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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84448; File No. SR-GEMX-2018-33)

October 18, 2018

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Registration, Qualification Examination and Continuing Education Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 10, 2018, Nasdaq GEMX, LLC ("GEMX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqgemx.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

1. Purpose

The Exchange has adopted registration requirements to ensure that associated persons attain and maintain specified levels of competence and knowledge pertinent to their function. In general, the current rules require that persons engaged in a member’s securities business who are to function as representatives or principals register with the Exchange in each category of registration appropriate to their functions by passing one or more qualification examinations³ and exempt specified associated persons from the registration requirements.⁴ They also prescribe ongoing continuing education requirements for registered persons.⁵ The Exchange now proposes to amend, reorganize and enhance its rules regarding registration, qualification examinations and continuing education, as described below.

Recently, the Commission approved a Financial Industry Regulatory Authority (“FINRA”) proposed rule change consolidating and adopting NASD and Incorporated NYSE rules relating to qualification and registration requirements into the Consolidated FINRA Rulebook,⁶ restructuring the FINRA representative-level qualification examinations, creating a general knowledge examination and specialized knowledge examinations, allowing permissive

³ See, e.g., GEMX Rule 306, Registration Requirements, Section (a)(1).

⁴ See, e.g., GEMX Rule 306, Registration Requirements, Section (a)(2).

⁵ See ISE Rule 604, Continuing Education for Registered Persons, incorporated by reference into the GEMX rules as explained below.

⁶ The current FINRA rulebook consists of: (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from the New York Stock Exchange (“NYSE”) (the “Incorporated NYSE rules”). While the NASD rules generally apply to all FINRA members, the Incorporated NYSE rules apply only to those members of FINRA that are also members of the NYSE.

registration, establishing an examination waiver process for persons working for a financial services affiliate of a member, and amending certain continuing education (“CE”) requirements (collectively, the “FINRA Rule Changes”).⁷ The FINRA Rule Changes became effective on October 1, 2018.

The Exchange now proposes to amend, reorganize and enhance its own membership, registration and qualification requirements rules in part in response to the FINRA Rule Changes, and also in order to conform its rules to those of its affiliated exchanges in the interest of uniformity and to facilitate compliance with membership, registration and qualification regulatory requirements by members of multiple Nasdaq-affiliated exchanges including GEMX. Last, the Exchange proposes to enhance its registration rules by adding a new registration requirement for developers of algorithmic trading systems similar to a requirement adopted by FINRA pursuant to a 2016 FINRA proposed rule change.⁸

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

⁸ See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR-FINRA-2016-007). In its proposed rule change FINRA addressed the increasing significance of algorithmic trading strategies by amending its rules to require registration, as Securities Traders, of associated persons primarily responsible for the design, development or significant modification of

As part of this proposed rule change, current Rule 306, Registration Requirements, is proposed to be deleted.⁹ Additionally, as part of a parallel ISE filing that proposes to adopt the same registration, qualification examinations and continuing education rule changes proposed herein, Nasdaq ISE, LLC (“ISE”) is proposing to amend ISE Rules 601, Registration of Options Principals, 602, Registration of Representatives, 603, Termination of Registered Persons, and 604, Continuing Education for Registered Persons. The Exchange’s own Chapter 6, Doing Business with the Public, incorporates by reference the ISE rules that are set forth in Chapter 6 of the ISE rulebook, including ISE Rules 601, 602, 603 and 604, such that the proposed changes to these ISE rules will apply automatically to the Exchange’s own rules.¹⁰ Citations herein to Rules 601, 602, 603, 604 and other Chapter 6 rules will be preceded by the term “ISE Rule” to reflect the Exchange’s incorporation by reference of those rules.

The Exchange, like ISE, is proposing to adopt a new 1200 Series of rules captioned Registration, Qualification and Continuing Education, generally conforming to and based upon FINRA’s new 1200 Series of rules resulting from the FINRA Rule Changes but with a number of Exchange-specific variations.¹¹ The 1200 Series would replace Exchange Rule 306 and portions of ISE Rules 601, 602 and 604. GEMX’s intent is to adopt the same rule changes that ISE is proposing in SR-ISE-2018-82, resulting in the same new 1200 Series of rules on both exchanges, and ultimately the same changes to ISE Rules 601, 602 and 604 on both exchanges through the

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

⁹ Conforming changes are proposed to Rules 100, Definitions, and to Chapter 90, Code of Procedure.

¹⁰ See SR-ISE-2018-82.

¹¹ The proposed 1200 Series of Rules would consist of Rule 1210, Registration Requirements; Rule 1220, Registration Categories; Rule 1230, Associated Persons Exempt from Registration; Rule 1240, Continuing Education Requirements; and Rule 1250, Electronic Filing Requirements for Uniform Forms.

Exchange's incorporation by reference of those rules. The proposed new 1200 Series is also being proposed for adoption by GEMX's affiliated exchanges, in order to facilitate compliance with membership, registration and qualification regulatory requirements by members of two or more of those affiliated exchanges.¹² In the new 1200 Series the Exchange would, among other things, recognize an additional associated person registration category, recognize a new general knowledge examination, permit the maintenance of permissive registrations, and require Securities Trader registration of developers of algorithmic trading strategies consistent with a comparable existing FINRA registration requirement.¹³

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

¹² The Exchange's other four affiliated exchanges, The Nasdaq Stock Market LLC ("Nasdaq"), Nasdaq BX, Inc. ("BX"), Nasdaq PHLX LLC ("PHLX"), and Nasdaq MRX, LLC ("MRX") (together with ISE and GEMX, the "Nasdaq Affiliated Exchanges") are also submitting proposed rule changes to adopt the 1200 Series of rules. See SR-NASDAQ-2018-078, SR-BX-2018-047, SR-Phlx-2018-61, and SR-MRX-2018-31. Additionally, the Exchange recently added a shell structure to its rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of the other Nasdaq Affiliated Exchanges. See Securities Exchange Act Release No. 82171 (November 29, 2017), 82 FR 57516 (December 5, 2017) (SR-GEMX-2017-54). Ultimately, the Exchange intends to submit another proposed rule change to transfer the 1200 Series of rules into the new shell structure.

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

Proposed Rules

A. Registration Requirements (Proposed Rule 1210)

Exchange Rule 306(a) currently requires individual associated persons engaged or to be engaged in the securities business of a member to be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange. The Exchange is proposing to delete this language and to adopt in its place Exchange Rule 1210.¹⁴

Proposed Rule 1210 provides that each person engaged in the securities business of a member must register with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in proposed Rule 1220, unless exempt from registration pursuant to proposed Rule 1230.¹⁵ Proposed Exchange Rule 1210 also provides that such person is not qualified to function in any registered capacity other than that for which the person is registered, unless otherwise stated in the rules.

¹⁴ In general the 1200 Series would conform the Exchange's rules to FINRA's rules as revised in the FINRA Rule Changes, with modifications tailored to the business of the Exchange and of the other Nasdaq Affiliated Exchanges. However, the Exchange also proposes to adopt Rule 1210, Supplementary Material .12, which is not based upon a FINRA rule but instead on current Nasdaq Rule 1031(c), (d) and (e), which Nasdaq is proposing in SR-Nasdaq-2018-078 to relocate to Rule 1210, Supplementary Material .12 in the Nasdaq rulebook. These provisions govern the process for applying for registration and amending the registration application, as well as for notifying the Exchange of termination of the member's association with a person registered with the Exchange. The Exchange proposes to adopt Rule 1210, Supplemental Material .12, in order to have uniform processes and requirements in this area across the Nasdaq Affiliated Exchanges.

¹⁵ Because the Exchange's proposed registration rules focus solely on securities trading activity, the proposed rules differ from the FINRA Rule Changes by omitting references to investment banking in proposed Rules 1210, 1210.03, 1210.10, 1220(a)(1), 1220(a)(2)(B), 1220(b), and 1240(b)(1), and also by omitting as unnecessary from Rule 1220(a)(10) a limitation on the qualification of a General Securities Sales Supervisor to supervise the origination and structuring of an underwriting.

