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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84389; File No. SR-NYSEARCA-2018-71]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Amendments to Rules Regarding Qualification, Registration and Continuing Education Applicable to Equity Trading Permit Holders, Options Trading Permit Holders or OTP Firms

October 10, 2018

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 27, 2018, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes amendments to the Exchange’s rules regarding qualification, registration and continuing education requirements applicable to Equity Trading Permit (“ETP”) Holders, Options Trading Permit (“OTP”) Holders or OTP Firms. The Exchange’s rule proposal is intended to harmonize its rules with Financial Regulatory Authority, Inc. (“FINRA”) rules and thus promote consistency within the securities industry, and therefore the Exchange is only adopting rules that are relevant to the Exchange’s ETP Holders, OTP Holders or OTP Firms. The Exchange is not adopting registration categories that are not applicable to ETP Holders, OTP Holders or OTP Firms because they do not engage in the type of business that would

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

require such registration. As such, the Exchange is amending current Rules 2.23 and 2.24 regarding continuing education requirements to reflect the FINRA rule; adopting Commentary .06 to current Rule 2.23 and 2.24 regarding fingerprint information; adopting new Rule 2.1210 regarding registration requirements and related Commentary to new Rule 2.1210; adopting new Rule 2.1220 regarding registration categories<sup>4</sup> and related Commentary to new Rule 2.1220; and adopting new Rule 2.1230 regarding associated persons exempt from registration and related Commentary to new Rule 2.1230. Each of these rule changes, which are [sic] described in more detail below, would become operative on October 1, 2018. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

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<sup>4</sup> The relevant principal registration categories the Exchange proposes to adopt are (1) Principal; (2) General Securities Principal; (3) Compliance Officer; (4) Financial and Operations Principal and Introducing Broker-Dealer Financial and Operations Principal; (5) Securities Trader Principal; (6) General Securities Sales Supervisor; and (7) Registered Options Principal. The relevant representative registration categories the Exchange proposes to adopt are (1) Representative; (2) General Securities Representative; and (3) Securities Trader.

The Exchange proposes to amend its qualification, registration, and continuing education requirements applicable to ETP Holders, OTP Holders or OTP Firms. The proposed amendments are intended to: (i) provide transparency and clarity with respect to the Exchange's registration, qualification and examination requirements; (ii) amend its rules relating to categories of registration and respective qualification examinations required for ETP Holders that engage in trading activities on the Exchange; (iii) harmonize the Exchange's qualification, registration and examination rules with those of FINRA<sup>5</sup> so as to promote uniform standards across the securities industry; and (iv) add new definitions of terms and make other conforming changes to enhance the comprehensiveness and clarity of the Exchange's rules.<sup>6</sup> The proposed changes are discussed below.

A. Amendments to Current Rules 2.5, 2.23, 2.24, 6.43-O, 9.27-O and 9.27-E

Current Rules 2.5(A) and (B) currently require traders of ETP Holders to successfully complete the Series 7 Examination. The Exchange proposes to amend current Rules 2.5(A) and (B) by requiring traders of ETP Holders to successfully complete the Securities Industry Essentials ("SIE") examination in addition to the Series 7 Examination in order to satisfy the Exchange's registration requirement, consistent with the proposed restructuring of the representative-level examinations proposed in the FINRA Filing.

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<sup>5</sup> See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR-FINRA-2017-007) (Approval Order) (the "FINRA Filing"). The Exchange notes that in order to maintain consistency with the FINRA Filing, the Exchange proposes to incorporate certain terms from the relevant FINRA rule into the Exchange's rule that may not be applicable to ETP Holders, OTP Holders or OTP Firms. For example, while ETP Holders, OTP Holders or OTP Firms may not be engaged in "investment banking" activity, the Exchange proposes to adopt that term within these registration rules to conform them to the FINRA rules.

<sup>6</sup> The conforming changes the Exchange proposes would substitute the term "ETP Holder," "OTP Holder" or "OTP Firm" as applicable for "member" and the term "Exchange" for "FINRA."

Current Rule 2.23(b)(1) similarly requires traders of OTP Holders and OTP Firms to successfully complete the Series 7 Examination. Consistent with the proposed restructuring of the representative-level examination proposed in the FINRA Filing, the Exchange proposes to amend current Rule 2.23(b)(1) to require traders of OTP Holders and OTP Firms to successfully complete the SIE examination and the Series 7 Examination in order to satisfy the Exchange's registration requirement. Rule 2.23(b)(2) currently provides that the examination requirement in Rule 2.23(b)(1) does not apply to an individual who does not conduct business with the public and who is registered as a Market Maker or Market Maker Authorized Traders, pursuant to Rule 2.23(b)(2)(A), or as a Securities Trader, pursuant to Rule 2.23(b)(2)(C), in which case such individuals are required to successfully complete the Series 57 examination.

Consistent with the proposed restructuring of the representative-level examination proposed in the FINRA Filing, the Exchange proposes to amend current Rule 2.23(b)(2)(A) and (C) by requiring traders of OTP Holders and OTP Firms to successfully complete the SIE examination and the Series 57 Examination in order to satisfy the Exchange's registration requirement. Further, current Rule 2.23(b)(2)(C) provides the definition of a Securities Trader. The Exchange proposes to adopt FINRA's definition of Securities Trader (as described below) and, therefore, proposes to add a reference to Rule 2.1220(b)(3) as the appropriate rule in the Exchange's Rulebook where the definition of Securities Trader can be found. The Exchange also proposes to adopt rule text within the current rule that provides that a person registered as a Securities Trader would not be qualified to function in any other registration category unless he or she is also qualified and registered in such other registration category. Current Rule 2.23(b)(3)(A) provides that a General Securities Principal engaged in supervisory activities must complete the Series 7 examination and the Series 24 examination. Consistent with the proposed

restructuring of the representative-level examination proposed in the FINRA Filing, the Exchange proposes to amend current Rule 2.23(b)(3)(A) to require such persons to also complete the SIE examination.

Current Rule 2.24(b)(iii) provides that employees of ETP Holders seeking limited registration as Securities Traders are required to complete the Series 57 examination. Consistent with the proposed restructuring of the representative-level examination proposed in the FINRA Filing, the Exchange proposes to amend current Rule 2.24(b)(iii) to require such persons to also complete the SIE examination in addition to the Series 57 examination. Further, current Rule 2.24, Commentary .03, provides the definition of a Securities Trader. With this proposed rule change, the Exchange proposes to adopt FINRA's definition of Securities Trader (as described below) and therefore, proposes to add a reference to Rule 2.1220(b)(3) as the appropriate rule in the Exchange's Rulebook where the definition of Securities Trader can be found. The Exchange also proposes to adopt rule text within the current rule that provides that a person registered as a Securities Trader would not be qualified to function in any other registration category unless he or she is also qualified and registered in such other registration category.

Current Rule 6.43-O(b)(1)(A) currently requires qualified Floor Brokers and Floor Clerks of qualified Floor Brokers that conduct a public business limited to accepting orders directly from Professional Customers for execution on the Floor of the Exchange must successfully complete the Series 7 examination or the Series 7A examination. Consistent with the proposed restructuring of the representative-level examination proposed in the FINRA Filing, the Exchange proposes to amend current Rule 6.43-O(b)(1)(A) by requiring qualified Floor Brokers and Floor Clerks of qualified Floor Brokers to successfully complete the SIE examination and the Series 7 Examination or the Series 7A examination in order to satisfy the Exchange's

registration requirement.

