effective date of the proposed rule change and individuals who had been registered in such categories within the past two years before the effective date of the proposed rule change would be eligible to maintain their registrations with FINRA. However, if individuals registered in these categories terminate their registration with FINRA and the registration remains terminated for two or more years, they would not be able to re-register in that category.

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<sup>34</sup> As discussed above, FINRA is also proposing to eliminate the United Kingdom Securities Representative and Canada Securities Representative registration categories. See Section II.M.15 supra.

<sup>35</sup> See Notice, supra note 4.

<sup>36</sup> See id.

With respect to Foreign Associates, proposed Rule 1220.06 provides that individuals registered as Foreign Associates on the effective date of the proposed rule change would also be eligible to maintain their registrations with FINRA. However, if Foreign Associates subsequently terminate their registrations with FINRA, they would not be able to re-register as Foreign Associates. FINRA states that, unlike the other categories being eliminated, Foreign Associates would not be eligible to re-register in the same category within two years of terminating their registrations because the two-year lapse of registration provision is only applicable to those registration categories that have an associated qualification exam.<sup>37</sup>

N. Associated Persons Exempt from Registration

Proposed Rule 1230 provides that the following persons associated with a member are not required to be registered: (i) persons associated with a member whose functions are solely and exclusively clerical or ministerial; and (ii) persons associated with a member whose functions are related solely and exclusively to: (a) effecting transactions on the floor of a national securities exchange and who are appropriately registered with such exchange; (b) transactions in municipal securities; (c) transactions in commodities; or (d) transactions in security futures, provided that any such person is registered with a registered futures association.

Proposed Rule 1230.01 provides that: (i) the function of accepting customer orders is not considered a clerical or ministerial function; (ii) each person associated with a member who accepts customer orders under any circumstances shall be registered in an appropriate registration category pursuant to proposed Rule 1220; and (iii) an associated person shall not be considered to be accepting a customer order where occasionally, when an appropriately registered person is unavailable, the associated person transcribes order details submitted by a

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<sup>37</sup> See id.

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

FINRA is proposing to rescind the guidance provided in NTM 87-47 (July 1987),<sup>38</sup> and is proposing Rule 1230.01 to clarify that associated persons who accept customer orders are required to be appropriately registered.<sup>39</sup>

O. Changes to Continuing Education Requirements

As discussed above, Rule 1250 includes a Regulatory Element and a Firm Element of CE.<sup>40</sup> FINRA is proposing to renumber Rule 1250 as Rule 1240 with certain changes.

1. Regulatory Element

The Regulatory Element of CE currently applies to registered persons and consists of periodic computer-based training on regulatory, compliance, ethical, supervisory subjects and sales practice standards.<sup>41</sup> FINRA proposes to replace the term “registered person” with the term “covered person” for purposes of the Regulatory Element, and to define the term “covered person” as any person, other than a Foreign Associate, registered pursuant to proposed Rule 1210, including any person who is permissively registered pursuant to proposed Rule 1210.02, and any person who is designated as eligible for a waiver pursuant to proposed Rule 1210.09. FINRA states that 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.<sup>42</sup>

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<sup>38</sup> In NTM 87-47, FINRA stated that unregistered administrative personnel may occasionally receive an unsolicited customer order at a time when appropriately qualified representatives or principals are unavailable. See id.

<sup>39</sup> See id.

<sup>40</sup> See supra note 17.

<sup>41</sup> See Notice, supra note 4.

<sup>42</sup> See id.

Consistent with proposed Rule 1210.09, the term “covered person” would include any person designated as eligible for waiver pursuant to the rule. Proposed Rule 1240(a) provides that the content of the Regulatory Element for a person designated as eligible for a waiver pursuant to proposed Rule 1210.09 shall be determined based on the person’s most recent registration status, and the Regulatory Element shall be completed based on the same cycle had the person remained registered. Proposed Rule 1240(a) further provides that if a person designated as eligible for a waiver fails to complete the Regulatory Element within the prescribed time frames, the person shall no longer be eligible for a waiver.