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

Existing Rule 306.07 requires members to register with the Exchange as a principal each individual acting in any of the following capacities: (i) officer; (ii) partner; (iii) director; (iv) supervisor of proprietary trading, market-making or brokerage activities; and/or (v) supervisor of those engaged in proprietary trading, market-making or brokerage activities with respect to those activities. Members must register with the Exchange at least two individuals acting in one or more of these heightened capacities (the “two-principal requirement”). The Exchange may waive this requirement if a member demonstrates conclusively that only one individual acting in one or more of these capacities should be required to register. Further, a member that conducts proprietary trading only and has 25 or fewer registered persons is only required to have one officer or partner who is registered in this capacity.¹⁶

The Exchange is proposing to delete these requirements and in their place to adopt new Rule 1210.01. The new rule would provide firms that limit the scope of their business with flexibility in satisfying the two-principal requirement. In particular, proposed Rule 1210.01 requires that a member have a minimum of two General Securities Principals, provided that a member that is limited in the scope of its activities may instead have two officers or partners who are registered in a principal category that corresponds to the scope of the member’s activities.¹⁷ For instance, if a firm’s business is limited to securities trading, the firm may have two Securities Trader Principals, instead of two General Securities Principals. Additionally, Exchange Rule 1210.01 provides that any member with only one associated person is excluded from the two

¹⁶ Rule 306, Supplementary Material .07, describes when a member is considered to be conducting only proprietary trading of the member. Because the Exchange is proposing to delete Rule 306 in its entirety, Rule 306, Supplementary Material .07 would be reworded and relocated to Rule 100(a), Definitions, as a provision defining the term “proprietary trading” for purposes of Rule 1210.

¹⁷ The principal registration categories are described in greater detail below.

principal requirement. Proposed Rule 1210.01 would provide that existing members as well as new applicants may request a waiver of the two-principal requirement, consistent with current Exchange Rule 306.07. Finally, the Exchange is proposing to include a provision currently found in current Rule 306 permitting a proprietary trading firm with 25 or fewer registered representatives to have just one registered principal. The FINRA Rule Changes do not include this provision.¹⁸

C. Permissive Registrations (Proposed Rule 1210.02)

Current Rule 306(a)(1) prohibits members from maintaining a registration with the Exchange for any person (1) who is no longer active in the member's securities business; (2) who is no longer functioning in the registered capacity; or (3) where the sole purpose is to avoid an examination requirement. It further prohibits a member from making an application for the registration of any person where there is no intent to employ that person in the member's securities business. A member may, however, maintain or make application for the registration of an individual who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the member, or a person who performs administrative support

¹⁸ The Exchange is not proposing provisions comparable to the new FINRA Rule 1210.01 requirements that all FINRA members are required to have a Principal Financial Officer and a Principal Operations Officer, because it believes that its proposed Rule 1220(a)(4), Financial and Operations Principal, which requires member firms operating pursuant to certain provisions of SEC rules to designate at least one Financial and Operations Principal, is sufficient. Further, the Exchange is not adopting the FINRA Rule 1210.01 requirements that (1) a member engaged in investment banking activities have an Investment Banking Principal, (2) a member engaged in research activities have a Research Principal, or (3) a member engaged in options activities with the public have a Registered Options Principal. The Exchange does not recognize the Investment Banking Principal or the Research Principal registration categories, and the Registered Options Principal registration requirement is set forth in Rule 1210.08 and its inclusion is therefore unnecessary in Rule 1210.01.

functions for registered personnel, or a person engaged in the securities business of a foreign securities affiliate or subsidiary of the member.

The Exchange is proposing to replace this provision with new Rule 1210.02. The Exchange is also proposing to expand the scope of permissive registrations and to clarify a member's obligations regarding individuals who are maintaining such registrations.

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

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

obtain permissive registrations, but not others who equally are engaged in the member's business.

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

Consistent with the Exchange's supervision rules, members would be required to have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions.¹⁹ With respect to an individual who solely maintains a permissive registration, such as an individual working exclusively in an administrative capacity, the individual's day-to-day supervisor may be a nonregistered person. Members would be required to assign a registered supervisor to this person who would be responsible for periodically contacting such individual's day-to-day supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor must be

¹⁹ The FINRA Proposed Rules at Rule 1210.02 cite FINRA's own supervision rule, by number. Because the 1200 Series of rules is intended to apply to the Exchange as well as to its affiliates which have different supervision rules, proposed Rule 1210.02 refers generally to the supervision rules rather than identifying them by number.

registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor must be registered as a principal.²⁰

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

Current Rule 306(a)(1) provides that before a registration can become effective, the individual associated person shall submit the appropriate application for registration, pass a qualification examination appropriate to the category of registration as prescribed by the Exchange and submit any required registration and examination fees. The Exchange is proposing to replace this rule language with new Rule 1210.03, Qualification Examinations and Waivers of Examinations.

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

²⁰ 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.

Further, proposed 1210.03 provides that if the job functions of a registered representative, other than an individual registered as an Order Processing Assistant Representative, change and he or she needs to become registered in another representative-level category, he or she would not need to pass the SIE again. Rather, the registered person would need to pass only the appropriate representative-level qualification examination.²¹ Thus under the proposed rule change, individuals seeking registration in two or more representative-level categories would experience a net decrease in the total number of exam questions they would be required to answer because the SIE content would be tested only once.

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

²¹ The exception for Order Processing Assistant Representatives and Foreign Associates was adopted by FINRA in FINRA Rule 1210.03, and is included in proposed Exchange Rule 1210.03 without the reference to Foreign Associates which is a registration category the Nasdaq Affiliated Exchanges do not recognize. FINRA has stated that the SIE would assess basic product knowledge; the structure and function of the securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. Proposed Rule 1210.03 provides that all associated persons, such as associated persons whose functions are solely and exclusively clerical or ministerial, are eligible to take the SIE. Proposed Rule 1210.03 also provides that individuals who are not associated persons of firms, such as members of the general public, are eligible to take the SIE. FINRA has stated its belief that expanding the pool of individuals who are eligible to take the SIE would enable prospective securities industry professionals to demonstrate to prospective employers a basic level of knowledge prior to submitting a job application. Further, this approach would allow for more flexibility and career mobility within the securities industry. While all associated persons of firms as well as individuals who are not associated persons would be eligible to take the SIE pursuant to proposed Rule 1210.03, passing the SIE alone would not qualify them for registration with the Exchange. Rather, to be eligible for registration with the Exchange, an individual would be required to pass an applicable representative or principal qualification examination and complete the other requirements of the registration process.

However, such individual may engage only in those activities in which a current Securities Trader may engage under current Exchange Rules.

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

Further, registered representatives, other than an individual registered as an Order Processing Assistant Representative, would be considered to have passed the SIE in the CRD system, and thus if they wish to register in any other representative category after the operative date of the proposed rule change, they could do so by taking only the appropriate specialized knowledge examination.²² However, with respect to an individual who is not registered on the operative date of the proposed rule change but was registered within the past two years prior to the operative date of the proposed rule change, the individual's SIE status in the CRD system would be administratively terminated if such individual does not register within four years from the date of the individual's last registration.²³

²² Under the proposed rule change, only individuals who have passed an appropriate representative-level examination would be considered to have passed the SIE. Registered principals who do not hold an appropriate representative-level registration would not be considered to have passed the SIE. For example, an individual who is registered solely as a Financial and Operations Principal (Series 27) today would have to take the Series 7 to become registered as a General Securities Representative. Under the proposed rule change, in the future, this individual would have to pass the SIE and the specialized Series 7 examination to obtain registration as a General Securities Representative.

²³ As discussed below, the Exchange is proposing a four-year expiration period for the SIE.

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

Finally, under current Rule 306.05, the Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications for registration. The Exchange is proposing to replace Rule 306.05 with proposed Rule 1210.03 with changes which track FINRA Rule 1210.03. The proposed rule provides that the Exchange will only consider examination waiver requests submitted by a firm for individuals associated with the firm who are seeking registration in a representative- or principal-level registration category. Moreover, proposed Rule 1210.03 states that the Exchange will consider waivers of the SIE alone or the SIE and the representative- and principal-level examination(s) for such individuals.

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

The Exchange is proposing to adopt new Rule 1210.04, which 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 prior to passing an appropriate principal qualification examination, provided that such person has at least 18 months of experience functioning as a registered representative within the five-year period immediately preceding the designation and has fulfilled all prerequisite registration, fee and examination requirements prior to designation as principal. These requirements apply to any principal category, including those categories that are not subject to a prerequisite representative-level registration requirement, such as the Financial and Operations Principal registration category.²⁴ Similarly, the rule would permit a member to designate any person currently registered, or who becomes registered, with the member as a principal to function in another principal category for a period of 120 calendar days prior to passing an appropriate qualification examination as specified under Rule 1220.²⁵

This provision, which has no counterpart in the Exchange's current rules, is intended to provide flexibility to members in meeting their principal requirements on a temporary basis.

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

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

²⁴ In this regard, the Exchange notes that qualifying as a registered representative is currently a prerequisite to qualifying as a principal on the Exchange except with respect to the Financial and Operations Principal registration category.

²⁵ Proposed Rule 1210.04 omits FINRA Rule 1210.04's reference to Foreign Associates, which is a registration category not recognized by the Nasdaq Affiliated Exchanges, but otherwise tracks the language of FINRA Rule 1210.04.

