

that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market.

Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Added Displayed Volume and Added Non-Displayed Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to decrease the Exchange's expenditures with respect to its transaction pricing and to encourage additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants that achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>16</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. SEC*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker

dealers'. . . ."<sup>17</sup> Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>18</sup> and Rule 19b-4(f)(2)<sup>19</sup> thereunder.

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

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MEMX-2022-15 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-MEMX-2022-15. This file number should be included on the subject line if email is used. To help the

<sup>17</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

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-MEMX-2022-15 and should be submitted on or before July 5, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-95062; File No. SR-NYSE-2022-07]

### **Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule of Amendments to the Exchange's Rules Regarding Continuing Education Requirements**

June 7, 2022.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on May 25, 2022, NYSE National, Inc. ("NYSE

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>16</sup> See *supra* note 13.

National” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes amendments to the Exchange's rules regarding continuing education requirements (Rule 2.2(e)) applicable to ETP Holders. The proposed rule change also makes conforming amendments to the Exchange's rules regarding registration requirements (Rule 2.1210). Among other changes, the proposed rule change requires that the Regulatory Element of continuing education be completed annually rather than every three years and provides a path through continuing education for individuals to maintain their qualification following the termination of a registration. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

#### **1. Purpose**

The Exchange proposes to amend its continuing education requirements in Rule 2.2(e) and amend related registration requirements provided under various Commentaries to Rule 2.1210. This proposed rule change is based on a filing recently submitted by the Financial Industry Regulatory Authority, Inc. (“FINRA”), and is intended to harmonize the Exchange's

continuing education rules with those of FINRA so as to promote uniform standards across the securities industry.<sup>4</sup> The proposed rule change is discussed in detail below.

The proposed changes are based on the changes approved by the Commission in the approval order for SR-FINRA-2021-015.<sup>5</sup> The Exchange is proposing to adopt such changes substantially in the same form as proposed by FINRA, with only minor changes necessary to conform to the Exchange's existing rules such as to remove cross-references and rules that are applicable to FINRA members but not to Exchange members.

#### **Continuing Education Rules**

##### **(i) Background**

The continuing education program for registered persons of broker-dealers (“CE Program”) currently requires registered persons to complete continuing education consisting of a Regulatory Element and a Firm Element. The Regulatory Element, which is administered by FINRA on behalf of the Exchange, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends. The CE Program is codified under the rules of the self-regulatory organizations (“SROs”). The CE Program for registered persons of Exchange members is codified under 2.2(e).<sup>6</sup>

##### **a. Regulatory Element**

Rule 2.2(e)(1) (Regulatory Element) currently requires a registered person to complete the applicable 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.<sup>7</sup> The Exchange may

extend these time frames for good cause shown.<sup>8</sup> Registered persons who have not completed the Regulatory Element within the prescribed time frames will have their Exchange registrations deemed inactive and will be designated as “CE inactive” in the CRD system until the requirements of the Regulatory Element have been satisfied.<sup>9</sup> A CE inactive person is prohibited from performing, or being compensated for, any activities requiring FINRA registration, including supervision. Moreover, if registered persons remain CE inactive for two consecutive years, they must requalify by retaking required examinations (or obtain a waiver of the applicable qualification examinations).<sup>10</sup>

The Regulatory Element consists of a subprogram for registered persons generally, and a subprogram for principals and supervisors.<sup>11</sup> While some of the current Regulatory Element content is unique to particular registration categories, most of the content has broad application to both representatives and principals.<sup>12</sup>

The Regulatory Element was originally designed at a time when most individuals had to complete the

registered individuals who are participating in the waiver program under Commentary .08 to Rule 2.1210 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of an ETP Holder) (“FSAWP participants”) are also subject to the Regulatory Element. The Regulatory Element for FSAWP participants correlates to their most recent registration(s), and it must be completed based on the same cycle had they remained registered. FSAWP participants are eligible for a single, fixed seven-year waiver period from the date of their initial designation, subject to specified conditions. Registered persons who become subject to a significant disciplinary action, as specified in Rule 2.2(e)(1)(C) (Disciplinary Actions), may be required to retake the Regulatory Element within 120 days of the effective date of the disciplinary action, if they remain registered. Further, their cycle for participation in the Regulatory Element may be adjusted to reflect the effective date of the disciplinary action rather than their registration anniversary date.