FINRA is proposing to codify existing guidance regarding the effect of failing to complete the Regulatory Element on a registered person’s activities and compensation.<sup>43</sup> Specifically, proposed Rule 1240(a)(2) provides that any person whose registration has been deemed inactive under the rule may not accept or solicit business or receive any compensation for the purchase or sale of securities. However, 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.<sup>44</sup>

## 2. Firm Element

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.<sup>45</sup> FINRA proposes to amend the Firm Element requirements in proposed Rule 1204(b)(2)(B) to require that programs used to

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<sup>43</sup> See id.

<sup>44</sup> FINRA is also proposing to remove language under Rule 1250(a)(1) stating that FINRA shall determine the content of the Regulatory Element. FINRA states that this language is superfluous. See id.

<sup>45</sup> See id.

implement a member's training plan include training in ethics and professional responsibility. FINRA states that it believes training in ethics and professional responsibility should apply to all covered persons.<sup>46</sup>

### III. Summary of Comment Letters and FINRA Response Letter

The Commission received eighteen comment letters on the proposal.<sup>47</sup> Sixteen commenters support the proposed rule change, and some of these commenters suggest certain areas of the proposal that could be clarified or revised, as further described below.<sup>48</sup> Two commenters support certain aspects of the proposal and do not support other aspects of the proposal.<sup>49</sup>

#### A. Opposition to Permissive Registration Proposal

One commenter generally supports the proposed restructuring of the representative-level qualification exams, but does not support the proposed permissive registration regime set forth in the proposal.<sup>50</sup> This commenter argues that eliminating any prohibition on the parking of registrations could allow unqualified individuals to maintain FINRA registrations and “runs contrary to the provisions of the Exchange Act requiring FINRA to prescribe standards of

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<sup>46</sup> Rule 1250(b)(2)(B) provides that with respect to Research Analysts and their immediate supervisors, the minimum standards for the Firm Element training programs must cover training in ethics, professional responsibility, and the requirements of Rule 2241. FINRA proposes to delete this language.

<sup>47</sup> See supra note 5.

<sup>48</sup> See CFA Letter, CFA Boston Letter, CFA Los Angeles Letter, CFA DC Letter, CFA San Francisco Letter, CFA Chicago Letter, CFA New York Letter, CFA Atlanta Letter, CFA Texas Letter, SIFMA Letter, FSI Letter, Fidelity Letter, Wells Fargo Letter, Nationwide Letter, ARM Letter, CAI Letter, and Morgan Stanley Letter.

<sup>49</sup> See NASAA Letter and CAI Letter.

<sup>50</sup> See NASAA Letter.

training, experience, and competence for individuals engaged in the investment banking or securities business.”<sup>51</sup>

In response, FINRA states that its current rule allows firms to permissively register associated persons who perform legal, compliance, internal audit, and back-office operations or who have similar responsibilities; that the proposed rule would allow firms to register other associated persons, such as those working in accounting or technology, regardless of their job function; and that FINRA does not believe that there is any meaningful distinction between the current categories of associated persons and other categories of associated persons for purposes of permissive registration.<sup>52</sup> In addition, FINRA notes that “by allowing firms to maintain a larger roster of associated persons who are permissively registered, firms will have greater flexibility in managing unanticipated needs for qualified personnel.”<sup>53</sup>

In response to this commenter’s concern that the proposal could result in potentially unqualified individuals acting in registered capacities, FINRA provides two examples to illustrate that the proposed permissive registration regime should not result in unqualified individuals acting in registered capacities any more so than does allowing individuals who just entered the securities industry and passed the requisite examinations to serve in registered capacities.<sup>54</sup> FINRA also points out that the proposal contains a number of provisions designed to ensure that individuals with permissive registrations are adequately supervised and do not act outside the scope of their assigned functions.<sup>55</sup>

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<sup>51</sup> Id.

<sup>52</sup> See FINRA Response Letter.

<sup>53</sup> Id.

<sup>54</sup> See id.

<sup>55</sup> See id.