Rules of Conduct require each candidate to attest that he or she is in fact the person who is taking the examination. These Rules of Conduct also require that each candidate agree that the examination content is the intellectual property of FINRA and that the content cannot be copied or redistributed by any means. If FINRA discovers that a candidate has violated the Rules of Conduct for taking a qualification examination, the candidate may forfeit the results of the examination and may be subject to disciplinary action by FINRA. For instance, for cheating on a qualification examination, FINRA's Sanction Guidelines recommend a bar.²⁶

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

The Exchange proposes to adopt its own version of Rule 1210.05, which would provide that associated persons taking the SIE are subject to the SIE Rules of Conduct, and that associated persons taking any representative or principal examination are subject to the Rules of Conduct for representative and principal examinations. Under the proposed rule, a violation of the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations by an associated person would be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade, such as Exchange Rule 400.²⁷ Further, if the Exchange determines that an associated person has violated the SIE Rules of Conduct or the Rules of Conduct for representative and principal

²⁶ See SR-FINRA-2017-007, pp. 26 – 27.

²⁷ Exchange Rule 400 prohibits members from engaging in acts or practices inconsistent with just and equitable principles of trade. Persons associated with members have the same duties and obligations as members under Rule 400. FINRA Rule 1210.05 cites FINRA Rule 2010, which is a comparable rule.

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

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

Finally, proposed Rule 1210.05 would prohibit an applicant from receiving assistance while taking the examination, and require the applicant to certify that no assistance was given to or received by him or her during the examination.²⁸

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

The Exchange proposes to adopt new Rule 1210.06, which provides that a person who fails an examination may retake that examination after 30 calendar days from the date of the person's last attempt to pass that examination.²⁹ Proposed Rule 1210.06 further provides that if a person fails an examination three or more times in succession within a two-year period, the person is prohibited from retaking that examination until 180 calendar days from the date of the

²⁸ The Exchange is not adopting portions of FINRA's Rule 1210.05 which apply to non-associated persons, over whom the Exchange would in any event have no jurisdiction.

²⁹ Proposed Rule 1210.06 has no counterpart in existing Exchange rules.

person's last attempt to pass it. These waiting periods would apply to the SIE and the representative- and principal-level examinations.³⁰

H. CE Requirements (Proposed Rule 1210.07)

Pursuant to current Exchange Rule 306.04, each individual required to register under Rule 306 is required to satisfy the continuing education requirements set forth in ISE Rule 604, Continuing Education for Registered Persons, or any other applicable continuing education requirements as prescribed by the Exchange. Under ISE Rule 604 the CE requirements applicable to registered persons consist of a Regulatory Element³¹ and a Firm Element.³² The Regulatory Element applies to registered persons and must be completed within prescribed time frames.³³ For purposes of the Regulatory Element, a "registered person" is defined in the current rule as any person registered or required to be registered with the Exchange under the

³⁰ FINRA Rule 1210.06 requires individuals taking the SIE who are not associated persons to agree to be subject to the same waiting periods for retaking the SIE. The Exchange is not including this language in proposed Rule 1210.06, as the Exchange will not apply the 1200 Series of rules in any event to individuals who are not associated persons of members.

³¹ See ISE Rule 604(a).

³² See ISE Rule 604(c).

³³ Pursuant to ISE Rule 604(a), each registered person is required to complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date. Unless otherwise determined by the Exchange, a registered person who has not completed the Regulatory Element program within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under Rule ISE Rule 604(a) must cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. A person whose registration is so terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Exchange's rules. The Exchange may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

Exchange's rules.³⁴ The Firm Element consists of annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the member. For purposes of the Firm Element, the term "covered registered persons" is defined as any registered person who has a Series 57 registration or who has direct contact with customers in the conduct of the member's securities sales and trading activities, and the immediate supervisors of such persons.³⁵

The Exchange proposes to delete Rule 306.4. The CE requirements set forth in Rule 306.04 have been reorganized and renumbered, and are now proposed to be adopted as new Rule 1240. The Exchange believes that all registered persons, regardless of their activities, should be subject to the Regulatory Element of the CE requirements so that they can keep their knowledge of the securities industry current. Therefore, the Exchange is proposing Rule 1210.07, to clarify that all registered persons, including those who solely maintain a permissive registration, are required to satisfy the Regulatory Element, as specified in proposed new Rule 1240, discussed below.³⁶ Individuals who have passed the SIE but not a representative or principal-level examination and do not hold a registered position would not be subject to any CE requirements. Consistent with current practice, proposed Rule 1210.07 also provides that a registered person of a member who becomes CE inactive would not be permitted to be registered in another registration category with that member or be registered in any registration category with another member, until the person has satisfied the Regulatory Element.

³⁴ See ISE Rule 604.01.

³⁵ See ISE Rule 604(c)(1).

³⁶ Current Rule 306.04 would be deleted.

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

Existing Rule 306(e) states that any person whose registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration has been terminated for two or more years immediately preceding the date of receipt by the Exchange of a new application shall be required to pass a qualification examination appropriate to the category of registration as prescribed by the Exchange. The two year period is calculated from the termination date to the date the Exchange receives a new application for registration. The Exchange is proposing to delete existing Rule 306(e), and to replace it with Rule 1210.08, Lapse of Registration and Expiration of SIE.

Proposed Rule 1210.08 contains language comparable to that of existing Rule 306(e) but also clarifies that, for purposes of the proposed rule, an application would not be considered to have been received by the Exchange if that application does not result in a registration. Proposed Rule 1210.08 also sets forth the expiration period of the SIE. Based on the content covered on the SIE, the Exchange is proposing that a passing result on the SIE be valid for four years. Therefore, under the proposed rule change, an individual who passes the SIE and is an associated person of a firm at the time would have up to four years from the date he or she passes the SIE to pass a representative-level examination to register as a representative with that firm, or a subsequent firm, without having to retake the SIE. In addition, an individual who passes the SIE and is not an associated person at the time would have up to four years from the date he or she passes the SIE to become an associated person of a firm, pass a representative-level examination and register as a representative without having to retake the SIE.

Moreover, an individual holding a representative-level registration who leaves the industry after the operative date of the proposed rule change would have up to four years to re-associate with a firm and register as a representative without having to retake the SIE. However,

the four-year expiration period in the proposed rule change extends only to the SIE, and not the representative- and principal-level registrations. The representative- and principal-level registrations would continue to be subject to a two year expiration period as is the case today.

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

The Exchange is proposing Rule 1210.09 to provide a new process whereby individuals who would be working for a financial services industry affiliate of a member³⁷ would terminate their registrations with the member and would be granted a waiver of their requalification requirements upon re-registering with a member, provided the firm that is requesting the waiver and the individual satisfy the criteria for a Financial Services Affiliate (“FSA”) waiver.³⁸ The purpose of the FSA waiver is to provide a firm greater flexibility to move personnel, including senior and middle management, between the firm and its financial services affiliate(s) so that they may gain organizational skills and better knowledge of products developed by the affiliate(s) without the individuals having to requalify by examination each time they returned to the firm.

Under the proposed waiver process, the first time a registered person is designated as eligible for a waiver based on the FSA criteria, the member with which the individual is registered would notify the Exchange of the FSA designation. The member would concurrently

³⁷ Proposed Rule 1210.09 defines a “financial services industry affiliate of a member” as a legal entity that controls, is controlled by or is under common control with a member and is regulated by the SEC, Commodity Futures Trading Commission (“CFTC”), state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

³⁸ There is no counterpart to proposed Rule 1210.09 in the Exchange’s existing rules. FINRA Rule 1210.09 was recently adopted as a new waiver process for FINRA registrants, as part of the FINRA Rule Changes.

file a full Form U5 terminating the individual's registration with the firm, which would also terminate the individual's other SRO and state registrations.

To be eligible for initial designation as an FSA-eligible person by a member, an individual must have been registered for a total of five years within the most recent 10- year period prior to the designation, including for the most recent year with that member.³⁹ 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 designation⁴⁰ provided that the other conditions of the waiver, as described below, have been satisfied. Consequently, a member other than the member that initially designated an individual as an FSA-eligible person may request a waiver for the individual and more than one member may request a waiver for the individual during the seven-year period.⁴¹

³⁹ For purposes of this requirement, a five year period of registration with the Exchange, with FINRA or with another self-regulatory organization would be sufficient.

⁴⁰ 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.

⁴¹ The following examples illustrate this point:

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

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

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

An individual designated as an FSA-eligible person would be subject to the Regulatory Element of CE while working for a financial services industry affiliate of a member. The individual would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. If the individual fails to complete the prescribed Regulatory Element during the 120-day window for taking the session, he or she would lose FSA eligibility (i.e., the individual would have the standard two-year period after termination to re-register without having to retake an examination). The Exchange is making corresponding changes in proposed Rule 1240 (currently ISE Rule 604, Continuing Education for Registered Persons).