<sup>8</sup> See Rule 2.2(e)(1)(B) (Failure to Complete).

<sup>9</sup> *Id.* Individuals must complete the entire Regulatory Element session to be considered to have “completed” the Regulatory Element; partial completion is the same as non-completion.

<sup>10</sup> This CE inactive two-year period is calculated from the date such persons become CE inactive, and it continues to run regardless of whether they terminate their registrations before the end of the two-year period. Therefore, if registered persons terminate their registrations while in a CE inactive status, they must satisfy all outstanding Regulatory Element prior to the end of the CE inactive two-year period in order to reregister with a member without having to requalify by examination or having to obtain an examination waiver.

<sup>11</sup> The S101 (General Program for Registered Persons) and the S201 (Registered Principals and Supervisors).

<sup>12</sup> The current content is presented in a single format leading individuals through a case that provides a story depicting situations that they may encounter in the course of their work.

<sup>4</sup> See Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (SR-FINRA-2021-015) (“FINRA Rule Change”).

<sup>5</sup> *Id.*

<sup>6</sup> See also Commentary .06 to Rule 2.1210 (All Registered Persons Must Satisfy the Regulatory Element of Continuing Education).

<sup>7</sup> See Rule 2.2(e)(1)(A) and (1)(D). An individual's registration anniversary date is generally the date they initially registered with the Exchange in the Central Registration Depository (“CRD”) system. However, an individual's registration anniversary date would be reset if the individual has been out of the industry for two or more years and is required to requalify by examination, or obtain an examination waiver, in order to reregister. An individual's registration anniversary date would also be reset if the individual obtains a conditional examination waiver that requires them to complete the Regulatory Element by a specified date. Non-

Regulatory Element at a test center, and its design was shaped by the limitations of the test center-based delivery model. In 2015, FINRA transitioned the delivery of the Regulatory Element to an online platform (“CE Online”), which allows individuals to complete the content online at a location of their choosing, including their private residence. This online delivery provides FINRA with much greater flexibility in updating content in a timelier fashion, developing content tailored to each registration category and presenting the material in an optimal learning format.

#### b. Firm Element

Rule 2.2(e)(2) (Firm Element) currently requires each firm to develop and administer an annual Firm Element training program for covered registered persons.<sup>13</sup> The rule requires firms to conduct an annual needs analysis to determine the appropriate training.<sup>14</sup> Currently, at a minimum, the Firm Element must cover training in ethics and professional responsibility as well as the following items concerning securities products, services and strategies offered by the member: (1) general investment features and associated risk factors; (2) suitability and sales practice considerations; and (3) applicable regulatory requirements.<sup>15</sup>

A firm, consistent with its needs analysis, may determine to apply toward the Firm Element other required training. The current rule does not expressly recognize other required training, such as training relating to the anti-money laundering (“AML”) compliance program and training relating to the annual compliance meeting, for purposes of satisfying Firm Element training.

#### c. Termination of a Registration

Currently, individuals whose registrations as representatives or principals have been terminated for two or more years may reregister as representatives or principals only if they qualify by retaking and passing the applicable representative- or principal-level examination or if they obtain a waiver of such examination(s) (the “two-year qualification period”).<sup>16</sup> The

two-year qualification period was adopted prior to the creation of the CE Program and was intended to ensure that individuals who reregister are relatively current on their regulatory and securities knowledge.

#### (ii) Proposed Rule Change

After extensive work with the Securities Industry/Regulatory Council on Continuing Education (“CE Council”) and discussions with stakeholders, including industry participants and the North American Securities Administrators Association (“NASAA”), FINRA adopted the following changes to the CE Program under its rules.<sup>17</sup> In order to promote uniform standards across the securities industry, the Exchange now proposes to adopt substantially similar changes to its continuing education rules.