B. Opposition to Revised Registration Rules and Categories and Financial Services Affiliate Waiver Process

One commenter supports the permissive registration rules and opening the SIE up to the public but believes that the new rules and categories of registration are not necessarily an improvement over the current exam structure and that the time and effort spent by FINRA and firms to comply with the new rules can be better spent on other projects.<sup>56</sup> In response, FINRA states that it believes the proposed restructuring will result in a more effective and efficient examination program and reduce duplication.<sup>57</sup> FINRA also states that, to facilitate the implementation and management of the new examination structure with minimum disruption, FINRA is enhancing the CRD system and developing a management system to track SIE enrollments and results.<sup>58</sup>

This commenter also stated that FINRA should delay restructuring of representative-level exams until it determines whether a similar restructuring is feasible for principal-level exams.<sup>59</sup> In response, FINRA states that the value of the proposed changes warrants moving forward with the proposal now, and notes the extensive commentary previously sought and received on the registration rules.<sup>60</sup>

In addition, this commenter believes that the financial services affiliate waiver process set forth in proposed Rule 1210.09 is overly complex and difficult to understand and it is hard to determine what its effect will be.<sup>61</sup> In response, FINRA states that the financial services affiliate

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<sup>56</sup> See CAI Letter.

<sup>57</sup> See FINRA Response Letter.

<sup>58</sup> Id.

<sup>59</sup> See CAI Letter.

<sup>60</sup> See FINRA Response Letter.

<sup>61</sup> See CAI Letter.

waiver program is much less burdensome than the original proposal set forth in Regulatory Notice 09-70 and that the conditions of the waiver are not difficult to satisfy, especially when compared to the original proposal.<sup>62</sup> FINRA notes that it provided several examples in the proposed rule change to illustrate the application of the waiver program and it will work with the industry to provide guidance, if necessary.<sup>63</sup> Finally, FINRA notes that the current waiver process would still be available to individuals who do not qualify for the waiver program set forth in proposed Rule 1210.09.<sup>64</sup>

Finally, this commenter notes that FINRA has not provided a cost estimate for the SIE and states that it cannot provide thoughtful comment without such an estimate.<sup>65</sup> In response, FINRA states that it provided a detailed economic impact assessment in the filing, including with respect to the introduction of the SIE and the restructuring of the representative-level examinations.<sup>66</sup> Further, FINRA states that it will file a separate proposed rule change to establish the fees for the SIE and the specialized knowledge examinations, which will include a pricing analysis.<sup>67</sup>

### C. Suggested Amendments and Clarifications

#### 1. Supervisory Obligations Relating to Permissive Registrations

Two commenters believe that the proposed supervisory requirements relating to permissive registrants are overly burdensome and should be amended to allow a permissively

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<sup>62</sup> See FINRA Response Letter.

<sup>63</sup> See id.

<sup>64</sup> See id.

<sup>65</sup> See CAI Letter.

<sup>66</sup> See FINRA Response Letter. See also Notice, supra note 4.

<sup>67</sup> See FINRA Response Letter.

registered principal to be supervised by a registered representative or a registered principal.<sup>68</sup> In response, FINRA states that, under the proposal, the direct supervisor of an individual who solely maintains a permissive registration is not required to be a registered person, and a registered supervisor is only required to periodically contact the direct supervisor of such an individual to verify that the individual is not acting outside the scope of the individual's assigned functions.<sup>69</sup> In addition, FINRA states that it believes the designated supervisor of an individual who solely maintains a permissive registration as a principal should be a registered principal, as a registered principal is in the best position to assess whether a permissively-registered principal is performing activities normally performed by principals.<sup>70</sup>

One commenter recommends that more specific guidance be provided with respect to supervisory obligations of permissively registered individuals and believes that proposed Rule 1210.02, which states that all permissively registered individuals are subject to all FINRA rules, to the extent relevant to their activities, is both under- and over-inclusive.<sup>71</sup> In response, FINRA states that it “does not believe that it is necessary to adopt a prescriptive provision identifying each rule that may potentially apply to a permissively-registered individual” and that “the proposed rule provides firms the flexibility to evaluate the activities of their personnel and tailor their supervisory systems accordingly, in light of the requirements of the particular rule.”<sup>72</sup> In addition, FINRA notes that “to the extent that interpretive questions arise regarding the

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<sup>68</sup> See ARM Letter and Fidelity Letter.