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,⁴² similar to the process used today for waiver requests, and it would represent that the individual is eligible for an FSA waiver based on the conditions set forth below. The Exchange would review the waiver request and make a determination of whether to grant the request within 30 calendar days of receiving the request. The Exchange would summarily grant the request if the following conditions are met:

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

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.

⁴² The Exchange would consider a waiver of the representative-level qualification examination(s), the principal-level qualification examination(s) and the SIE, as applicable.

most recent year with the member that initially designated the individual as an FSA-eligible person;

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

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

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

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

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

Following the Form U5 filing, an individual could move between the financial services affiliates of a member so long as the individual is continuously working for an affiliate. Further, a member could submit multiple waiver requests for the individual, provided that the waiver requests are made during the course of the seven-year period.⁴³ An individual who has been designated as an FSA-eligible person by a member would not be able to take additional

⁴³ For example, if a member submits a waiver request for an FSA-eligible person who has been working for a financial services affiliate of the member for three years and re-registers the individual, the member could subsequently file a Form U5 and re-designate the individual as an FSA-eligible person. Moreover, if the individual works with a financial services affiliate of the member for another three years, the member could submit a second waiver request and re-register the individual upon returning to the member.

examinations to gain additional registrations while working for a financial services affiliate of a member.

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

The Exchange is proposing to adopt new Rule 1210.10, Status of Persons Serving in the Armed Forces of the United States.⁴⁴ Rule 1210.10(a) would permit a registered person of a member who volunteers for or is called into active duty in the Armed Forces of the United States to be placed, after proper notification to the Exchange, on inactive status. The registered person would not need to be re-registered by such member upon his or her return to active employment with the member.

The registered person would remain eligible to receive transaction-related compensation, including continuing commissions, and the employing member could allow the registered person to enter into an arrangement with another registered person of the member to take over and service the person's accounts and to share transaction-related compensation based upon the business generated by such accounts. However, because such persons would be inactive, they could not perform any of the functions and responsibilities performed by a registered person, nor would they be required to complete either the continuing education Regulatory Element or Firm Element set forth in proposed Rule 1240 during the pendency of such inactive status.⁴⁵

⁴⁴ There is no counterpart to proposed Rule 1210.10 in the Exchange's existing rules.

⁴⁵ The relief provided in Rule 1210.10(a) would be available to a registered person during the period that such person remains registered with the member with which he or she was registered at the beginning of active duty in the Armed Forces of the United States, regardless of whether the person returns to active employment with another member upon completion of his or her active duty. The relief would apply only to a person registered with a member and only while the person remains on active military duty. Further, the member with which such person is registered would be required to promptly notify the Exchange of such person's return to active employment with the member.

Pursuant to proposed Exchange Rule 1210.10(b), a member that is a sole proprietor who temporarily closes his or her business by reason of volunteering for or being called into active duty in the Armed Forces of the United States, shall be placed, after proper notification to the Exchange, on inactive status while the member remains on active military duty, would not be required to pay dues or assessments during the pendency of such inactive status and would not be required to pay an admission fee upon return to active participation in the securities business. This relief would be available only to a sole proprietor member and only while the person remains on active military duty, and the sole proprietor would be required to promptly notify the Exchange of his or her return to active participation in the securities business.

If a person who was formerly registered with a member volunteers for or is called into active duty in the Armed Forces of the United States at any time within two years after the date the person ceased to be registered with a member, the Exchange shall defer the lapse of registration requirements set forth in proposed Rule 1210.08 (i.e., toll the two-year expiration period for representative and principal qualification examinations) and the lapse of the SIE (i.e., toll the four-year expiration period for the SIE). The Exchange would defer the lapse of registration requirements and the SIE commencing on the date the person begins actively serving in the Armed Forces of the United States, provided that the Exchange is properly notified of the person's period of active military service within 90 days following his or her completion of active service or upon his or her re-registration with a member, whichever occurs first. The deferral will terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person does not re-register with a member within 90 days following his or her completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a member

without being subject to a representative or principal qualification examination or the SIE shall consist of the standard two-year period for representative and principal qualification examinations or the standard four-year period for the SIE, whichever is applicable, as provided in Rule 1210.08 reduced by the period of time between the person's termination of registration and beginning of active service in the Armed Forces of the United States.

Finally, under proposed Rule 1210.10(c), if a person placed on inactive status while serving in the Armed Forces of the United States ceases to be registered with a member, the Exchange would defer the lapse of registration requirements set forth in Rule 1210.08 (i.e., toll the two-year expiration period for representative and principal qualification examinations) and the lapse of the SIE (i.e., toll the four-year expiration period for the SIE) during the pendency of his or her active service in the Armed Forces of the United States. The Exchange would defer the lapse of registration requirements based on existing information in the CRD system, provided that the Exchange is properly notified of the person's period of active military service within two years following his or her completion of active service or upon his or her re-registration with a member, whichever occurs first. The deferral would terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person did not re-register with a member within 90 days following completion of active service, the amount of time in which the person must become re-registered with a member without being subject to a representative or principal qualification examination or the SIE would consist of the standard two-year period for representative and principal qualification examinations or the standard four-year period for the SIE, whichever is applicable, as provided in Rule 1210.08.⁴⁶

⁴⁶ Proposed Rule 1210.10 tracks FINRA Rule 1210.10 except for the statement that inactive registered persons are not to be included within the definition of "Personnel" for purposes of dues or assessments as provided in Article VI of the FINRA By-Laws. Instead,

L. Impermissible Registrations (Proposed Rule 1210.11)

Existing Rule 306(a)(1) prohibits a member from maintaining a representative or principal registration with the Exchange for any person who is no longer active in the member's securities business, who is no longer functioning in the registered capacity, or where the sole purpose is to avoid an examination requirement. The rule also prohibits a member from applying for the registration of a person as representative or principal where the member does not intend to employ the person in its securities business. These prohibitions do not apply to the current permissive registration categories identified in Rule 306(a)(1).

In light of proposed Rule 1210.02, Permissive Registrations, discussed above, the Exchange is proposing to delete these provisions of Rule 306(a)(1) and instead adopt Rule 1210.11 prohibiting a member from registering or maintaining the registration of a person unless the registration is consistent with the requirements of proposed Rule 1210.⁴⁷

M. Registration Categories (Proposed Rule 1220)

The Exchange is proposing to adopt new and revised registration category rules and related definitions in proposed Rule 1220, Registration Categories.⁴⁸

proposed Rule 1210.10 includes language from existing Nasdaq IM-1002-2 stating that inactive persons under the rule are not included within the scope of fees, if any, charged by the Exchange with respect to registered persons.

⁴⁷ As discussed above, the Exchange is also proposing Rule 1210, Supplementary Material .12, Application for Registration and Jurisdiction, which is not included in FINRA Rule 1210. Proposed Exchange Rule 1210, Supplementary Material .12, is based upon portions of existing Nasdaq Rule 1031.

⁴⁸ For ease of reference, the Exchange proposes to adopt as Rule 1220, Supplementary Material .07, in chart form, a Summary of Qualification Requirements for each of the Exchange's permitted registration categories discussed below.

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

The Exchange's registration rules currently do not include a definition of the term "principal." Rather than employing a defined term, the Exchange's principal registration requirement directly identifies the types of persons who would be encompassed within the term "principal" if that term were defined.⁴⁹ The Exchange is now proposing to adopt a definition of "principal" in Rule 1220(a)(1).

Under proposed Rule 1220(a)(1) a "principal" would be defined 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 securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a member for any of these functions. Such persons would include, among other persons, a member's chief executive officer and chief financial officer (or equivalent officers). A "principal" would also include any other person associated with a member who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules. The term "actively engaged in the management of the member's securities business" would include the management of, and the implementation of corporate policies related to, such business, as well as managerial decision-making authority with respect to the member's securities business and management-level

⁴⁹ Pursuant to existing Rule 306.07 each member must register with the Exchange each individual acting as an officer, partner, director, supervisor of proprietary trading, market-making or brokerage activities, and/or supervisor of those engaged in proprietary trading, market-making or brokerage activities with respect to those activities. This requirement is consistent with FINRA's current registration requirement for principals (NASD Rule 1021).

responsibilities for supervising any aspect of such business, such as serving as a voting member of the member's executive, management or operations committees.

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

The Exchange currently does not impose a General Securities Principal registration obligation. The Exchange is now proposing to adopt new Rule 1220(a)(2), which establishes an obligation to register as a General Securities Principal, but with certain exceptions.⁵⁰

Proposed Rule 1220(a)(2)(A) states that each principal as defined in proposed Rule 1220(a)(1) is required to register with the Exchange as a General Securities Principal, except that if a principal's activities are limited to the functions of a Compliance Official, a Financial and Operations Principal, a Securities Trader Principal a Securities Trader Compliance Officer, or a Registered Options Principal, then the principal shall appropriately register in one or more of these categories.⁵¹ Proposed Rule 1220(a)(2)(A) further provides that if a principal's activities are limited solely to the functions of a General Securities Sales Supervisor, then the principal may appropriately register in that category in lieu of registering as a General Securities Principal, provided that if the principal is engaged in options sales activities he or she would be required to register as a General Securities Sales Supervisor or as a Registered Options Principal.⁵²

Proposed Rule 1220(a)(2)(B) requires that an individual registering as a General Securities Principal satisfy the General Securities Representative prerequisite registration and pass the General Securities Principal qualification examination.