Current Rule 9.27-O, Commentary .01, and Rule 9.27-E, Commentary .01, each states that the Exchange considers the Uniform Registered Representative Examination<sup>7</sup> (“Series 7”) as adequate in measuring an applicant’s knowledge of the securities industry and satisfies the examination requirements prescribed in the rule. As noted below, given the adoption of the Securities Industry Essential (“SIE”) examination in the FINRA Filing, the Exchange proposes to amend the current rules to adopt the SIE exam as an additional requirement. As amended, Rule 9.27-O, Commentary .01, and Rule 9.27-E, Commentary .01, would each provide that in addition to the Series 7 examination, the Exchange would also require an applicant to pass the SIE examination to register as a general securities representative.

#### B. Amendments to Rules 2.23 and Rule 2.24- Continuing Education Requirements

Rules 2.23 and 2.24 provide the continuing education requirements of registered persons<sup>8</sup> of an OTP Holder or OTP Firm, and ETP Holders, respectively, subsequent to their initial qualification and registration with the Exchange, and includes a Regulatory Element and a Firm Element. The Regulatory Element applies to registered persons and consists of periodic computer-based training on regulatory, compliance, ethical, supervisory subjects and sales practice standards. The Firm Element consists of at least an annual, member-developed and administered training programs designed to keep registered persons current regarding securities products, services and strategies offered by the member.

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<sup>7</sup> The Exchange proposes to rename the Uniform Registered Representative Examination in Rule 9.27-O, Commentary .01, and in Rule 9.27-E, Commentary .01, as the General Securities Representative Examination to reflect the current name of the Series 7 examination.

<sup>8</sup> For purposes of Rule 2.24, the term “registered person” means any ETP Holder, Allied Person thereof, registered representative or other person registered or required to be registered under the Rules of the Exchange. See Rule 2.24, Commentary .01.

## 1. Regulatory Element

The Exchange proposes to amend Rules 2.23(d)(1) and 2.24(d)(1) to provide, consistent with proposed Rule 2.1210, Commentary .08, that a waiver-eligible person would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and that the content of the Regulatory Element would be based on the same cycle had the individual remain [sic] registered.<sup>9</sup> The proposed amendment to Rules 2.23(d)(1) and 2.24(d)(1) also provides that if a waiver-eligible person fails to complete the Regulatory Element during the prescribed time frames, he or she would lose waiver eligibility.<sup>10</sup>

Further, the Exchange proposes to amend Rules 2.23(d)(1) and 2.24(d)(1) to provide 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. The proposed amendment provides, however, that such person may receive trail or residual commissions resulting from transactions completed before the inactive status, unless the OTP Holder or OTP Firm, or ETP Holder, with which the person is associated has a policy prohibiting such trail or residual commissions.<sup>11</sup>

Additionally, under Rules 2.23(d)(1) and 2.24(d)(1), a registered person is required to retake the Regulatory Element in the event that such person (i) is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act; (ii) is subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such

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<sup>9</sup> The proposed change is substantially similar to that contained in FINRA Rule 1240(a)(1).

<sup>10</sup> The proposed change is substantially similar to that contained in FINRA Rule 1240(a)(2).

<sup>11</sup> The proposed change is substantially similar to that contained in FINRA Rule 1240(a)(2).

regulatory or self-regulatory organization in connection with a disciplinary proceeding; or (iii) is ordered as a sanction in a disciplinary action to retake the Regulatory Element by any securities governmental agency or self-regulatory organization. The Exchange proposes to amend Rules 2.23(d)(1) and 2.24(d)(1) to provide an exception to a waiver-eligible person from retaking the Regulatory Element and satisfy [sic] all of its requirements.<sup>12</sup>

## 2. Firm Element

Current Rule 2.23(d)(2)(B)(ii) provides that programs used to implement an OTP Firm's or OTP Holder's training program must be appropriate for the business of the OTP Firm or OTP Holder and, at a minimum must cover specific matters concerning securities products, services, and strategies offered by the OTP Firm or OTP Holder. Current Rule 2.24(d)(2)(B)(ii) also provides that programs used to implement an ETP Holder's training program must be appropriate for the business of the ETP Holder and, at a minimum must cover specific matters concerning securities products, services, and strategies offered by the ETP Holder. The Exchange proposes to amend both Rules 2.23(d)(2)(B)(ii) and 2.24(d)(2)(B)(ii) to expand the minimum standard for such training programs by requiring that, at a minimum, a firm's training program must also cover training in ethics and professional responsibility.<sup>13</sup>

### C. Proposed Rule 2.23 - Commentary .06 and Proposed Rule 2.24 - Commentary .06 - Fingerprint Information<sup>14</sup>

The Exchange proposes to adopt Rule 2.23, Commentary .06 and Rule 2.24, Commentary .06, regarding the submission of fingerprint information by OTP Firms or OTP Holders, and ETP Holders, respectively. As proposed, upon filing an electronic Form U4 on behalf of a person

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<sup>12</sup> The proposed change is substantially similar to that contained in FINRA Rule 1240(a)(3).

<sup>13</sup> The proposed change is substantially similar to that contained in FINRA Rule 1240(b)(2).

<sup>14</sup> The proposed rule is substantially similar to FINRA Rule 1010(d).

applying for registration, an OTP Firm or OTP Holder, or ETP Holder, as applicable, would be required to promptly submit fingerprint information for that person. If the OTP Firm or OTP Holder, or ETP Holder, as applicable, fails to submit the fingerprint information within 30 days after the Exchange receives the electronic Form U4, the person's registration shall be deemed inactive and the person would be required to immediately cease all activities requiring registration and would be prohibited from performing any duties and functioning in any capacity requiring registration. The proposed rule further provides [sic] allows the Exchange to administratively terminate a registration that is inactive for a period of two years. However, a person whose registration is administratively terminated may seek to reactivate his or her registration by reapplying for registration and meeting the qualification requirements under Exchange rules.

#### D. Proposed New Rules 2.1210 through 2.1230

As a general matter, FINRA administers qualification examinations that are designed to establish that persons associated with ETP Holders, OTP Holders or OTP Firm have attained specified levels of competence and knowledge. Over time, the examination program has increased in complexity to address the introduction of new products and functions, and related regulatory concerns and requirements. As a result, today, there are a large number of examinations, considerable content overlap across the representative-level examinations and requirements for individuals in various segments of the industry to pass multiple examinations. To address these issues, FINRA has formulated a general knowledge examination called the Securities Industry Essential ("SIE") that all potential representative-level registrants would take.<sup>15</sup> Rule changes related to the adoption of the SIE and other proposed new rules are

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<sup>15</sup> The SIE would assess basic product knowledge; the structure and function of the

discussed below.

1. Proposed Rule 2.1210 - Registration Requirements<sup>16</sup>

Proposed Rule 2.1210 provides that each person engaged in the investment banking or securities business of an ETP Holder, OTP Holder or OTP Firm must register with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in proposed Rule 2.1220, unless exempt from registration pursuant to proposed Rule 2.1230. Proposed Rule 2.1210 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.