<sup>69</sup> See FINRA Response Letter.

<sup>70</sup> Id.

<sup>71</sup> See CAI Letter.

<sup>72</sup> See FINRA Response Letter.

application of a particular FINRA rule, FINRA will work with the industry to address such interpretive questions and provide additional guidance as needed.”<sup>73</sup>

2. Requirements for Registered Persons Functioning as Principals for a Limited Period

Four commenters suggest that FINRA remove or shorten the requirement that registered representatives designated to function as principals for a limited period before passing a principal qualification exam have 18 months of registered representative experience within the previous five year period.<sup>74</sup> In response, FINRA states that when a firm designates a registered representative to function as a principal without having passed the principal-level examinations, the registered representative must have a consistent amount of securities industry experience.<sup>75</sup> FINRA also notes that the proposed rule provides firms the flexibility to designate a principal to function in another principal category for 120 calendar days before passing the applicable exams. The Principal would not be subject to the proposed experience requirement.<sup>76</sup>

3. Time Period for Retaking Failed Exams

One commenter requests that FINRA eliminate the proposed 180-day waiting period for taking an exam imposed on individuals who fail an exam three or more times in succession within a two-year period, and suggests various alternatives.<sup>77</sup> In response, FINRA states that the

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<sup>73</sup>

Id.

<sup>74</sup>

See SIFMA Letter, Wells Fargo Letter, Fidelity Letter, and ARM Letter.

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See FINRA Response Letter.

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See id. FINRA also notes that the proposed experience requirement does not operate as a “safe harbor” with respect to a firm’s designation of supervisory personnel. See id.

<sup>77</sup>

See Nationwide Letter.

proposed waiting periods for retaking a failed exam are specifically designed for test security purposes and to ensure an exam’s effectiveness as a measure of ability.<sup>78</sup>

#### 4. Lapse of Registration and SIE Expiration Periods

A number of commenters suggest that FINRA amend the proposal to align the expiration periods for the SIE, representative-level registrations, and principal-level registrations to make them all be four years.<sup>79</sup> One commenter requests that FINRA eliminate or extend the SIE expiration period.<sup>80</sup> Two commenters believe that the SIE should never expire so long as individuals complete their required Regulatory Element of CE.<sup>81</sup> One of these commenters argues that there should not be an expiration period for the specialized exams either so long as individuals complete their required Regulatory Element of CE.<sup>82</sup>

In response, FINRA states that it continues to believe that the SIE should be subject to a four-year expiration period given that, among other things, some of the individuals who pass the SIE may not have any exposure to the investment banking or securities business until they associate with a member, individuals who only pass the SIE would not be required to satisfy CE requirements, and the knowledge tested on the SIE is not static.<sup>83</sup> However, FINRA states that it will consult with the Securities Industry/Regulatory Council on Continuing Education (“CE Council”) to “evaluate the feasibility of developing a CE program, which would include general knowledge content, for individuals who have only passed the SIE.”<sup>84</sup> In addition, FINRA notes

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<sup>78</sup> See FINRA Response Letter.

<sup>79</sup> See SIFMA Letter, FSI Letter, and Fidelity Letter.

<sup>80</sup> See CAI Letter.

<sup>81</sup> See Nationwide Letter and ARM Letter.

<sup>82</sup> See ARM Letter.

<sup>83</sup> See FINRA Response Letter.