⁵⁰ There is no counterpart to proposed Rule 1220(a)(2) in the Exchange's existing rules.

⁵¹ The Exchange is proposing to recognize the General Securities Principal and the Compliance Official registration categories for the first time in this proposed rule change.

⁵² The Exchange's proposed Rule 1220(a)(2)(A) deviates somewhat from the counterpart FINRA rule in that it does not offer various limited registration categories provided for in FINRA's new Rule 1220(a)(2)(A). It therefore proposes to reserve Rules 1220(a)(2)(A)(ii) and (iv).

Proposed Rule 1220(a)(2)(B) provides that, subject to the lapse of registration provisions in proposed Rule 1210.08, General Securities Principals who obtained the Corporate Securities Representative prerequisite registration on the Exchange in lieu of the General Securities Representative prerequisite registration and individuals who had been registered as such within the past two years prior to the operative date of the proposed rule change, may continue to supervise corporate securities activities as currently permitted.⁵³ Proposed Rule 1220(a)(2)(B) requires all other individuals registering as General Securities Principals after October 1, 2018, to first become registered as a General Securities Representative pursuant to Rule 1220(b)(2). The Exchange is not adopting the FINRA Rule 1220(a)(2)(B) language permitting an individual registering as a General Securities Principal after October 1, 2018 to register as a General Securities Sales Supervisor and to pass the General Securities Principal Sales Supervisor Module qualification examination. The Exchange believes that individuals registering as General Securities Principals should be required to demonstrate their competence for that role by passing the General Securities Principal qualification examination.⁵⁴

⁵³ The Exchange itself does not recognize the Corporate Securities Representative registration category, but understands that FINRA and Nasdaq currently accept Corporate Securities Representative registration as a prerequisite to General Securities Principal registration.

⁵⁴ Proposed Rule 1220(a)(2) generally tracks FINRA Rule 1220(a)(2), except that it omits references to a number of registration categories which FINRA recognizes but that the Exchange does not, and it includes a reference to the Securities Trader Compliance Officer category which the Exchange proposes to recognize, but which FINRA does not. Additionally, proposed Rule 1220(a)(2)(A)(i) extends that provision's exception to the General Securities Principal registration requirement to certain principals whose activities are "limited to" (rather than "include") the functions of a more limited principal. The Exchange believes that activities "limited to" expresses the intent of that exception more accurately than activities that "include." Finally, proposed Rule 1220(a)(2)(B) specifies that registration as a Corporate Securities Representative must be with the Exchange in order to fulfill the Corporate Securities Representative registration prerequisite for General Securities Principal registration pursuant to that rule.

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

Existing Rule 306(c) requires each member to designate a Chief Compliance Officer on Schedule A of Form BD, and requires individuals designated as a Chief Compliance Officer to register with the Exchange and pass the appropriate heightened qualification examination(s) as prescribed by the Exchange.⁵⁵ Current Rule 306.08(a)(3) provides that an individual associated person who is a Chief Compliance Officer (or performs similar functions) for a member that engages in proprietary trading, market-making or effecting transactions on behalf of a broker-dealer is required to register and qualify as a Securities Trader Compliance Officer (CT) in WebCRD and to satisfy the prerequisite registration and qualification requirements.⁵⁶

The Exchange is proposing to delete Rules 306(c) and 306.08(a)(3) and to adopt Rule 1220(a)(3), Compliance Official, in their place. Proposed Rule 1220(a)(3) provides that each person designated as a Chief Compliance Officer on Schedule A of Form BD shall be required to register with the Exchange as a General Securities Principal, provided that such person may instead register as a Compliance Official if his or her duties do not include supervision of trading. All individuals registering as Compliance Official would be required, prior to or

⁵⁵ Rule 306(c) further provides that a person who has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to January 1, 2002, and who has not been subject within the last ten years to any statutory disqualification as defined in Section 3(a)(39) of the Act; a suspension; or the imposition of a fine of \$5,000 or more for a violation of any provision of any securities law or regulation, or any agreement with, rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding shall be required to register in the category of registration appropriate to the function to be performed as prescribed by the Exchange, but shall be exempt from the requirement to pass the heightened qualification examination as prescribed by the Exchange.

⁵⁶ Rule 306.08(b) establishes the Series 14 as the appropriate qualification examination for a Securities Trader Compliance Officer, but also permits General Securities Principal Registration (GP) or Securities Trader Principal (TP) (Series 24) as alternative acceptable qualifications.

concurrent with such registration, to pass the Compliance Official qualification examination. An individual designated as a Chief Compliance Officer on Schedule A of Form BD of a member that is engaged in limited securities business could be registered in a principal category under Rule 1220(a) that corresponds to the limited scope of the member's business.

Additionally, Rule 1220(a)(3) would provide that an individual designated as a Chief Compliance Officer on Schedule A of Form BD may register and qualify as a Securities Trader Compliance Officer if, with respect to transactions in equity, preferred or convertible debt securities, or options such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with a member. All individuals registering as Securities Trader Compliance Officers would be required to first become registered pursuant to paragraph (b)(4) as a Securities Trader, and to pass the Compliance Official qualification exam.⁵⁷

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

Existing Rule 306(b) provides that each member subject to Exchange Act Rule 15c3-1 must designate a Financial/Operations Principal. It specifies that the duties of a Financial/Operations Principal shall include taking appropriate actions to assure that the member

⁵⁷ Proposed Rule 1220(a)(3) differs from FINRA Rule 1220(a)(3), Compliance Officer. The Exchange does not recognize the Compliance Officer registration category. Similarly, FINRA does not recognize the Compliance Official or the Securities Trader Compliance Officer registration categories which the Exchange proposes to recognize. However, FINRA Rule 1220(a)(3), like proposed Rule 1220(a)(3), offers an exception pursuant to which a Chief Compliance Officer designated on Schedule A of Form BD may register in a principal category that corresponds to the limited scope of the member's business.

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

The Exchange is proposing to delete Rule 306(b) and to adopt in its place Rule 1220(a)(4). Under the new rule, every member of the Exchange that is operating pursuant to the provisions of SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), shall designate at least one Financial and Operations Principal who shall be responsible for performing the duties described in subparagraph (B) of that rule. In addition, each person associated with a member who performs such duties shall be required to register as a Financial and Operations Principal with the Exchange.⁵⁸

Subparagraph (B) defines the term Financial and Operations Principal as a person associated with a member whose duties include (i) final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory

⁵⁸ FINRA Rule 1220(a)(4) differs from proposed Rule 1220(a)(4) in that it includes an Introducing Broker-Dealer Financial and Operations Principal registration requirement. Additionally, proposed Rule 1220(a)(4) contains a requirement, which the FINRA rule does not, that each person associated with a member who performs the duties of a Financial and Operations Principal must register as such with the Exchange. Further, as discussed above, the Exchange is not adopting a Principal Financial Officer or Principal Operations Officer requirement like FINRA Rule 1220(a)(4)(B), as it believes the Financial and Operations Principal requirement is sufficient. Finally, proposed Rule 1220(a)(4)(B)(v) and (vi) contain minor wording variations from the FINRA rule.

body, (ii) final preparation of such reports, (iii) supervision of individuals who assist in the preparation of such reports, (iv) supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived, (v) supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act, (vi) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations and (vii) any other matter involving the financial and operational management of the member.

Subparagraph (C) would require all individuals registering as a Financial and Operations Principal to pass the Financial and Operations Principal qualification examination before such registration may become effective. Finally, subparagraph (D) would prohibit a person registered solely as a Financial and Operations Principal from functioning in a principal capacity with responsibility over any area of business activity not described in subparagraph (2) of the rule.

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

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

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

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

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

Existing Rule 306.08(a)(2) provides that an individual associated person who (i) supervises or monitors proprietary trading, market-making and/or brokerage activities for broker-

dealers; (ii) supervises or trains those engaged in proprietary trading, market-making and/or effecting transactions on behalf of a broker-dealer, with respect to those activities; and/or (iii) is an officer, partner or director of a member is required to register and qualify as a Securities Trader Principal (TP) in WebCRD and to satisfy the prerequisite registration and qualification requirements. Further, current Rule 306.08(b) specifies that the Series 24 is the appropriate qualification examination, and that General Securities Sales Supervision Registration and General Securities Principal - Sales Supervisor Module Registration (Series 9/10 and Series 23) is an alternative acceptable qualification. Finally, current Rule 306.08(a)(2) provides that Securities Trader Principals' (TP) supervisory authority is limited to supervision of the securities trading functions of members and of officers, partners, and directors of a member.