2. Proposed Rule 2.1210, Commentary .01 - Permissive Registrations<sup>17</sup>

The Exchange currently does not have a specific rule that provides for permissive registrations. With this proposed rule change, and to conform its rules to the FINRA rules, the Exchange proposes to adopt a specific rule regarding permissive registrations. Proposed Rule 2.1210, Commentary .01, allows any associated person to obtain and maintain any registration permitted by an ETP Holder, OTP Holder or OTP Firm. For instance, an associated person of an ETP Holder, OTP Holder or OTP Firm working solely in a clerical or ministerial capacity, such as in an administrative capacity, would be able to obtain and maintain a General Securities

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securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. In particular, the SIE will cover four major areas. The first, "Knowledge of Capital Markets," focuses on topics such as types of markets and offerings, broker-dealers and depositories, and economic cycles. The second, "Understanding Products and Their Risks," covers securities products at a high level as well as associated investment risks. The third, "Understanding Trading, Customer Accounts and Prohibited Activities," focuses on accounts, orders, settlement and prohibited activities. The final area, "Overview of the Regulatory Framework," encompasses topics such as SROs, registration requirements and specified conduct rules.

<sup>16</sup> The proposed rule is substantially similar to FINRA Rule 1210.

<sup>17</sup> The proposed rule is substantially similar to FINRA Rule 1210.02.

Representative registration with the ETP Holder, OTP Holder or OTP Firm. As another example, an associated person of an ETP Holder, OTP Holder or OTP Firm who is registered, [sic] and functioning solely, as a General Securities Representative would be able to obtain and maintain a General Securities Principal registration with the ETP Holder, OTP Holder or OTP Firm. Further, proposed Rule 2.1210, Commentary .01, allows an individual engaged in the securities business of a foreign securities affiliate or subsidiary of an ETP Holder, OTP Holder or OTP Firm to obtain and maintain any registration permitted by the ETP Holder, OTP Holder or OTP Firm.

The Exchange is proposing to permit the registration of such individuals for several reasons. First, an ETP Holder, OTP Holder or OTP Firm may foresee a need to move a former representative or principal who has not been registered for two or more years back into a position that would require such person to be registered. Currently, such persons are required to requalify (or obtain a waiver of the applicable qualification examinations) and reapply for registration. Second, the proposed rule change would allow ETP Holders, OTP Holder or OTP Firm to develop a depth of associated persons with registrations in the event of unanticipated personnel changes. Finally, allowing registration in additional categories encourages greater regulatory understanding.

Individuals maintaining a permissive registration under the proposed rule change would be considered registered persons and subject to all Exchange rules, to the extent relevant to their activities. Additionally, consistent with the requirements of the Exchange's supervision rules, as proposed, ETP Holders, OTP Holder or OTP Firm would be required to have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions. With respect to

an individual who solely maintains a permissive registration, such as an individual working exclusively in an administrative capacity, the individual's day-to-day supervisor may be a non-registered person. However, for purposes of compliance with the Exchange's supervision rules, an ETP Holder, OTP Holder or OTP Firm would be required to assign a registered supervisor who would be responsible for periodically contacting such individual's day-to-day supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor must be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor must be registered as a principal.<sup>18</sup>

3. Proposed Rule 2.1210, Commentary .02 - Qualification Examinations and Waivers of Examinations<sup>19</sup>

Proposed Rule 2.1210, Commentary .02, provides that before the registration of a person as a representative can become effective under proposed Rule 2.1210, such person must pass the SIE and an appropriate representative-level qualification examination as specified in proposed Rule 2.1220.<sup>20</sup> Proposed Rule 2.1210, Commentary .02, also provides that before the registration of a person as a principal can become effective under proposed Rule 2.1210, such person must pass an appropriate principal-level qualification examination as specified in proposed Rule 2.1220.

Further, proposed Rule 2.1210, Commentary .02, provides that if a registered person's job functions change and he or she needs to become registered in another representative-level

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<sup>18</sup> In either case, the registered supervisor of an individual who solely maintains a permissive registration would not be required to be registered in the same representative or principal registration category as the permissively-registered individual.

<sup>19</sup> The proposed rule is substantially similar to FINRA Rule 1210.03.

<sup>20</sup> Proposed Rule 2.1220 sets forth each registration category and applicable qualification examination for ETP Holders, OTP Holder or OTP Firm on the Exchange.

category, he or she would not need to pass the SIE again. Rather, the registered person would need to pass only the appropriate representative-level qualification examination.

Moreover, proposed Rule 2.1210, Commentary .02, provides that all associated persons, such as associated persons whose functions are solely and exclusively clerical or ministerial, are eligible to take the SIE. Proposed Rule 2.1210, Commentary .02, also provides that individuals who are not associated persons of firms, such as members of the general public, are eligible to take the SIE. The Exchange 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 prior to submitting a job application. Further, this approach would allow for more flexibility and career mobility within the securities industry. While all associated persons of firms as well as individuals who are not associated persons would be eligible to take the SIE pursuant to the proposed rule, passing the SIE alone would not qualify them for registration with the Exchange. Rather, to be eligible for registration with the Exchange, an individual must pass an applicable representative or principal qualification examination and complete the other requirements of the registration process.

Proposed Rule 2.1210, Commentary .02, also provides that the Exchange may, in exceptional cases and where good cause is shown, pursuant to Rule 2.5(c), waive the applicable qualification examination(s) and accept other standards as evidence of an applicant's qualifications for registration. The proposed rule further provides that the Exchange will only consider examination waiver requests submitted by an ETP Holder, OTP Holder or OTP Firm for individuals associated with the ETP Holder, OTP Holder or OTP Firm who are seeking registration in a representative- or principal-level registration category. Moreover, the proposed rule states that the Exchange will consider waivers of the SIE alone or the SIE and the

representative- and principal-level examination(s) for such individuals. The Exchange would not consider a waiver of the SIE for non-associated persons or for associated persons who are not registering as representatives or principals.

4. Proposed Rule 2.1210, Commentary .03 - Requirements for Registered Persons Functioning as Principals for a Limited Period<sup>21</sup>

Proposed Rule 2.1210, Commentary .03, provides that an ETP Holder, OTP Holder or OTP Firm may designate any person currently registered, or who becomes registered, with the ETP Holder, OTP Holder or OTP Firm as a representative to function as a principal for a limited period, provided that such person has at least 18 months of experience functioning as a registered representative with the [sic] five-year period immediately preceding the designation. The proposed rule is intended to ensure that representatives designated to function as principals for the limited period under the proposal have an appropriate level of registered representative experience. The proposed rule clarifies that the requirements of the rule apply to designations to any principal category, including those categories that are not subject to a prerequisite representative-level registration requirement, such as the Financial and Operations Principal registration category.<sup>22</sup>

The proposed rule also clarifies that the individual must fulfill all applicable prerequisite registration, fee and examination requirements before his or her designation as a principal. Further, the proposed rule provides that in no event may such person function as a principal beyond the initial 120 calendar days without having successfully passed an appropriate principal qualification examination. The proposed rule also provides an exception to the experience

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<sup>21</sup> The proposed rule is substantially similar to FINRA Rule 1210.04.

<sup>22</sup> The Exchange notes that qualifying as a registered representative is a prerequisite to qualifying as a principal except with respect to the following principal-level registrations: (1) Compliance Official; (2) Financial and Operations Principal; and (3) Introducing Broker-Dealer Financial and Operations Principal.

requirement for principals who are designated by an ETP Holder, OTP Holder or OTP Firm to function in other principal categories for a limited period. Specifically, the proposed rule states that an ETP Holder, OTP Holder or OTP Firm may designate any person currently registered, or who becomes registered, with the ETP Holder as a principal to function in another principal category for 120 calendar days before passing any applicable examinations.