#### a. Transition to Annual Regulatory Element for Each Registration Category

As noted above, currently, the Regulatory Element generally must be

qualification period is calculated from the date individuals terminate their registration and the date the Exchange receives a new application for registration. The two-year qualification period does not apply to individuals who terminate a limited registration category that is a subset of a broader registration category for which they remain qualified. For instance, it would not apply to an individual who maintains his registration as a General Securities Representative but who terminates his registration as an Investment Company and Variable Contracts Products Representative. Such individuals have the option of reregistering in the more limited registration category without having to requalify by examination or obtain an examination waiver so long as they continue to remain qualified for the broader registration category. Further, the two-year qualification period only applies to the representative- and principal-level examinations; it does not extend to the Securities Industry Essentials (“SIE”) examination. The SIE examination is valid for four years, but having a valid SIE examination alone does not qualify an individual for registration as a representative or principal. Individuals whose registrations as representatives or principals have been revoked pursuant to Rule 10.8310 (Sanctions for Violation of the Rules) may only requalify by retaking the applicable representative- or principal-level examination in order to reregister as representatives or principals, in addition to satisfying the eligibility conditions for association with a firm. Waivers are granted either on a case-by-case basis under Commentary .02 to Rule 2.1210 (Qualification Examinations and Waivers of Examinations) or as part of the waiver program under Commentary .08 to Rule 2.1210.

<sup>17</sup> See *supra* note 4. FINRA’s changes are based on the CE Council’s September 2019 recommendations to enhance the CE Program. See Recommended Enhancements for the Securities Industry Continuing Education Program, available at <http://cecouncil.org/media/266634/council-recommendations-final-.pdf>. The CE Council is composed of securities industry representatives and representatives of SROs. The CE Council was formed in 1995 upon a recommendation from the Securities Industry Task Force on Continuing Education and was tasked with facilitating the development of uniform continuing education requirements for registered persons of broker-dealers.

completed every three years, and the content is broad in nature. Based on changes in technology and learning theory, the Regulatory Element content can be updated and delivered in a timelier fashion and tailored to each registration category, which would further the goals of the Regulatory Element.<sup>18</sup> Therefore, to provide registered persons with more timely and relevant training on significant regulatory developments, the Exchange proposes amending Rule 2.2(e)(1) to require registered persons to complete the Regulatory Element annually by December 31.<sup>19</sup> The proposed amendment would also require registered persons to complete Regulatory Element content for each representative or principal registration category that they hold, which would also further the goals of the Regulatory Element.<sup>20</sup> Under the proposed rule change, firms would have the flexibility to require their registered persons to complete the Regulatory Element sooner than December 31, which would allow firms to coordinate the timing of the Regulatory Element with other training requirements, including the Firm Element.<sup>21</sup> For example, a firm could require its registered persons to complete both their Regulatory Element and Firm Element by October 1 of each year.

Individuals who would be registering as a representative or principal for the first time on or after the implementation date of the proposed rule change would be required to complete their initial Regulatory Element for that registration category in the next calendar year following their registration.<sup>22</sup> In addition, subject to specified conditions, individuals who would be reregistering as a representative or principal on or after the implementation date of the proposed rule change would also be required to complete their initial

<sup>18</sup> When the CE Program was originally adopted in 1995, registered persons were required to complete the Regulatory Element on their second, fifth and 10th registration anniversary dates. See Securities Exchange Act Release No. 35341 (February 8, 1995), 60 FR 8426 (February 14, 1995) (Order Approving File Nos. SR-AMEX-94-59; SR-CBOE-94-49; SR-CHX-94-27; SR-MSRB-94-17; SR-NASD-94-72; SR-NYSE-94-43; SR-PSE-94-35; and SR-PHLX-94-52). The change to the current three-year cycle was made in 1998 to provide registered persons more timely and effective training, consistent with the overall purpose of the Regulatory Element. See Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (Order Approving File Nos. SR-CBOE-97-68; SR-MSRB-98-02; SR-NASD-98-03; and SR-NYSE-97-33).

<sup>19</sup> See proposed Rules 2.2(e)(1)(A) and (1)(D).

<sup>20</sup> See proposed Rules 2.1210, Commentary .06 and 2.2(e)(1)(A).