<sup>84</sup> Id.

that it is currently consulting with the CE Council to explore the possibility of requiring registered persons to participate more frequently in CE as a precondition to extending this time period.<sup>85</sup>

5. Waiver of Exams for Individuals Working for a Financial Services Industry Affiliate of a Member

A number of commenters suggest that FINRA clarify and/or amend certain aspects of the financial services affiliate waiver set forth in proposed Rule 1210.09. Three commenters argue that the requirement that an individual be registered during five of the previous ten years is overly burdensome and should be revised.<sup>86</sup> Three commenters request that FINRA eliminate the seven-year time limit following designation as eligible for a financial services affiliate waiver.<sup>87</sup> In response, FINRA states that it narrowly tailored the proposed waiver program; the proposed time limits are specifically designed to allow more seasoned personnel that have been transferred by a firm to an affiliate for a limited period to return to the securities industry without having to requalify by exam.<sup>88</sup>

One commenter requests that FINRA provide a waiver “claw back” period to allow individuals who were terminated from a firm within two years of the proposal’s approval date, and who meet the eligibility requirements, to be eligible for a waiver.<sup>89</sup> FINRA responds that applying the proposed waiver program on a retroactive basis would add unnecessary complexity and that the existing waiver process would be available to such persons.<sup>90</sup>

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<sup>85</sup> See id.

<sup>86</sup> See Wells Fargo Letter, Fidelity Letter, and CAI Letter.

<sup>87</sup> See Nationwide Letter, ARM Letter, and CAI Letter.

<sup>88</sup> See FINRA Response Letter.

<sup>89</sup> See Fidelity Letter.

<sup>90</sup> See FINRA Response Letter.

One commenter suggests that individuals designated as eligible for the financial services affiliate waiver be placed on inactive status rather than have their registrations terminated, so that they could be tracked through CRD and FINRA could provide information to the public through BrokerCheck.<sup>91</sup> FINRA responds that this commenter's suggestion mirrors its original proposal<sup>92</sup> which commenters objected to because of the complexity and operational and cost burden. In response, FINRA developed the current proposal.<sup>93</sup>

One commenter asked whether individuals designated under the waiver provision would be subject to FINRA's regulatory requirements and further stated that the proposed rule should require such individuals to attend annual compliance meetings and complete the Firm Element of CE.<sup>94</sup> FINRA responds that individuals subject to the designation would not be subject to FINRA's jurisdiction based on their activities working for a member's financial services industry affiliate but would be required to, among other things, complete the Regulatory Element of CE if they wish to obtain a waiver upon their return to the securities industry.<sup>95</sup> FINRA notes that it does not believe that it is necessary to require these individuals to attend annual compliance meetings and complete the Firm Element of CE, which are requirements applicable to registered persons with day-to-day responsibilities at a member.<sup>96</sup>

One commenter requests that FINRA clarify the process for designating an individual for the waiver, and argues that the designation process could be simplified by relying on the CRD

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<sup>91</sup> See Nationwide Letter.

<sup>92</sup> See Regulatory Notice 09-70.

<sup>93</sup> See FINRA Response Letter.

<sup>94</sup> See Nationwide Letter.

<sup>95</sup> See FINRA Response Letter. FINRA notes, however, that it retains jurisdiction for up to two years over a person who ceases to be associated or registered with a member. See id.

<sup>96</sup> See id.

system to accept and maintain the designation.<sup>97</sup> One commenter notes that firms must develop a process for tracking and monitoring designated individuals, which will be a burden.<sup>98</sup> In response, FINRA states that it is considering using the CRD system to allow a member to designate an individual for the waiver.<sup>99</sup> However, FINRA notes that it would not track a designated individual's time at a financial services industry affiliate of a member and, upon registering the individual with FINRA, the firm with which the individual is associating at that time would be required to represent, among other things, that the individual continuously worked for the financial services industry affiliate(s) of a member since the last Form U5 filing.<sup>100</sup> FINRA notes that it may independently verify this information and it will be able to track whether an individual completed the Regulatory Element of CE while working for a financial services industry affiliate of a member.<sup>101</sup>

One commenter states that individuals should not be disqualified from the waiver due to “pending or adverse regulatory matters,” but only as a result of “regulatory findings.”<sup>102</sup> FINRA responds that pending regulatory matters have a bearing on whether an individual has remained in good standing while working for a financial services industry affiliate of a member.<sup>103</sup>

Two commenters suggest that FINRA change the financial services affiliate waiver acronym from “FSA” to something else in order to avoid confusion.<sup>104</sup> In response, FINRA

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<sup>97</sup> See CAI Letter.

<sup>98</sup> See Nationwide Letter.