5. Proposed Rule 2.1210, Commentary .04 - Rules of Conduct for Taking Examinations and Confidentiality of Examinations<sup>23</sup>

Proposed Rule 2.1210, Commentary .04 states that associated persons taking the SIE would be subject to the SIE Rules of Conduct, and associated persons taking a representative or principal examination would be subject to the Rules of Conduct for representative and principal examinations. Pursuant to proposed Rule 2.1210, Commentary .04, a violation of the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations by an associated person would be deemed to be a violation of Rule 11.1. Moreover, if an associated person is deemed to have violated the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations, the associated person may forfeit the results of the examination and may be subject to disciplinary action by the Exchange.

Further, the proposed rule states that individuals taking the SIE who are not associated persons must agree to be subject to the SIE Rules of Conduct. Among other things, the SIE Rules of Conduct would require individuals to attest that they are not qualified to engage in the investment banking or securities business based on passing the SIE and would prohibit individuals from cheating on the examination or misrepresenting their qualifications to the public subsequent to passing the SIE. Moreover, non-associated persons may forfeit their SIE results

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<sup>23</sup> The proposed rule is substantially similar to FINRA Rule 1210.05.

and may be prohibited from retaking the SIE if the Exchange determines that they cheated on the SIE or that they misrepresented their qualifications to the public subsequent to passing the SIE.

The proposed rule further notes that the Exchange considers all qualification examinations [sic] content to be highly confidential and that the removal of examination content from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such qualification examination or any other use that would compromise the effectiveness of the examinations and the use in any manner and at any time of the questions or answers to the examinations is prohibited and would be deemed a violation of Rule 11.1.

6. Proposed Rule 2.1210, Commentary .05 - Waiting Periods for Retaking a Failed Examination<sup>24</sup>

Proposed Rule 2.1210, Commentary .05 provides that any person who fails a qualification examination may retake that examination after 30 calendar days from the date of the person's last attempt to pass that examination. The proposed rule further provides that if a person fails an examination three or more times in succession within a two-year period, he or she would be prohibited from retaking the examination either until a period of 180 calendar days from the date of the person's last attempt to pass it [sic]. These waiting periods would apply to the SIE and the representative- and principal-level examinations. Moreover, the proposed rule provides that non-associated persons taking the SIE must agree to be subject to the same waiting periods for retaking the SIE.

7. Proposed Rule 2.1210, Commentary .06 - All Registered Persons Must Satisfy

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<sup>24</sup> The proposed rule is substantially similar to FINRA Rule 1210.06.

## the Regulatory Element of Continuing Education<sup>25</sup>

Pursuant to Rules 2.23(d) and 2.24(d), the CE requirements applicable to registered persons consist of a Regulatory Element<sup>26</sup> and a Firm Element.<sup>27</sup> The Regulatory Element applies to registered persons and must be completed within prescribed time frames.<sup>28</sup> The Firm Element consists of annual, ETP Holder-, OTP Holder- or OTP Firm-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the ETP Holder, OTP Holder or OTP Firm. For purposes of the Firm Element, the term covered registered persons means any registered Securities Trader and any registered person who has direct contact with customers in the conduct of the ETP Holder's, OTP Holder's or OTP Firm's securities sales, trading and investment banking activities and to the immediate supervisors of such persons.

The Exchange believes that all registered persons, regardless of their activities, should be subject to the Regulatory Element of the CE requirements so that they can keep their knowledge of the securities industry current. Therefore, the Exchange proposes to adopt Rule 2.1210,

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<sup>25</sup> The proposed rule is substantially similar to FINRA Rule 1210.07.

<sup>26</sup> See Rules 2.23(d)(1) and 2.24(d)(1).

<sup>27</sup> See Rules 2.23(d)(2) and 2.24(d)(1).

<sup>28</sup> Pursuant to Rules 2.23(d)(1) and 2.24(d)(1), each specified registered person is required to complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date. A registered person who has not completed the Regulatory Element program within the prescribed time frames will have his or her registrations deemed inactive and designated as "CE inactive" on the CRD system until such time as the requirements of the program have been satisfied. A CE inactive person is prohibited from performing, or being compensated for, any activities requiring registration, including supervision. Moreover, if a registered person is CE inactive for a two-year period, the Exchange will administratively terminate the person's registration status. The two-year period would be calculated from the date the person becomes CE inactive. In either case, such person must requalify (or obtain a waiver of the applicable qualification examination(s)) to be re-eligible for registration.

Commentary .06, to clarify that all registered persons, including those who solely maintain a permissive registration, are required to satisfy the Regulatory Element, as specified in Rules 2.23(d)(1) and 2.24(d)(1). The Exchange is making corresponding changes to Rules 2.23(d)(1) and 2.24(d)(1). The Exchange is not proposing any changes to the Firm Element requirement at this time. Individuals who have passed the SIE but not a representative- or principal-level examination and do not hold a registered position would not be subject to any CE requirements.

Proposed Rule 2.1210, Commentary .06, also provides that a registered person of an ETP Holder, OTP Holder or OTP Firm who becomes CE inactive would not be permitted to be registered in another registration category with the ETP Holder, OTP Holder or OTP Firm or be registered in any registration category with another ETP Holder, OTP Holder or OTP Firm, until the person has satisfied the Regulatory Element.

8. Proposed Rule 2.1210, Commentary .07 - Lapse of Registration and Expiration of the SIE<sup>29</sup>

Proposed Rule 2.1210, Commentary .07, provides that any person who was last registered as a representative two or more years immediately preceding the date of receipt by the Exchange of a new application for registration as a representative is required to pass a qualification examination for representatives appropriate to the category of registration as specified in proposed Rule 2.1220(b). Proposed Rule 2.1210, Commentary .07, also sets forth that a passing result on the SIE would be valid for up to four years. Therefore, under the proposed rule change, an individual who passes the SIE and is an associated person of an ETP Holder, OTP Holder or OTP Firm at the time would have up to four years from the date he or she passes the SIE to pass a representative-level examination to register as a representative with that ETP Holder, OTP Holder or OTP Firm, or a subsequent ETP Holder, OTP Holder or OTP Firm, without having to

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<sup>29</sup> The proposed rule is substantially similar to FINRA Rule 1210.08.

retake the SIE. In addition, an individual who passes the SIE and is not an associated person at the time would have up to four years from the date he or she passes the SIE to become an associated person of an ETP Holder, OTP Holder or OTP Firm and pass a representative-level examination and register as a representative without having to retake the SIE.

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

Finally, proposed Rule 2.1210, Commentary .07, clarifies that, for purposes of the proposed rule, an application would not be considered to have been received by the Exchange if that application does not result in a registration.

9. Proposed Rule 2.1210, Commentary .08 - Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of an ETP Holder, OTP Holder or OTP Firm<sup>30</sup>

Proposed Rule 2.1210, Commentary .08, provides the process for individuals working for a financial services industry affiliate of an ETP Holder, OTP Holder or OTP Firm<sup>31</sup> to terminate their registrations with the ETP Holder, OTP Holder or OTP Firm and be granted a waiver of

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<sup>30</sup> The proposed rule is substantially similar to FINRA Rule 1210.09.