<sup>21</sup> See proposed Rules 2.2(e)(1)(A) and (1)(D).

<sup>22</sup> See proposed Rule 2.2(e)(1)(A).

<sup>13</sup> The rule defines “covered registered persons” as any registered person who has direct contact with customers in the conduct of a member’s securities sales and trading activities, and the immediate supervisors of any such persons. See Rule 2.2(e)(2)(A) (Persons Subject to the Firm Element).

<sup>14</sup> See Rule 2.2(e)(2)(B) (Standards for the Firm Element).

<sup>15</sup> *Id.*

<sup>16</sup> See Commentary .07 to Rule 2.1210 (Lapse of Registration and Expiration of SIE). The two-year

Regulatory Element for that registration category in the next calendar year following their reregistration.<sup>23</sup>

Consistent with current requirements, individuals who fail to complete their Regulatory Element within the prescribed period would be automatically designated as CE inactive.<sup>24</sup> However, the proposed rule change preserves the Exchange's ability to extend the time by which a registered person must complete the Regulatory Element for good cause shown.<sup>25</sup>

The Exchange also proposes amending Rule 2.2(e)(1) to clarify that: (1) individuals who are designated as CE inactive would be required to complete all of their pending and upcoming annual Regulatory Element, including any annual Regulatory Element that becomes due during their CE inactive period, to return to active status;<sup>26</sup> (2) the two-year CE inactive period is calculated from the date individuals become CE inactive, and it continues to run regardless of whether individuals terminate their registrations;<sup>27</sup> (3) individuals who become subject to a significant disciplinary action may be required to complete assigned continuing education content as prescribed by the Exchange;<sup>28</sup> (4) individuals who have not completed any Regulatory Element content for a registration category in the calendar year(s) prior to reregistering would not be approved for registration for that category until they complete that Regulatory Element content, pass an examination for that registration category or obtain an unconditional examination waiver for that registration category, whichever is applicable;<sup>29</sup> and (5) the Regulatory Element requirements apply to individuals who are registered, or in the process of registering, as a representative or principal. In addition, the Exchange proposes making conforming amendments to Commentary .07 to Rule 2.1210.

Under the proposed rule change, the amount of content that registered persons would be required to complete in a three-year, annual cycle for a particular registration category is expected to be comparable to what most registered persons are currently

completing every three years. In some years, there may be more required content for some registration categories depending on the volume of rule changes and regulatory issues. In addition, an individual who holds multiple registrations may be required to complete additional content compared to an individual who holds a single registration because, as noted above, individuals would be required to complete content specific to each registration category that they hold.<sup>30</sup> However, individuals with multiple registrations would not be subject to duplicative regulatory content in any given year. The more common registration combinations would likely share much of their relevant regulatory content each year. For example, individuals registered as General Securities Representatives and General Securities Principals would receive the same content as individuals solely registered as General Securities Representatives, supplemented with a likely smaller amount of supervisory-specific content on the same topics. The less common registration combinations may result in less topic overlap and more content overall.

#### b. Recognition of Other Training Requirements for Firm Element and Extension of Firm Element to All Registered Persons

To better align the Exchange's rulebook with FINRA's rulebook, and, in addition, to better align the Firm Element requirement with other required training, the Exchange proposes amending Rule 2.2(e)(2) to expressly allow firms to consider training relating to the AML compliance program and the annual compliance meeting toward satisfying an individual's annual Firm Element requirement.<sup>31</sup> The Exchange also proposes amending the rule to extend the Firm Element requirement to all registered persons, including individuals who maintain solely a permissive registration consistent with Commentary .01 to Rule 2.1210 (Permissive Registrations), thereby further aligning the Firm Element requirement with other broadly-based training requirements.<sup>32</sup> In conjunction with this proposed change, the Exchange proposes modifying the

current minimum training criteria under Rule 2.2(e)(2) to instead provide that the training must cover topics related to the role, activities or responsibilities of the registered person and to professional responsibility.<sup>33</sup>

#### c. Maintenance of Qualification After Termination of Registration

The Exchange proposes adopting paragraph (3) under Rule 2.2(e) and Commentaries .09 and .10 to Rule 2.2 to provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing continuing education.<sup>34</sup> The proposed rule change would not eliminate the two-year qualification period. Rather, it would provide such individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration(s). Eligible individuals who elect not to participate in the proposed continuing education program would continue to be subject to the current two-year qualification period. The proposed rule change is generally aligned with other professional continuing education programs that allow individuals to maintain their qualification to work in their respective fields during a period of absence from their careers (including an absence of more than two years) by satisfying continuing education requirements for their credential.