<sup>99</sup> See FINRA Response Letter.

<sup>100</sup> See *id.*

<sup>101</sup> See *id.* and Section 15A(b)(2) of the Exchange Act.

<sup>102</sup> See ARM Letter

<sup>103</sup> See FINRA Response Letter.

<sup>104</sup> See SIFMA Letter and ARM Letter.

notes that the acronym is not used in proposed Rule 1210.09 and, to avoid confusion, FINRA will use a different acronym in the future.<sup>105</sup>

Three commenters suggest that, following the effectiveness of the proposal, FINRA monitor the waiver program and maintain a dialog with members to make sure it is operating as intended.<sup>106</sup> One commenter notes that members will need training, additional information, and detailed waiver guidelines to better understand the designation and waiver process.<sup>107</sup> In response, FINRA states that it is committed to engaging in an ongoing dialogue with industry participants to ensure that the waiver program is effective and efficient and, as needed, will provide guidance to firms.<sup>108</sup>

#### 6. Principal Financial Officer and Principal Operations Officer

Two commenters request that FINRA clarify the registration requirements for Principal Financial Officers and Principal Operations Officers, including whether such designated individuals will continue to be exempt from the Operations Professional (Series 99) qualification exam.<sup>109</sup> In response, FINRA states that Principal Financial Officers and Principal Operations Officers must be registered in the CRD system as Operations Professionals but would not be required to pass the Series 99 exam in order to register as such if they already hold a qualifying registration.<sup>110</sup> In addition, FINRA states that because Principal Financial Officers and Principal Operations Officers would already be registered as Financial and Operations Principals or

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<sup>105</sup> See FINRA Response Letter.

<sup>106</sup> See SIFMA Letter, Wells Fargo Letter, and ARM Letter.

<sup>107</sup> See ARM Letter.

<sup>108</sup> See FINRA Response Letter.

<sup>109</sup> See SIFMA Letter and Wells Fargo Letter.

<sup>110</sup> See FINRA Response Letter.

Introducing Broker-Dealer Financial and Operations Principals, they would be eligible to register as Operations Professionals.<sup>111</sup>

7. Implementation Date

Six commenters state that the proposed implementation date set forth in the Notice of March 2018 is not appropriate and suggest FINRA allow more time for firms to implement the proposed rule change.<sup>112</sup> In response, FINRA states that it intends to move the implementation date to the fourth quarter of 2018; FINRA will announce the implementation date of the proposed rules in a Regulatory Notice.<sup>113</sup>

8. Other Comments

Nine commenters request that FINRA and the Commission recognize the Chartered Financial Analyst (CFA) program and the CFA charter as an alternative means of qualifying individuals for FINRA representative-level registrations.<sup>114</sup> In response, FINRA states that it will consider undertaking an analysis that would evaluate the proposed CFA approach to determine if it is feasible and would be cost effective for the industry.<sup>115</sup>

Two commenters state that the broker-dealer registration rules, as amended by FINRA's proposal, should be harmonized across regulators.<sup>116</sup> In response, FINRA states that it has discussed aspects of the proposal, such as the introduction of the SIE and the specialized

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<sup>111</sup> See id.

<sup>112</sup> See SIFMA Letter, FSI Letter, Wells Fargo Letter, Fidelity Letter, ARM Letter, and CAI Letter.

<sup>113</sup> See FINRA Response Letter.

<sup>114</sup> See CFA Letter, CFA Boston Letter, CFA Los Angeles Letter, CFA DC Letter, CFA San Francisco Letter, CFA Chicago Letter, CFA New York Letter, CFA Atlanta Letter, and CFA Texas Letter.

<sup>115</sup> See FINRA Response Letter.