<sup>31</sup> Proposed Rule 2.1210, Commentary .07 [sic], defines a “financial services industry affiliate of an ETP Holder, OTP Holder or OTP Firm” as a legal entity that controls, is controlled by or is under common control with an ETP Holder, OTP Holder or OTP Firm and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

their requalification requirements upon re-registering with an ETP Holder, OTP Holder or OTP Firm, provided the firm that is requesting the waiver and the individual satisfy the criteria for a Financial Services Affiliate (“FSA”) waiver.

Under the proposed waiver process, the first time a registered person is designated as eligible for a waiver based on the FSA criteria, the ETP Holder, OTP Holder or OTP Firm with which the individual is registered would notify the Exchange of the FSA designation. The ETP Holder, OTP Holder or OTP Firm would concurrently file a full Form U5 terminating the individual's registration with the firm, which would also terminate the individual's other SRO and state registrations. To be eligible for initial designation as an FSA-eligible person by an ETP Holder, OTP Holder or OTP Firm, an individual must have been registered for a total of five years within the most recent 10-year period prior to the designation, including for the most recent year with that ETP Holder, OTP Holder or OTP Firm. An individual would have to satisfy these preconditions only for purposes of his or her initial designation as an FSA-eligible person, and not for any subsequent FSA designation(s). Thereafter, the individual would be eligible for a waiver for up to seven years from the date of initial designation,<sup>32</sup> provided that the other conditions of the waiver, as described below, have been satisfied. Consequently, an ETP Holder, OTP Holder or OTP Firm other than the ETP Holder, OTP Holder or OTP Firm that initially designated an individual as an FSA-eligible person may request a waiver for the individual and more than one ETP Holder, OTP Holder or OTP Firm may request a waiver for the individual during the seven-year period.<sup>33</sup>

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<sup>32</sup> Individuals would be eligible for a single, fixed seven-year period from the date of initial designation, and the period would not be tolled or renewed.

<sup>33</sup> The following examples illustrate this point:

*Example 1.* Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate.

An individual designated as an FSA-eligible person would be subject to the Regulatory Element of CE while working for a financial services industry affiliate of an ETP Holder, OTP Holder or OTP Firm. The individual would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. If the individual fails to complete the prescribed Regulatory Element during the 120-day window for taking the session, he or she would lose FSA eligibility (*i.e.*, the individual would have the standard two-year period after termination to re-register without having to retake an examination). The Exchange is making corresponding changes to Rule 2.23(d) and 2.24(d).

Upon registering an FSA-eligible person, a firm would file a Form U4 and request the appropriate registration(s) for the individual. The firm would also submit an examination waiver request to the Exchange,<sup>34</sup> similar to the process used today for waiver requests, and it would

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Firm A does not submit a waiver request for the individual. After working for Firm A's financial services affiliate for three years, the individual directly joins Firm B's financial services affiliate for three years. Firm B then submits a waiver request to register the individual.

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

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

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

<sup>34</sup> The Exchange would consider a waiver of the representative-level qualification examination(s), the principal-level qualification examination(s) and the SIE, as

represent that the individual is eligible for an FSA waiver based on the conditions set forth below. The Exchange would review the waiver request and make a determination of whether to grant the request within 30 calendar days of receiving the request. The Exchange would summarily grant the request if the following conditions are met:

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

(2) The waiver request is made within seven years of the individual's initial designation as an FSA-eligible person by an ETP Holder, OTP Holder or OTP Firm;

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

(4) The individual continuously worked for the financial services affiliate(s) of an ETP Holder, OTP Holder or OTP Firm since the last Form U5 filing;

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

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

Following the Form U5 filing, an individual could move between the financial services affiliates of an ETP Holder, OTP Holder or OTP Firm so long as the individual is continuously working for an affiliate. Further, an ETP Holder could submit multiple waiver requests for the

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applicable.

individual, provided that the waiver requests are made during the course of the seven-year period.<sup>35</sup> An individual who has been designated as an FSA-eligible person by an ETP Holder, OTP Holder or OTP Firm would not be able to take additional examinations to gain additional registrations while working for a financial services affiliate of an ETP Holder.

10. Proposed Rule 2.1210, Commentary .09 - Status of Persons Serving in the Armed Forces of the United States<sup>36</sup>

Proposed Rule 2.1210, Commentary .09 provides specific relief to registered persons serving in the Armed Forces of the United States. Among other things, the proposed rule permits a registered person of an ETP Holder, OTP Holder or OTP Firm who volunteers for or is called into active duty in the Armed Forces of the United States to be registered in an inactive status and remain eligible to receive ongoing transaction-related compensation. The proposed rule also includes specific provisions regarding the deferment of the lapse of registration requirements for formerly registered persons serving in the Armed Forces of the United States. The proposed rule further requires that the ETP Holder, OTP Holder or OTP Firm with which such person is registered promptly notify the Exchange of such person's return to employment with the ETP Holder, OTP Holder or OTP Firm. The proposed rule would require an ETP Holder, OTP Holder or OTP Firm that is a sole proprietor to also similarly notify the Exchange of his or her return to participation in the investment banking or securities business. The proposed rule also

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<sup>35</sup> For example, if an ETP Holder, OTP Holder or OTP Firm submits a waiver request for an FSA-eligible person who has been working for a financial services affiliate of the ETP Holder, OTP Holder or OTP Firm for three years and re-registers the individual, the ETP Holder, OTP Holder or OTP Firm could subsequently file a Form U5 and re-designate the individual as an FSA-eligible person. Moreover, if the individual works with a financial services affiliate of the ETP Holder, OTP Holder or OTP Firm for another three years, the ETP Holder, OTP Holder or OTP Firm could submit a second waiver request and re-register the individual upon returning to the ETP Holder, OTP Holder or OTP Firm.

<sup>36</sup> The proposed rule is substantially similar to FINRA Rule 1210.10.

provides that the Exchange would defer the lapse of the SIE for formerly registered persons serving in the Armed Forces of the United States.

E. Proposed New Rule 2.1220 - Registration Categories<sup>37</sup>

1. Proposed Rule 2.1220(a)(1) - Principal

As set forth in proposed Rule 2.1220(a)(1), for purposes of these registration rules, the term “Principal” to mean any Person Associated with an ETP Holder, OTP Holder or OTP Firm actively engaged in the management of the ETP Holder’s, OTP Holder’s or OTP Firm’s securities business, including supervision, solicitation, conduct of the ETP Holder’s, OTP Holder’s or OTP Firm’s business, or the training of Authorized Traders and Persons Associated with an ETP Holder, OTP Holder or OTP Firm for any of these functions. Such Persons include Sole Proprietors, Officers, Partners, and Directors of Corporations.