The proposed rule change would impose the following conditions and limitations:

- individuals would be required to be registered in the terminated registration category for at least one year immediately prior to the termination of that category;<sup>35</sup>
- individuals could elect to participate when they terminate a

<sup>23</sup> See proposed Rule 2.2(e)(1)(D).

<sup>24</sup> See proposed Rule 2.2(e)(1)(B).

<sup>25</sup> *Id.* The proposed rule change clarifies that the request for an extension of time must be in writing and include supporting documentation, which is consistent with current practice.

<sup>26</sup> See proposed Rule 2.2(e)(1)(B).

<sup>27</sup> See proposed Rule 2.2(e)(1)(B).

<sup>28</sup> See proposed Rule 2.2(e)(1)(C). As previously noted, Rule 2.2(e)(1)(C) currently provides that such individuals may be required to retake the Regulatory Element. See *supra* note 7.

<sup>29</sup> See proposed Rule 2.2(e)(1)(D).

<sup>30</sup> As discussed in the economic impact assessment in the FINRA Rule Change, individuals with multiple registrations represent a smaller percentage of the population of registered persons.

<sup>31</sup> See proposed Rule 2.2(e)(2)(B)(iv).

<sup>32</sup> See proposed Rule 2.2(e)(2)(A). As noted earlier, the current requirement only applies to "covered registered persons" and not all registered persons.

<sup>33</sup> See proposed Rule 2.2(e)(2)(B)(ii).

<sup>34</sup> The proposed option would also be available to individuals who terminate any permissive registrations as provided under Commentary .01 to Rule 2.1210. However, the proposed option would not be available to individuals who terminate a limited registration category that is a subset of a broader registration category for which they remain qualified. As previously noted, such individuals currently have the option of reregistering in the more limited registration category without having to requalify by examination or obtain an examination waiver so long as they continue to remain qualified for the broader registration category. In addition, the proposed option would not be available to individuals who are maintaining an eliminated registration category, such as the category for Corporate Securities Representative, or individuals who have solely passed the Securities Industry Essentials examination, which does not, in and of itself, confer registration.

<sup>35</sup> See proposed Rule 2.2(e)(3)(A).

registration or within two years from the termination of a registration;<sup>36</sup>

- individuals would be required to complete annually all prescribed continuing education;<sup>37</sup>
- individuals would have a maximum of five years in which to reregister;<sup>38</sup>
- individuals who have been CE inactive for two consecutive years, or who become CE inactive for two consecutive years during their participation, would not be eligible to participate or continue;<sup>39</sup> and
- individuals who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the termination of their registration or during their participation, would not be eligible to participate or continue.<sup>40</sup>

<sup>36</sup> See proposed Rule 2.2(e)(3)(B). Individuals who elect to participate at the later date would be required to complete, within two years from the termination of their registration, any continuing education that becomes due between the time of their Form U5 (Uniform Termination Notice for Securities Industry Registration) submission and the date that they commence their participation. In addition, FINRA would enhance its systems to notify individuals of their eligibility to participate, enable them to affirmatively opt in, and notify them of their annual continuing education requirement if they opt in.

<sup>37</sup> See proposed Rule 2.2(e)(3)(C). However, upon a participant's request and for good cause shown, the Exchange would have the ability to grant an extension of time for the participant to complete the prescribed continuing education. A participant who is also a registered person must directly request an extension of the prescribed continuing education from the Exchange. The continuing education content for participants would consist of a combination of Regulatory Element content and content selected by FINRA and the CE Council from the Firm Element content catalog. The content would correspond to the registration category for which individuals wish to maintain their qualifications. Participants who are maintaining their qualification status for a principal registration category that includes one or more corequisite representative registrations must also complete required annual continuing education for the corequisite registrations in order to maintain their qualification status for the principal registration category. The proposed rule change clarifies that the prescribed continuing education must be completed by December 31 of the calendar year, which is consistent with the timing for the proposed annual Regulatory Element.