<sup>116</sup> See Fidelity Letter and Morgan Stanley Letter.

knowledge examinations, with other self-regulatory organizations, including the MSRB, and that it will continue these discussions.<sup>117</sup>

One commenter requests that FINRA clarify whether it will provide actual scores for the SIE to candidates.<sup>118</sup> In response, FINRA states that it is exploring options for providing appropriate performance feedback to failing candidates and their firms and that FINRA does not see a need, at this time, to provide such feedback for candidates who pass.<sup>119</sup>

One commenter notes its concern that bad actors who take the SIE may hold themselves out as licensed professionals to defraud investors, and encourages FINRA to consider implementing further controls as a part of the enhancements it is considering to the CRD system and BrokerCheck, to ensure those who pass the SIE do not mislead investors.<sup>120</sup> In response, FINRA states that BrokerCheck provides information to the public on persons who are, or were, registered to conduct investment banking or securities business, and FINRA believes that including individuals who only pass the SIE, and thus would not be registered to engage in such business, on BrokerCheck may cause confusion.<sup>121</sup>

One commenter makes several additional suggestions relating to FINRA's registration rules and processes, including that FINRA: (i) modify the General Securities Principal exam content to eliminate product scope limitations; (ii) establish reciprocity with the New York Stock Exchange with respect to Chief Compliance Officer exams; (iii) keep certain registration categories that are being eliminated as qualifying prerequisites for other registration categories;

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<sup>117</sup> See FINRA Response Letter.

<sup>118</sup> See ARM Letter.

<sup>119</sup> See FINRA Response Letter.

<sup>120</sup> See FSI Letter.

<sup>121</sup> See FINRA Response Letter.

and (iv) work with other regulators to minimize multiple registration categories related to a single exam in order to simplify Section 4 of the Form U4.<sup>122</sup> In response, FINRA states that it will address the content of the Series 24 exam and the status of the Series 14 exam as part of evaluating the principal-level examinations, which is ongoing.<sup>123</sup> In addition, FINRA states that, while it is proposing to eliminate the United Kingdom Securities Representative and Canada Securities Representative registration categories, individuals maintaining these registrations would be grandfathered and their registrations would continue to be viewed as equivalent to the General Securities Representative prerequisite registration.<sup>124</sup> Finally, FINRA states that concerns regarding the complexities of the Form U4 registration table are more appropriately addressed through changes to the CRD system's Form U4 interface, rather than through the proposed rule change.<sup>125</sup>

#### IV. Discussion and Commission's Findings

After careful review of the proposed rule change, the comment letters and the FINRA Response Letter, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.<sup>126</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,<sup>127</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to

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<sup>122</sup> See ARM Letter.

<sup>123</sup> See FINRA Response Letter.

<sup>124</sup> See id.

<sup>125</sup> See id.

<sup>126</sup> In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>127</sup> 15 U.S.C. 78o-3(b)(6).

promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(g)(3) of the Exchange Act,<sup>128</sup> which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members.

FINRA states that, as part of the process of developing the Consolidated FINRA Rulebook, FINRA undertook a review of the NASD registration rules and the Incorporated NYSE rules relating to registration to update the rules and eliminate duplicative, obsolete, or superfluous provisions, and the proposed consolidated registration rules are the result of that process.<sup>129</sup> FINRA states that it believes the proposed rule change will streamline, and bring consistency and uniformity to, the registration rules, which will, in turn, assist members and their associated persons in complying with the rules and improve regulatory efficiency.<sup>130</sup>

FINRA states that it also reviewed its representative-level examination program and determined to enhance the overall efficiency of the 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.<sup>131</sup> FINRA states that the proposed changes will improve the efficiency of the examination program, without compromising the qualification standards, by eliminating duplicative testing of general securities knowledge on exams and by removing exams that currently have limited utility.<sup>132</sup>

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<sup>128</sup> 15 U.S.C. 78o-3(g)(3).

<sup>129</sup> See Notice, supra note 4.

<sup>130</sup> See id.

<sup>131</sup> See id.

<sup>132</sup> See id.