The Exchange is proposing to delete Rules 306.08(a)(2) and related portions of Rule 306.08(b) (a summary chart) and to adopt in their place Rule 1220(a)(7), Securities Trader Principal. Proposed Rule 1220(a)(7) requires that a principal responsible for supervising the securities trading activities specified in proposed Rule 1220(b)(4)⁵⁹ 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.

8. Registered Options Principal (Proposed Rule 1220(a)(8))

The Exchange is proposing to adopt Rule 1220(a)(8)(A), Registered Options Principal, which would require under its section (a)(8)(A) that each member that is engaged in transactions in options with the public to [sic] have at least one Registered Options Principal. In addition, each principal as defined in Rule 1220(a)(1) who is responsible for supervising a member's

⁵⁹ Proposed Rule 1220(b)(4), discussed below, provides for representative-level registration in the "Securities Trader" category.

options sales practices with the public would be required to register with the Exchange as a Registered Options Principal, subject to the following exception. If a principal's options activities are limited solely to those activities that may be supervised by a General Securities Sales Supervisor, then such person may register as a General Securities Sales Supervisor pursuant to paragraph (a)(10) of the Rule in lieu of registering as a Registered Options Principal.⁶⁰

Pursuant to proposed Rule 1220(a)(8)(B), subject to the lapse of registration provisions in Rule 1210.08, each person registered with the Exchange as a Registered Options Principal on October 1, 2018 and each person who was registered as a Registered Options Principal within two years prior to October 1, 2018 would be qualified to register as a Registered Options

⁶⁰ Current ISE Rule 601(a) provides that no member shall be approved to transact options business with the public until those associated persons who are designated as Options Principals have been approved by and registered with the Exchange, and that persons engaged in the supervision of options sales practices or a person to whom the designated general partner or executive officer (pursuant to ISE Rule 609) or another Registered Options Principal delegates the authority to supervise options sales practices shall be designated as Options Principals. ISE Rule 601(e) provides that individuals who are delegated responsibility pursuant to ISE Rule 609 for the acceptance of discretionary accounts, for approving exceptions to a member's criteria or standards for uncovered options accounts, and for approval of communications, shall be designated as Options Principals and are required to qualify as an Options Principal by passing the Registered Options Principal Qualification Examination (Series 4). The foregoing provisions of ISE Rule 601 are specific to conducting an options business with the public and are not proposed to be amended by ISE. However, ISE Rule 601(b) and (c) contain provisions regarding submission of Forms U4 and U5 to WebCRD that are duplicative of the proposed 1200 Series of rules, in particular proposed Rules 1210.12, Application for Registration and Jurisdiction, and 1250, Electronic Filing Requirements for Electronic Forms, and ISE is therefore proposing to delete them. Current ISE Rule 601(d) provides that individuals engaged in the supervision of options sales practices and designated as Options Principals are required to qualify as an Options Principal by passing the Registered Options Principals Qualification Examination (Series 4) or the Sales Supervisor Qualification Examination (Series 9/10), and is proposed to be deleted by ISE in view of proposed Rule 1220(a)(8)(A). Exchange Rule 306(d), which merely serves as a cross-reference to ISE Rules 601 and 602, is unnecessary and is therefore proposed to be deleted with the rest of Rule 306.

Principal without passing any additional qualification examinations. All other individuals registering as Registered Options Principals after October 1, 2018 would, prior to or concurrent with such registration, be required to become registered pursuant to Rule 1220(b)(2) as a General Securities Representative and pass the Registered Options Principal qualification examination.⁶¹

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

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

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

The Exchange is proposing to adopt new Rule 1220(a)(10), General Securities Sales Supervisor, as well as new Rule 1220, Supplementary Material .04, which explains the purpose of the General Securities Sales Supervisor registration category.⁶² Proposed Rule 1220(a)(10) provides that each principal, as defined in Rule 1220(a)(1), may register with the Exchange as a General Securities Sales Supervisor if his or her supervisory responsibilities in the securities

⁶¹ Although the Exchange does not currently list security futures products, it is also proposing to adopt Rule 1220, Supplementary Material .02, which provides that each person who is registered with the Exchange as a Registered Options Principal, General Securities Representative, Options Representative or General Securities Sales Supervisor shall be eligible to engage in security futures activities as a principal provided that such individual completes a Firm Element program as set forth in proposed Rule 1240 that addresses security futures products before such person engages in security futures activities. Unlike FINRA Rule 1220.02, proposed Exchange Rule 1220.02 omits references to United Kingdom Securities Representatives and Canada Securities Representatives, which are registration categories the Exchange does not recognize. In addition, the Exchange is also proposing to adopt Rule 1220, Supplementary Material .03 which requires notification to the Exchange in the event a member's sole Registered Options Principal is terminated, resigns, becomes incapacitated or is otherwise unable to perform the duties of a Registered Options Principal, and imposes certain restrictions on the member's options business in that event.

⁶² Proposed Rule 1220(a)(10) has no counterpart in the Exchange's current rules.

business of a member are limited to the securities sales activities of the member, including the approval of customer accounts, training of sales and sales supervisory personnel and the maintenance of records of original entry or ledger accounts of the member required to be maintained in branch offices by the Exchange Act's record-keeping rules.

A person registered solely as a General Securities Sales Supervisor would not be qualified to perform any of the following activities: supervision of market making commitments, supervision of the custody of broker-dealer or customer funds or securities for purposes of SEA Rule 15c3-3, or supervision of overall compliance with financial responsibility rules for broker-dealers promulgated pursuant to the provisions of the Exchange Act.⁶³

Each person seeking to register as a General Securities Sales Supervisor would be required, prior to or concurrent with such registration, to become registered pursuant to Rule 1220(b)(2) of the rule as a General Securities Representative and pass the General Securities Sales Supervisor qualification examinations.⁶⁴

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

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

⁶³ Rule 1220(a)(10), however, omits the FINRA Rule 1220(a)(10) prohibition against supervision of the origination and structuring of underwritings as unnecessary, as this kind activity does not fall within the scope of "securities trading" covered by the Exchange's new 1200 Series of rules.

⁶⁴ Unlike FINRA Rule 1220.04, proposed Exchange Rule 1220.04 refers to "multiple exchanges" rather than listing the various exchanges where a sales principal might be required to qualify in the absence of the General Securities Sales Supervisor registration category. It also omits FINRA internal cross-references.

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

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

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

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

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

Exchange rules currently do not define the term "representative" although ISE Rule 602(b) states that persons who perform duties for the member which are customarily performed by sales representatives or branch office managers shall be designated as representatives of the member.

ISE is proposing to delete ISE Rule 602(b). The Exchange proposes to adopt a definition of "representative" in proposed Rule 1220(b)(1). Proposed 1220(b)(1) would define the term representative as any person associated with a member, including assistant officers other than principals, who is engaged in the member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a member for any of these functions.

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

The Exchange proposes to adopt new Rule 1220(b)(2), General Securities Representative. Proposed Rule 1220(b)(2)(A) states that each representative as defined in proposed Rule 1220(b)(1) is required to register with the Exchange as a General Securities Representative, subject to the exception that if a representative's activities include the functions of a Securities

Trader, as specified in Rule 1220(b)(2), then such person shall appropriately register as a Securities Trader.⁶⁵

Further, consistent with the proposed restructuring of the representative-level examinations, proposed Rule 1220(b)(2)(B) would require that individuals registering as General Securities Representatives pass the SIE and the General Securities Representative examination except that individuals registered as a General Securities Representatives within two years prior to October 1, 2018 would be qualified to register as General Securities Representatives without passing any additional qualification examinations.⁶⁶

In addition, the Exchange is proposing to adopt Rule 1220.01 to provide individuals who are associated persons of firms and who hold foreign registrations an alternative, more flexible, process to obtain an Exchange representative-level registration. The Exchange believes that there is sufficient overlap between the SIE and these foreign qualification requirements to permit them to act as exemptions to the SIE. Under proposed Rule 1220.01, individuals who are in good

⁶⁵ Current ISE Rule 602(a) and (b) provide that no member shall be approved to transact business with the public until those persons associated with it who are designated representatives have been approved by and registered with the Exchange, and that persons who perform duties for the member which are customarily performed by sales representatives or branch office managers shall be designated as Representatives of the member. Further, ISE Rule 602(d) provides that a person accepting orders from non-member customers (unless such customer is a broker-dealer registered with the Commission) is required to register with the Exchange and to be qualified by passing the General Securities Registered Representative Examination (Series 7). The foregoing provisions of current ISE Rule 602 are specific to conducting an options business with the public, and ISE is not proposing to amend them. However, ISE Rule 602(c) contains provisions regarding the submission of Form U4 through WebCRD and the necessity of completing a qualification examination that are duplicative of the proposed 1200 Series of rules, in particular proposed Rules 1210.12, Application for Registration and Jurisdiction, and 1250, Electronic Filing Requirements for Electronic Forms. ISE is therefore proposing to delete these provisions.