<sup>38</sup> See proposed 2.2(e)(3). In addition, individuals applying for reregistration must satisfy all other requirements relating to the registration process (e.g., submit a Form U4 (Uniform Application for Securities Industry Registration or Transfer) and undergo a background check).

<sup>39</sup> See proposed Rules 2.2(e)(3)(D) and (3)(E).

<sup>40</sup> See proposed Rules 2.2(e)(3)(A) and (3)(F). Further, any content completed by participants would be retroactively nullified upon disclosure of the statutory disqualification. The following example illustrates the application of the proposed rule change to individuals who become subject to a statutory disqualification while participating in the proposed continuing education program. Individual A participates in the proposed continuing education program for four years and completes the prescribed content for each of those years. During year five of his participation, he becomes subject to a statutory disqualification

The proposed rule change also includes a look-back provision that would, subject to specified conditions, extend the proposed option to individuals who have been registered as a representative or principal within two years immediately prior to the implementation date of the proposed rule change and individuals who have been FSAWP participants immediately prior to the implementation date of the proposed rule change.<sup>41</sup>

In addition, the proposed rule change includes a re-eligibility provision that would allow individuals to regain eligibility to participate each time they reregister with a firm for a period of at least one year and subsequently terminate their registration, provided that they satisfy the other participation conditions and limitations.<sup>42</sup> Additionally, the Exchange proposes

resulting from a foreign regulatory action. In that same year, the Exchange receives a Form U4 submitted by a member on behalf of Individual A requesting registration with the Exchange. The Form U4 discloses the statutory disqualification event. The Exchange would then retroactively nullify any content that Individual A completed while participating in the proposed continuing education program. Therefore, in this example, in order to become registered with the Exchange, he would be required to requalify by examination. This would be in addition to satisfying the eligibility conditions for association with an Exchange member firm. See Exchange Act Sections 3(a)(39) and 15(b)(4).

<sup>41</sup> See proposed Commentary .09 to Rule 2.2. Such individuals would be required to elect whether to participate by the effective date of the proposed rule change. If such individuals elect to participate, they would be required to complete their initial annual content by the end of the calendar year in which the proposed rule change becomes effective. In addition, if such individuals elect to participate, their initial participation period would be adjusted based on the date that their registration was terminated. The current waiver program for FSAWP participants would not be available to new participants upon the date the proposed rule change becomes effective. See proposed Commentary .08 to Rule 2.1210. However, individuals who are FSAWP participants immediately prior to the effective date of the proposed rule change could elect to continue in that waiver program until the program has been retired. As noted above, FSAWP participants may participate for up to seven years in that waiver program, subject to specified conditions. See *supra* note 7. As discussed above, the proposed rule change provides a five-year participation period for participants in the proposed continuing education program. So as not to disadvantage FSAWP participants, the Exchange has determined to preserve that waiver program for individuals who are participating in the FSAWP immediately prior to the effective date of the proposed rule change. Because the proposed rule change transitions the Regulatory Element to an annual cycle, FSAWP participants who remain in that waiver program following the effective of the proposed rule change would be subject to an annual Regulatory Element requirement. See proposed Rule 2.2(e)(1)(A). Finally, the proposed rule change preserves the Exchange's ability to extend the time by which FSAWP participants must complete the Regulatory Element for good cause shown. See proposed Rule 2.2(e)(1)(B).

<sup>42</sup> See proposed Commentary .10 to Rule 2.2.

making conforming amendments to Rule 2.1210, including adding references to proposed Rule 2.2(e)(3) under Commentary .07 to Rule 2.1210. Finally, the Exchange proposes certain additional amendments to its rules to further align the Exchange's rules with those of FINRA, including making changes to certain rules to correct typographical and grammatical errors. More specifically, the Exchange proposes to amend current Rule 2.2(e)(1)(B) to clarify that the provisions under the rule apply to a "registered person" by inserting the word "registered" in front of "person."