For purposes of proposed Rule 2.1220(a)(1), the phrase “actively engaged in the management of the ETP Holder’s, OTP Holder’s or OTP Firm’s securities business” includes the management of, and the implementation of corporate policies related to, such business. The term also includes managerial decision-making authority with respect to the ETP Holder’s, OTP Holder’s or OTP Firm’s securities business and management-level responsibilities for

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<sup>37</sup> The Exchange is not adopting the following categories from the FINRA Filing because ETP Holders, OTP Holders or OTP Firms do not engage in the type of business that would require registration with the Exchange: Investment Banking Principal, Research Principal, Government Securities Principal, Investment Company and Variable Contracts Products Principal, Direct Participation Programs Principal, Private Securities Offerings Principal, Supervisory Analyst, Operations Professional, Investment Banking Representative, Research Analyst, Investment Company and Variable Contracts Products Representative, Direct Participation Programs Representative, and Private Securities Offering Representative. The Exchange is also not adopting the following categories because the FINRA Filing eliminated them: Order Processing Assistant Representative, United Kingdom Securities Representative, Canadian Securities Representative, Options Representative, Corporate Securities Representative and Government Securities Representative.

supervising any aspect of such business, such as serving as a voting member of the ETP Holder's, OTP Holder's or OTP Firm's executive, management or operations committee.

2. Proposed Rule 2.1220(a)(2) - General Securities Principal<sup>38</sup>

Proposed Rule 2.1220(a)(2)(A) states that each principal as defined in proposed Rule 2.1220(a)(1) is required to register with the Exchange as a General Securities Principal, subject to the following exceptions. The proposed rule provides that if a principal's activities 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, a Securities Trader Principal, or a Registered Options Principal then the principal must appropriately register in one or more of these categories.

Proposed Rule 2.1220(a)(2)(A) further provides that if a principal's activities are limited solely to the functions of a General Securities Sales Supervisor, then the principal may appropriately register in that category in lieu of registering as a General Securities Principal.

Proposed Rule 2.1220(a)(2)(B) requires that an individual registering as a General Securities Principal satisfy the General Securities Representative prerequisite registration and pass the General Securities Principal qualification examination. Proposed Rule 2.1220(a)(2)(B) also clarifies that an individual may register as a General Securities Sales Supervisor and pass the General Securities Sales Supervisor qualification examination in lieu of passing the General Securities Principal examination.

As a general matter, the Exchange currently recognizes the Corporate Securities Representative but would no longer recognize this registration category given its elimination by FINRA. Proposed Rule 2.1220(a)(2)(B), however, provides that, subject to the lapse of

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<sup>38</sup> The proposed rule is substantially similar to FINRA Rule 1220(a)(2).

registration provisions in proposed Rule 2.1210, Commentary .07, each person registered with the Exchange as a Corporate Securities Representative and a General Securities Principal on October 1, 2018 and each person who was registered with the Exchange as a Corporate Securities Representative and a General Securities Principal within two years prior to October 1, 2018 would be qualified to register as a General Securities Principal without having to take any additional qualification examinations, provided that such person's supervisory responsibilities in the investment banking and securities business of an ETP Holder, OTP Holder or OTP Firm are limited to corporate securities activities of the ETP Holder, OTP Holder or OTP Firm. The proposed rule further provides that all other individuals registering as General Securities Principals after October 1, 2018 shall, prior to or concurrent with such registration, become registered as a General Securities Representative and either (1) pass the General Securities Principal qualification examination; or (2) register as a General Securities Sales Supervisor and pass the General Securities Sales Supervisor qualification examination.

### 3. Proposed Rule 2.1220(a)(3) - Compliance Officer<sup>39</sup>

Proposed Rule 2.1220(a)(3) establishes a Compliance Officer registration category and requires all persons designated as CCOs on Schedule A of Form BD to register as Compliance Officers, subject to an exception for ETP Holders, OTP Holders or OTP Firms engaged in limited investment banking or securities business. The proposed rule only addresses the registration requirements for CCOs. However, consistent with proposed Rule 2.1210, Commentary .01 relating to permissive registrations, a firm may allow other associated persons to register as Compliance Officers. Chief Compliance Officers at OTP Holders or OTP Firms, who are currently not subject to a registration requirement, would be excluded from the

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<sup>39</sup> The proposed rule is substantially similar to FINRA Rule 1220(a)(3).

requirements of the proposed rule.

In addition, the Exchange is proposing to provide CCOs of firms that engage in limited investment banking or securities business with greater flexibility to satisfy the qualification requirements for CCOs. Specifically, proposed Rule 2.1220(a)(3) set forth the following qualification requirements for Compliance Officer registration:

- Subject to the lapse of registration provisions in proposed Rule 2.1210, Commentary .07, each person registered with the Exchange as a General Securities Representative and a General Securities Principal on October 1, 2018 and each person who was registered with the Exchange as a General Securities Representative and a General Securities Principal within two years prior to October 1, 2018 would be qualified to register as Compliance Officers without having to take any additional examinations. In addition, subject to the lapse of registration provisions in proposed Rule 2.1210, Commentary .07, individuals registered as Compliance Officials in the CRD system on October 1, 2018 and individuals who were registered as such within two years prior to October 1, 2018 would also be qualified to register as Compliance Officers without having to take any additional examinations; [sic]
- All other individuals registering as Compliance Officers after October 1, 2018 would have to: (1) satisfy the General Securities Representative prerequisite registration and pass the General Securities Principal qualification examination; or (2) pass the Compliance Official qualification examination.
- An individual designated as a CCO on Schedule A of Form BD of an ETP Holder, OTP Holder or OTP Firm that is engaged in limited investment banking or

securities business may be registered in a principal category under proposed Rule 2.1220(a) that corresponds to the limited scope of the ETP Holder's, OTP Holder's or OTP Firm's business.

4. Proposed Rule 2.1220(a)(4) - Financial and Operation Principal and Introducing Broker-Dealer Financial and Operations Principal<sup>40</sup>

Proposed Rule 2.1220(a)(4) provides that each principal who is responsible for the financial and operational management of an ETP Holder, OTP Holder or OTP Firm that has a minimum net capital requirement of \$250,000 under SEA Rules 15c3-1(a)(1)(ii) and 15c3-1(a)(2)(i), or an ETP Holder, OTP Holder or OTP Firm that has a minimum net capital requirement of \$150,000 under SEA Rule 15c-3-1(a)(8) must be designated as a Financial and Operations Principal. In addition, proposed Rule 2.1220(a)(4) provides that a principal who is responsible for the financial and operational management of an ETP Holder, OTP Holder or OTP Firm that is subject to the net capital requirements of SEA Rule 15c3-1, other than an ETP Holder, OTP Holder or OTP Firm that is subject to the net capital requirements of SEA Rules 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), must be designated and registered as either a Financial and Operations Principal or an Introducing Broker-Dealer Financial and Operations Principal. Financial and Operations Principals and Introducing Broker-Dealer Financial and Operation Principals are not subject to a prerequisite representative registration, but they must pass the Financial and Operations Principal or Introducing Broker-Dealer Financial and Operations Principal examination, as applicable.

Additionally, proposed Rule 2.1220(a)(4)(B) requires an ETP Holder, OTP Holder or OTP Firm to designate a Principal Financial Officer with primary responsibility for the day-to-day operations of the business, including overseeing the receipt and delivery of securities and

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<sup>40</sup> The proposed rule is substantially similar to FINRA Rule 1220(a)(4).

funds, safeguarding customer and firm assets, calculation and collection of margin from customers and processing dividend receivable and payables and reorganization redemptions and those books and records related to such activities. Further, the proposed rule requires that a firm's Principal Financial Officer and Principal Operations Officer qualify and register as Financial and Operations Principals or Introducing Broker-Dealer Financial and Operations Principals, as applicable.