⁶⁶ Proposed Rule 1220(b)(2)(B) differs from FINRA Rule 1220(b)(2)(B) in that it omits references to various registration categories which FINRA recognizes but which the Exchange does not propose to recognize.

standing as representatives with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator would be exempt from the requirement to pass the SIE, and thus would be required only to pass a specialized knowledge examination to register with the Exchange as a representative. The proposed approach would provide individuals with a United Kingdom or Canadian qualification more flexibility to obtain an Exchange representative-level registration.

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

Operations Professional, Investment Banking Representative, Research Analyst, Investment Company and Variable Products Representative, Direct Participation Programs Representative and Private Securities Offerings Representative. The Exchange does not recognize these registration categories for its associated persons. The Exchange is therefore reserving Rules 1220(b)(3) – Operations Professional, and related Rule 1220.05, Scope of Operations Professional Requirement; 1220(b)(5) – Investment Banking Representative; 1220(b)(6) – Research Analyst; 1220(b)(7) – Investment Company and Variable Products Representative; 1220(b)(8) – Direct Participation Programs Representative; and 1220(b)(9) - Private Securities Offerings Representative, retaining the captions for each of them solely to facilitate comparison with FINRA’s rules.

Securities Trader – Proposed Rule 1220(b)(4). Pursuant to current Exchange Rule 306, Supplementary Material .08, an individual associated person who is engaged in proprietary trading, market-making and/or effecting transactions on behalf of a broker-dealer is required to register and qualify as a Securities Trader (TD).

The Exchange now proposes to delete that section of Exchange Rule 306, Supplementary Material .08, and to replace it with proposed Rule 1220(b)(4).⁶⁷ Rule 1220(b)(4) would require each representative as defined in Rule 1220(b)(1) of the Rule to register with the Exchange as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities, or options such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with a member. The revised definition of Securities Trader is consistent with the Securities Trader definition in the Nasdaq rules.⁶⁸ As a result of the revised rule, additional types of activity on the Exchange would fall within the Securities Trader registration category, including engaging in customer business. Rule 1220(b)(4) would require individuals registering as Securities Traders to pass the SIE as well as the Securities Trader qualification exam.

Additionally, proposed Rule 1220(b)(4)(A) would require each person associated with a member who is: (i) primarily responsible for the design, development or significant modification of an algorithmic trading strategy relating to equity, preferred or convertible debt securities or options; or (ii) responsible for the day-to-day supervision or direction of such activities to register with the Exchange as a Securities Trader.⁶⁹

⁶⁷ Proposed Rule 1220(b)(4)(A) differs from FINRA Rule 1220(b)(4)(A) in that it applies to trading on the Exchange while the FINRA rule is limited to the specified trading which is “effected otherwise than on a securities exchange.” Additionally, the FINRA rule does not specifically extend to options trading.

⁶⁸ See current Nasdaq Rule 1032(f), Securities Trader.

⁶⁹ As noted above, this new registration requirement was recently added to the FINRA rulebook. The Exchange has determined to add a parallel requirement to its own rules,

For purposes of this proposed new registration requirement an “algorithmic trading strategy” is an automated system that generates or routes orders (or order-related messages) but does not include an automated system that solely routes orders received in their entirety to a market center. The proposed registration requirement applies to orders and order related messages whether ultimately routed or sent to be routed to an exchange or over the counter. An order router alone would not constitute an algorithmic trading strategy. However, an order router that performs any additional functions would be considered an algorithmic trading strategy. An algorithm that solely generates trading ideas or investment allocations—including an automated investment service that constructs portfolio recommendations—but that is not equipped to automatically generate orders and order-related messages to effectuate such trading ideas into the market—whether independently or via a linked router—would not constitute an algorithmic trading strategy.⁷⁰

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

but also to add options to the scope of products within the proposed rule’s coverage. See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR-FINRA-2016-007).

⁷⁰ See Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR-FINRA-2016-007).

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

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

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

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

17. Eliminated Registration Categories (Proposed Rule 1220.06)

Proposed Rule 1220.06 has no practical relevance to GEMX, but is included because all the Nasdaq Affiliated Exchanges, including Nasdaq, are also proposing to adopt the new 1200 Series on a uniform basis. Proposed Rule 1220.06 will be relevant to Nasdaq and BX which, unlike GEMX, are proposing to eliminate certain existing registration categories that are not currently recognized by the Exchange.⁷¹

Proposed Rule 1220.06 provides that, subject to the lapse of registration provisions in proposed Rule 1210.08, individuals who are registered with the Exchange in any capacity recognized by the Exchange immediately prior to October 1, 2018, and each person who was registered with the Exchange in such categories within two years prior to October 1, 2018, shall be eligible to maintain such registrations with the Exchange. However, if individuals registered in such categories terminate their registration with the Exchange and the registration remains

⁷¹ See SR-NASDAQ-2018-078.

terminated for two or more years, they would not be able to re-register in that category. In addition, proposed Rule 1220.06 would include the current restrictions to which Order Processing Assistant Representatives are subject under Nasdaq rules.⁷² As stated above, Rule 1220.06 would have no practical application to the Exchange.

18. Grandfathering Provisions

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

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

Existing Rule 306(a)(2) currently provides that the following persons associated with a member are not required to register:

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

⁷² See Nasdaq Rule 1042. Proposed Exchange Rule 1220.06 omits references to a number of registration categories it does not propose to recognize, but which FINRA refers to in its own Rule 1220.06.

(B) individual associated persons who are not actively engaged in the securities business;

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

(D) individual associated persons whose functions are related solely and exclusively to:

(i) transactions in commodities;

(ii) transactions in security futures; and/or

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

Rule 306(a)(2) is not meant to provide an exclusive or exhaustive list of exemptions from registration. Associated persons may otherwise be exempt from registration based on their activities and functions.

The Exchange is proposing to adopt Rule 306(a)(2) as Rule 1230 subject to certain changes. As noted above, Rule 306(a)(2)(B) exempts from registration those associated persons who are not actively engaged in the securities business. Rule 306(a)(2)(C) also exempts from registration those associated persons whose functions are related solely and exclusively to a member's need for nominal corporate officers or for capital participation.⁷³ The Exchange believes that the determination of whether an associated person is required to register must be based on an analysis of the person's activities and functions in the context of the various registration categories. The Exchange does not believe that categorical exemptions for associated persons who are not "actively engaged" in a member's securities business, associated persons whose functions are related only to a member's need for nominal corporate officers or associated

⁷³ These exemptions generally apply to associated persons who are corporate officers of a member in name only to meet specific corporate legal obligations or who only provide capital for a member, but have no other role in a member's business.

persons whose functions are related only to a member's need for capital participation is consistent with this analytical framework.⁷⁴ The Exchange therefore is proposing to delete these exemptions. Rule 306(a)(2) further exempts from registration associated persons whose functions are related solely and exclusively to effecting transactions on the floor of another national securities exchange as long as they are registered as floor members with such exchange. Because exchanges have registration categories other than the floor member category, proposed Rule 1230 clarifies that the exemption applies to associated persons solely and exclusively effecting transactions on the floor of another national securities exchange, provided they are appropriately registered with such exchange.⁷⁵ Additionally, the Exchange proposes to add Section 3 of Rule 1230, pursuant to which persons associated with a member that are not citizens, nationals, or residents of the United States or any of its territories or possessions, that will conduct all of their securities activities in areas outside the jurisdiction of the United States, and that will not engage in any securities activities with or for any citizen, national or resident of the United States need not register with the Exchange.⁷⁶

The Exchange proposes to adopt Rule 1230.01 to clarify that the function of accepting customer orders is not considered a clerical or ministerial function and that associated persons who accept customer orders under any circumstances are required to be appropriately registered.

⁷⁴ The Exchanges also proposes to delete Rule 306.06 which specifies circumstances in which the Exchange considers an associated person of a member to be engaged in the securities business of a member. The Exchange believes these determinations may be made on case by case basis, depending upon facts and circumstances.

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

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

However, the proposed rule provides that an associated person is not accepting a customer order where occasionally, when an appropriately registered person is unavailable, the associated person transcribes the order details and the registered person contacts the customer to confirm the order details before entering the order.