The Commission notes that one commenter is concerned that proposed Rule 1210.02, which would expand the scope of permissive registrations, could, among other things, result in potentially unqualified individuals acting in registered capacities.<sup>133</sup> In response, FINRA states that “allowing firms to permissively register associated persons in anticipation of future needs for qualified personnel is consistent with FINRA’s authority under the Exchange Act” and that “by allowing firms to maintain a larger roster of associated persons who are permissively registered, firms will have greater flexibility in managing unanticipated needs for qualified personnel.”<sup>134</sup> FINRA also points out that, pursuant to the proposal, individuals maintaining a permissive registration under the proposed rule change would be considered registered persons and subject to all FINRA rules, to the extent relevant to their activities; that members must have adequate supervisory systems and written procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions; and that the rule provides for additional supervisory controls of individuals with permissive registrations.<sup>135</sup> The Commission notes that, pursuant to the proposal, individuals with permissive registrations would also be subject to the Regulatory Element of the CE requirements.<sup>136</sup>

In addition, a number of commenters were concerned with various aspects of the proposal to provide a waiver process for individuals working for a financial services industry affiliate of a

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<sup>133</sup> See NASAA Letter. In addition, this commenter states that proposed Rule 1210.02 “runs contrary to the provisions of the Exchange Act requiring FINRA to prescribe standards of training, experience, and competence for individuals engaged in the investment banking or securities business.” Id.

<sup>134</sup> FINRA Response Letter.

<sup>135</sup> See id. See also proposed Rule 1210.02.

<sup>136</sup> See proposed Rules 1210.07 and 1240.

member.<sup>137</sup> FINRA states that this proposed waiver process is narrowly tailored,<sup>138</sup> and will require individuals granted a waiver to maintain specified levels of competence and knowledge while working in areas ancillary to the investment banking and securities business.<sup>139</sup> FINRA points out that, among other conditions, the proposed rule requires that: (i) before an individual's initial designation, the individual must have been 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; (ii) the waiver request must be made within seven years of the individual's initial designation; and (iii) the individual cannot have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4 (Uniform Application for Securities Industry Registration or Transfer).<sup>140</sup> The Commission notes that the designated individual must also comply with the Regulatory Element of the CE requirements.<sup>141</sup> The Commission further notes that FINRA has committed to "engaging in an ongoing dialogue with industry participants to ensure that the waiver program is effective and efficient and, as needed, will provide guidance to firms."<sup>142</sup>

FINRA states that the proposed rule change will make the qualification and registration process more effective and efficient, without affecting the proficiency required to function as a

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<sup>137</sup> See proposed Rule 1210.09 and supra notes 61 and notes 86-105.

<sup>138</sup> See FINRA Response Letter ("FINRA understands that firms regularly transfer more seasoned personnel to an affiliate for a limited period so that they could gain organizational skills and better knowledge of products developed by the affiliate. FINRA designed the FSA waiver program to allow such individuals to return to the securities industry without them having to requalify by examination. Thus, the FSA waiver program is narrowly tailored and the proposed conditions serve that purpose.")

<sup>139</sup> See Notice, supra note 4.

<sup>140</sup> See FINRA Response Letter.

<sup>141</sup> See proposed Rules 1210.09 and 1240.

<sup>142</sup> FINRA Response Letter.

representative or principal or reducing investor protection.<sup>143</sup> FINRA also states that the proposed rule change may enhance the pool of prospective securities industry professionals by familiarizing them with securities laws, rules, and regulations and appropriate conduct at an earlier stage of career development.<sup>144</sup>

The Exchange Act authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members.<sup>145</sup> In accordance with that provision, FINRA has proposed to revise its registration requirements, qualification examinations, and continuing education requirements which the Commission believes are designed to establish that persons associated with FINRA members have attained specified levels of competence and knowledge, consistent with the applicable registration category. The Commission believes that FINRA has adequately addressed all comments that are within the scope of the proposed rule change.<sup>146</sup> For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act.

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<sup>143</sup> See Notice, supra note 4.

<sup>144</sup> See id.

<sup>145</sup> 15 U.S.C. 78o-3(g)(3).

<sup>146</sup> See supra Section III.

V. Conclusion

IT IS THEREFORE ORDERED THAT, pursuant to Section 19(b)(2) of the Exchange Act,<sup>147</sup> the proposed rule change (SR-FINRA-2017-007), be and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>148</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>147</sup> 15 U.S.C. 78s(b)(2).

<sup>148</sup> 17 CFR 200.30-3(a)(12).

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