Because the financial and operational activities of ETP Holders, OTP Holders or OTP Firms that neither self-clear nor provide clearing services are more limited, such ETP Holders, OTP Holders or OTP Firms may designate the same person as the Principal Financial Officer, Principal Operations Officer and Financial and Operations Principal or Introducing Broker-Dealer Financial and Operations Principal (that is, such ETP Holders, OTP Holders or OTP Firms are not required to designate different persons to function in these capacities).

Given the level of financial and operational responsibility at clearing and self-clearing members, the Exchange believes that it is necessary for such ETP Holders, OTP Holders or OTP Firms 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, such as supervision of individuals engaged in financial and operational activities. In addition, the proposed rule provides that a clearing or self-clearing ETP Holder, OTP Holder or OTP Firm that is limited in size and resources may request a waiver of the requirement to designate separate persons to function as Principal Financial Officer and Principal Operations Officer.

#### 5. Proposed Rule 2.1220(a)(5) - Securities Trader Principal<sup>41</sup>

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<sup>41</sup> The proposed rule is substantially similar to FINRA Rule 1220(a)(7).

Proposed Rule 2.1220(a)(5) requires that a principal responsible for supervising the securities trading activities specified in proposed Rule 2.1220(b)(3) register as a Securities Trader Principal. The proposed rule requires that individuals registering as Securities Trader Principals must be registered as Securities Traders and pass the General Securities Principal qualification examination.

6. Proposed Rule 2.1220(a)(6) - General Securities Sales Supervisor<sup>42</sup>

Proposed Rule 2.1220(a)(6) provides that a principal may register with the Exchange as a General Securities Sales Supervisor if his or her supervisory responsibilities in the investment banking or securities business of an ETP Holder, OTP Holder or OTP Firm are limited to the securities sales activities of the ETP Holder, OTP Holder or OTP Firm, including the approval of customer accounts, training of sales and sales supervisory personnel and the maintenance of records of original entry or ledger accounts of the ETP Holder, OTP Holder or OTP Firm required to be maintained in branch offices by Exchange Act record-keeping rules.

A person registering as a General Securities Sales Supervisor must satisfy the General Securities Representative prerequisite registration and pass the General Securities Sales Supervisor examinations.<sup>43</sup> Moreover, a General Securities Sales Supervisor is precluded from performing any of the following activities: (1) Supervision of the origination and structuring of underwritings; (2) supervision of market-making commitments; (3) supervision of the custody of firm or customer funds or securities for purposes of SEA Rule 15c3-3; or (4) supervision of overall compliance with financial responsibility rules.

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<sup>42</sup> The proposed rule is substantially similar to FINRA Rule 1220(a)(10).

<sup>43</sup> An individual may also register as a General Securities Sales Supervisor by passing a combination of other principal-level examinations.

## 7. Proposed Rule 2.1220(a)(7) - Registered Options Principal<sup>44</sup>

Proposed Rule 2.1220(a)(7) provides that each OTP Holder or OTP Firm engaged in options transactions with the public have at least one Registered Options Principal. The proposed rule further requires that a principal responsible for supervising an OTP Holder or OTP Firm's options sales practices with the public, including a person designated pursuant to Rule 11.18(b)(2) register with the Exchange as a Registered Options Principal, unless such principal's options activities are limited solely to those activities that may be supervised by a General Securities Sales Supervisor, in which case, such person may register as a General Securities Sales Supervisor in lieu of registering as a Registered Options Principal.

Proposed Rule 2.1220(a)(7)(B) further provides that, subject to the lapse of registration provisions in proposed Rule 2.1210, Commentary .07, each person registered with the Exchange as a Registered Options Principal on October 1, 2018 and each person who was registered with the Exchange as a Registered Options Principal within two years prior to October 1, 2018 would be qualified to register as a Registered Options Principal without having to pass any additional qualification examinations. The proposed rule further provides that all other individuals registering as Registered Options Principals after October 1, 2018 shall, prior to or concurrent with such registration, become registered as a General Securities Representative and pass the Registered Options Principal qualification examination.

## 8. Proposed Rule 2.1220(b)(1) - Representative<sup>45</sup>

Proposed Rule 2.1220(b)(1) defines a representative as any person associated with an ETP Holder, OTP Holder or OTP Firm, including assistant officers other than principals, who is engaged in the ETP Holder's, OTP Holder's or OTP Firm's investment banking or securities

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<sup>44</sup> The proposed rule is substantially similar to FINRA Rule 1220(a)(8).

<sup>45</sup> The proposed rule is substantially similar to FINRA Rule 1220(b)(1).

business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with an ETP Holder, OTP Holder or OTP Firm for any of these functions.

9. Proposed Rule 2.1220(b)(2) - General Securities Representative<sup>46</sup>

Proposed Rule 2.1220(b)(2)(A) states that each representative as defined in proposed Rule 2.1220(b)(1) is required to register with the Exchange as a General Securities Representative, subject to the following exceptions. The proposed rule provides that if a representative's activities include the function of a Securities Trader, then the representative must appropriately register in that category.

The proposed rule further provides that, subject to the lapse of registration provisions in proposed Rule 2.1210, Commentary .07, each person registered with the Exchange as a General Securities Representative on October 1, 2018 and each person who was registered with the Exchange as a General Securities Representative within two years prior to October 1, 2018 would be qualified to register as a General Securities Representative without having to take any additional qualification examinations. Additionally, the proposed rule would require that individuals registering as General Securities Representatives after October 1, 2018 shall, prior to or concurrent with such registration, pass the SIE and the General Securities Representative examination.

10. Proposed Rule 2.1220(b)(3) - Securities Trader<sup>47</sup>

Proposed Rule 2.1220(b)(3) provides that each representative as defined in proposed Rule 2.1220(b)(1) is required to register as a Securities Trader if, with respect to transactions in equity (including equity options), preferred or convertible debt securities, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of

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<sup>46</sup> The proposed rule is substantially similar to FINRA Rule 1220(b)(2).

<sup>47</sup> The proposed rule is substantially similar to FINRA Rule 1220(b)(4).

such activities. The proposed rule provides an exception from the registration requirement for any associated person of an ETP Holder, OTP Holder or OTP Firm whose trading activities are conducted primarily on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with an ETP Holder, OTP Holder or OTP Firm. The Exchange proposes to adopt FINRA's definition of Securities Trader in proposed Rule 2.1220(b)(3) in order to align the text of the rule to that adopted by FINRA and other exchanges.<sup>48</sup>

The proposed rule also requires that associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies (or responsible for the day-to-day supervision or direction of such activities) register as Securities Traders. Individuals registering as Securities Traders must pass the SIE and the Securities Trader examination.

Finally, the proposed rule provides that, subject to the lapse of registration provisions in proposed Rule 2.1210, Commentary .07, each person registered with the Exchange as a Securities Trader on October 1, 2018 and each person who was registered with the Exchange as a Securities Trader within two years prior to October 1, 2018 would be qualified to register as a Securities Trader without having to take any additional qualification examinations. Additionally, the proposed rule would require that individuals registering as Securities Traders after October 1, 2018 shall, prior to or concurrent with such registration, pass the SIE and the Securities Trader qualification examination.

#### 11. Proposed Rule 2.1220, Commentary .01 - Foreign Registrations<sup>49</sup>

Proposed Rule 2.1220, Commentary .01, states that individuals who are in good standing

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<sup>48</sup> See e.g., MIAX International Stock Exchange, LLC Rule 203(d).