O. Changes to Continuing Education Requirements (Proposed Rule 1240)

As described above, existing ISE Rule 604, Continuing Education for Registered Persons, includes a Regulatory Element and a Firm Element. The Regulatory Element applies to registered persons and consists of periodic computer-based training on regulatory, compliance, ethical, supervisory subjects and sales practice standards. The Firm Element consists of at least annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the member. ISE proposes to reorganize and renumber the CE requirements set forth in ISE Rule 604. This rule, as reorganized and renumbered, is now proposed to be adopted by the Exchange with amendments as new Rule 1240.⁷⁷

1. Regulatory Element

The Exchange is proposing to replace the term “registered person” with the term “covered person” and make conforming changes to proposed Rule 1240(a). For purposes of the Regulatory Element, the Exchange is proposing to define the term “covered person” in Rule 1240(a)(5) as any person registered pursuant to proposed Rule 1210, including any person who is permissively registered pursuant to proposed Rule 1210.02, and any person who is designated as eligible for an FSA waiver pursuant to proposed Rule 1210.09. The purpose of this change is to

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

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

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

2. Firm Element

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

P. Electronic Filing Rules

Existing Rule 306, Supplementary Material .01 - .03 requires each individual required to register to electronically file a Uniform Application for Securities Industry Registration (“Form U4”) through the Central Registration Depository system (“Web CRD”) operated by the Financial Industry Regulatory Authority, Incorporated (“FINRA”) and to electronically submit to Web CRD any required amendments to Form U4. Similarly, any member that discharges or terminates the employment or retention of an individual required to register must comply with certain termination filing requirements which include the filing of a Form U5. Form U4 and U5 electronic filing requirements applicable to options principals and representatives, as well a Form U5 requirement applicable to members upon termination of employment of any of their registered persons, are found in ISE Rules 601, Registration of Options Principals, 602, Registration of Representatives, and 603, Termination of Registered Persons.

The Exchange is proposing to delete existing Rule 306, Supplementary Material .01 -.03. ISE is proposing to delete the electronic filing requirements of ISE Rules 601, 602 and 603. The Exchange proposes to replace these deleted rules and rule sections with new Rule 1250, Electronic Filing Requirements for Uniform Forms which will consolidate Form U4 and U5 electronic filing requirements in a single location.⁷⁸ The new rule provides that all forms required to be filed under the Exchange’s registration rules including the Rule 1200 series shall be filed through an electronic process or such other process as the Exchange may prescribe to the Central Registration Depository. It also would impose certain new requirements.

Under Rule 1250(b) members would be required to designate registered principal(s) or corporate officer(s) who are responsible for supervising a firm’s electronic filings. The

⁷⁸ Proposed Rule 1250 is based upon current Nasdaq Rule 1140.

registered principal(s) or corporate officer(s) who has or have the responsibility to review and approve the forms filed pursuant to the rule would be required to acknowledge, electronically, that he is filing this information on behalf of the member and the member's associated persons. Under Rule 1250, Supplementary Material .01, the registered principal(s) or corporate officer(s) could delegate filing responsibilities to an associated person (who need not be registered) but could not delegate any of the supervision, review, and approval responsibilities mandated in Rule 1250(b). The registered principal(s) or corporate officer(s) would be required to take reasonable and appropriate action to ensure that all delegated electronic filing functions were properly executed and supervised.

Under Rule 1250(c)(1), initial and transfer electronic Form U4 filings and any amendments to the disclosure information on Form U4 must be based on a manually signed Form U4 provided to the member or applicant for membership by the person on whose behalf the Form U4 is being filed. As part of the member's recordkeeping requirements, it would be required to retain the person's manually signed Form U4 or amendments to the disclosure information on Form U4 in accordance with Rule 17a-4(e)(1) under the Act and make them available promptly upon regulatory request. An applicant for membership must also retain every manually signed Form U4 it receives during the application process and make them available promptly upon regulatory request. Rule 1250(c)(2) and Supplementary Material .03 and 04 provide for the electronic filing of Form U4 amendments without the individual's manual signature, subject to certain safeguards and procedures.

Rule 1250(d) provides that upon filing an electronic Form U4 on behalf of a person applying for registration, a member must promptly submit fingerprint information for that person and that the Exchange may make a registration effective pending receipt of the fingerprint

information. It further provides that if a member fails to submit the fingerprint information within 30 days after filing of an electronic Form U4, the person's registration will be deemed inactive, requiring the person to immediately cease all activities requiring registration or performing any duties and functioning in any capacity requiring registration. Under the rule the Exchange must administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated could reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of proposed Exchange Rule 1220. Upon application and a showing of good cause, the Exchange could extend the 30-day period.

Rule 1250(e) would require initial filings and amendments of Form U5 to be submitted electronically. As part of the member's recordkeeping requirements, it would be required to retain such records for a period of not less than three years, the first two years in an easily accessible place, in accordance with Rule 17a-4 under the Act, and to make such records available promptly upon regulatory request.

Finally, under proposed Rule 1250, Supplementary Material .02, a member could enter into an agreement with a third party pursuant to which the third party agrees to file the required forms electronically on behalf of the member and the member's associated persons. Notwithstanding the existence of such an agreement, the member would remain responsible for complying with the requirements of the Rule.

Q. Other Rules

As noted above, the Exchange is proposing minor conforming amendments to Rule 208, Regulatory Fees or Charges, as well as to Chapter 90, Code of Procedure. In both cases, the amendments delete citations to rules proposed to be deleted or cite the relevant provisions of the

new 1200 Series. Chapter 90 would delete references to Exchange Rule 306, proposed to be deleted herein, and to BX Rule 1070, proposed to be deleted in SR-BX-2018-047.⁷⁹

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed rule change will streamline, and bring consistency and uniformity to, the registration rules, which will, in turn, assist members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule change will also improve the efficiency of the examination program, without compromising the qualification standards, by eliminating duplicative testing of general securities knowledge on examinations and by removing examinations that currently have limited utility. In addition, the proposed rule change will expand the scope of permissive registrations, which, among other things, will allow members to develop a depth of associated persons with registrations to respond to unanticipated personnel changes and will encourage greater regulatory understanding. Further, the proposed rule change will provide a more streamlined and effective

⁷⁹ See Securities Exchange Act Release No. 83704 (July 25, 2018), 83 FR 37012 (July 31, 2018) (SR-GEMX-2018-24), adding Chapter 90. Chapter 90 incorporates into the GEMX rules by reference Series 9000 of the BX rules. Chapter 90 states that references in the BX Rule 9000 Series to “Rule 1070” shall be read to refer to the Supplementary Material to GEMX Rule 306. As noted above, both the BX and the GEMX rules are proposed to be deleted.

⁸⁰ 15 U.S.C. 78f(b).

⁸¹ 15 U.S.C. 78f(b)(5).

waiver process for individuals working for a financial services industry affiliate of a member, and it will require such individuals to maintain specified levels of competence and knowledge while working in areas ancillary to the securities business. The proposed rule change will improve the supervisory structure of firms by imposing an experience requirement for representatives that are designated by firms to function as principals for a 120-day period before having to pass an appropriate principal qualification examination. The proposed rule change will also prohibit unregistered persons from accepting customer orders under any circumstances, which will enhance investor protection.

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

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

Finally, the proposed rule change makes organizational changes to the Exchange's registration and qualification rules to align them with registration and qualification rules of the Nasdaq Affiliated Exchanges, in order to prevent unnecessary regulatory burdens and to promote efficient administration of the rules. The change also makes minor updates and corrections to the Exchange's rules which improve readability.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule change is designed to ensure that all associated persons of members engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions, will be supervised, and can be identified by regulators. The proposed new 1200 Series of rules, which are similar in many respects to the registration-related requirements adopted by FINRA effective October 1, 2018, should enhance the ability of member firms to comply with the Exchange's rules as well as with the Federal securities laws. Additionally, as described above, the Exchange intends the amendments described herein to eliminate inconsistent registration-related requirements across the Nasdaq Affiliated Exchanges, thereby promoting uniformity of regulation across markets. The new 1200 Series should in fact remove administrative burdens that currently exist for members seeking to register associated persons on multiple Nasdaq Affiliated Exchanges featuring varying registration-related requirements. Additionally, all similarly-situated associated persons of members will be treated similarly under the new 1200 Series in terms of standards of training, experience and competence for persons associated with Exchange members.

With respect to registration of developers of algorithmic trading strategies in particular, the Exchange recognizes that the proposal would impose costs on member firms employing

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

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁸² and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸³

⁸² 15 U.S.C. 78s(b)(3)(A)(iii).

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

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)⁸⁴ 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 the date of filing to reflect FINRA's proposed rule change on which this proposal is based.⁸⁵ The waiver of the operative delay would make the Exchange's qualification requirements consistent with those of FINRA. 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 the date of filing.⁸⁶

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

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:

⁸⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁸⁵ See supra note 7.

⁸⁶ 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).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-GEMX-2018-33 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-GEMX-2018-33. 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-GEMX-2018-33, 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.⁸⁷

Eduardo A. Aleman
Assistant Secretary

⁸⁷ 17 CFR 200.30-3(a)(12).

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