<sup>49</sup> The proposed rule is substantially similar to FINRA Rule 1220.01 and 1220.06.

as representatives with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator would be exempt from the requirement to pass the SIE, and thus would be required only to pass a specialized knowledge examination to register with the Exchange as a representative. The proposed approach would provide individuals with a United Kingdom or Canadian qualification more flexibility to obtain a representative-level registration. Additionally, proposed Rule 2.1220, Commentary .01, provides that, subject to the lapse of registration provisions in Rule 2.1210, Commentary .07, each person who is registered with the Exchange as a United Kingdom Securities Representative or a Canada Securities Representative on October 1, 2018 and each person who was registered with the Exchange in such categories within two years prior to October 1, 2018 would be eligible to maintain such registrations with the Exchange. However, if persons registered in such categories subsequently terminate such registration(s) with the Exchange and the registration remains terminated for two or more years, they would not be eligible to re-register in such categories.

#### 12. Proposed Rule 2.1220, Commentary .02 - Additional Qualification Requirements for Persons Engaged in Security Futures<sup>50</sup>

Proposed Rule 2.1220, Commentary .02, states that each person who is registered with the Exchange as a General Securities Representative, United Kingdom Securities Representative, Canada Securities Representative, Options Representative, Registered Options Principal or General Securities Sales Supervisor shall be eligible to engage in security futures activities as a representative or principal, as applicable, provided that such individual completes a Firm Element program as set forth in Rule 2.23(d)(2) for ETP Holders and in Rule 2.24(d)(2) for OTP Holders or OTP Firms that addresses security futures products before such person engages in security futures activities.

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<sup>50</sup> The proposed rule is substantially similar to FINRA Rule 1220.02.

13. Proposed Rule 2.1220, Commentary .03 - Scope of General Securities Sales Supervisor Registration Category<sup>51</sup>

Proposed Rule 2.1220, Commentary .03, explains the purpose of the General Securities Sales Supervisor registration category. The General Securities Sales Supervisor category is an alternate category of registration designed to lessen the qualification burdens on principals of general securities firms who supervise sales. Without this category of limited registration, such principals would be required to separately qualify pursuant to the rules of FINRA, the MSRB, the NYSE and the options exchanges. While persons may continue to separately qualify with all relevant self-regulatory organizations, the General Securities Sales Supervisor examination permits qualification as a supervisor of sales of all securities through one registration category. Persons registered as General Securities Sales Supervisors may also qualify in any other category of principal registration. Persons who are already qualified in one or more categories of principal registration may supervise sales activities of all securities by also qualifying as General Securities Sales Supervisors.

The proposed rule further provides that any person required to be registered as a principal who supervises sales activities in corporate, municipal and option securities, investment company products, variable contracts, and security futures (subject to the requirements of Rule 2.1220, Commentary .02) may be registered solely as a General Securities Sales Supervisor. In addition to branch office managers, other persons such as regional and national sales managers may also be registered solely as General Securities Sales Supervisors as long as they supervise only sales activities.

14. Proposed Rule 2.1220, Commentary .04 - OTP Holders and OTP Firms with One Registered Options Principal<sup>52</sup>

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<sup>51</sup> The proposed rule is substantially similar to FINRA Rule 1220.04.

<sup>52</sup> The proposed rule is substantially similar to FINRA Rule 1220.03.

Proposed Rule 2.1220, Commentary .03, requires that an OTP Holder or OTP Firm that have one Registered Options Principal promptly notify the Exchange and agree to specified conditions if such person is terminated, resigns, becomes incapacitated or is otherwise unable to perform his or her duties.

F. Proposed New Rule 2.1230 - Associated Persons Exempt from Registration<sup>53</sup>

Proposed Rule 2.1230 provides an exemption from registration with the Exchange for certain associated persons. Specifically, the proposed rule provides that persons associated with an ETP Holder, OTP Holder or OTP Firm whose functions are solely and exclusively clerical or ministerial would be exempt from registration.<sup>54</sup>

1. Proposed Rule 2.1230, Commentary .01 - Registration Requirements for Associated Persons Who Accept Customer Orders<sup>55</sup>

Proposed Rule 2.1230, Commentary .01, clarifies that the function of accepting customer orders is not considered clerical or ministerial and that associated persons who accept customer orders under any circumstances are required to be appropriately registered. However, the proposed rule provides that an associated person is not accepting a customer order where occasionally, when an appropriately registered person is unavailable, the associated person

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<sup>53</sup> The proposed rule is substantially similar to FINRA Rule 1230.

<sup>54</sup> FINRA Rule 1230 provides an exemption from registration with FINRA to persons associated with a FINRA member whose functions are solely and exclusively clerical or ministerial and persons associated with a FINRA member whose functions are related solely and exclusively to (i) effecting transactions on the floor of a national securities exchange and who are appropriately registered with such exchange; (ii) effecting transactions in municipal securities; (iii) effecting transactions in commodities; or (iv) effecting transactions in security futures, provided that any such person is registered with a registered futures association. ETP Holders, OTP Holder or OTP Firms do not solely and exclusively engage in any of the foregoing transactions and therefore the Exchange is not adopting that portion of FINRA Rule 1230.

<sup>55</sup> The proposed rule is substantially similar to FINRA Rule 1230.01.

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

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>56</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>57</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change will streamline, and bring consistency and uniformity to, the registration rules, which will, in turn, assist ETP Holders, OTP Holders or OTP Firms and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule change will also improve the efficiency of the examination program, without compromising the qualification standards. In addition, the proposed rule change will expand the scope of permissive registrations, which, among other things, will allow ETP Holders, OTP Holders or OTP Firms to develop a depth of associated persons with registrations to respond to unanticipated personnel changes and will encourage greater regulatory understanding. Further, the proposed rule change will provide a more streamlined and effective waiver process for individuals working for a financial services industry affiliate of an ETP Holder, OTP Holder or OTP Firm, and it will require such individuals to maintain specified levels of competence and knowledge while working in areas ancillary to the

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<sup>56</sup> 15 U.S.C. 78f(b).

<sup>57</sup> 15 U.S.C. 78f(b)(5).

investment banking and securities business.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments are intended to promote transparency in the Exchange's rules, and consistency with the rules of other SROs with respect to the examination, qualification, and continuing education requirements applicable to ETP Holders, OTP Holders or OTP Firms and their registered personnel. The Exchange believes that in that regard that any burden on competition would be clearly outweighed by the important regulatory goal of ensuring clear and consistent requirements applicable across SROs, avoiding duplication, and mitigating any risk of SROs implementing different standards in these important areas.

Further, the Exchange does not believe that the proposed amendments will affect competition among securities markets since all SROs are expected to adopt similar rules with uniform standards for qualification, registration and continuing education requirements.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>58</sup> and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>59</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative on October 1, 2018 to coincide with the effective date of FINRA's proposed rule change on which the proposal is based.<sup>60</sup> The waiver of the operative delay would make the Exchange's qualification requirements consistent with those of FINRA, as of October 1, 2018. Therefore, the Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposal operative on October 1, 2018.<sup>61</sup>

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

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<sup>58</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>59</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>60</sup> See supra note 5.

<sup>61</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2018-71 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSEARCA-2018-71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons

submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2018-71 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>62</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>62</sup> 17 CFR 200.30-3(a)(12).

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