The proposed rule change will have several important benefits. It will provide individuals with flexibility to address life and career events and necessary absences from registered functions without having to requalify each time. It will also incentivize them to stay current on their respective securities industry knowledge following the termination of any of their registrations. The continuing education under the proposed option will be as rigorous as the continuing education of registered persons, which promotes investor protection. Further, the proposed rule change will enhance diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals.

Significantly, the proposed rule change will be of particular value to women, who continue to be the primary caregivers for children and aging family members and, as a result, are likely to be absent from the industry for longer periods.<sup>43</sup> In addition, the proposed rule change will provide longer-term relief for women, individuals with low incomes and other populations, including older workers, who are at a higher risk of a job loss during certain economic downturns and who are likely to remain unemployed for longer periods.<sup>44</sup>

#### d. CE Program Implementation

As stated in the FINRA Rule Change, FINRA and the CE Council also plan to enhance the CE Program in other ways, and these additional enhancements do

<sup>43</sup> See The Female Face of Family Caregiving (November 2018), available at <https://www.nationalpartnership.org/our-work/resources/economic-justice/femaleface-family-caregiving.pdf>.

<sup>44</sup> See The COVID-19 Recession is the Most Unequal in Modern U.S. History (September 30, 2020), available at <https://www.washingtonpost.com/graphics/2020/business/coronavirus-recessionequality/> and Unemployment's Toll on Older Workers Is Worst in Half a Century (October 21, 2020), available at <https://www.aarp.org/work/working-at-50-plus/info-2020/pandemic-unemployment-older-workers>.

not require any changes to the FINRA rules.<sup>45</sup> As it relates to the rule changes themselves, the FINRA changes relating to the Maintaining Qualifications Program and the Financial Services Affiliate Waiver Program (FSAWP) became effective on March 15, 2022.<sup>46</sup> The Exchange's proposed changes to the Maintaining Qualifications Program (paragraph (3) under Rule 2.2(e) and Commentary .09 and .10 to Rule 2.2) and to the FSAWP (Commentary .08 to Rule 2.1210) will become effective on the date this proposed rule change is filed. All other changes related to the FINRA Rule Change and to the Exchange's rules relating to the Regulatory Element, Firm Element and the two-year qualification period, will have an implementation date of January 1, 2023.<sup>47</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>48</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>49</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

As noted above, the proposed rule change seeks to align the Exchange Rules with the recent change to FINRA rules which has been approved by the Commission.<sup>50</sup> The Exchange believes the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,<sup>51</sup> which requires, among other things, that Exchange Rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(c)(3) of the Act,<sup>52</sup> which

authorizes the Exchange to prescribe standards of training, experience and competence for persons associated with the Exchange.

The Exchange believes that the proposed change to the Regulatory Element and Firm Element will ensure that all registered persons receive timely and relevant training, which will, in turn, enhance compliance and investor protection. Further, the Exchange believes that establishing a path for individuals to maintain their qualification following the termination of a registration will reduce unnecessary impediments to requalification and promote greater diversity and inclusion in the securities industry without diminishing investor protection.

The Exchange believes the proposal is consistent with the Act for the reasons described above and for the reasons outlined in the approval order for SR-FINRA-2021-015.<sup>53</sup>

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change, which harmonizes its rules with the recent rule change adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

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

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

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has

become effective pursuant to Section 19(b)(3)(A) of the Act<sup>54</sup> and Rule 19b-4(f)(6) thereunder.<sup>55</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may 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 this proposed rule change may become operative immediately upon filing. In addition, Rule 19b-4(f)(6)(iii)<sup>56</sup> requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

Waiver of the 30-day operative delay would allow the Exchange to more quickly align certain of its proposed changes with changes that FINRA implemented on March 15, 2022, thereby reducing the possibility of a significant regulatory gap between the FINRA and Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for registered persons of the Exchange that are also FINRA members. For this reason, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>57</sup>

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

<sup>54</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>55</sup> 17 CFR 240.19b-4(f)(6).

<sup>56</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>57</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>45</sup> See *supra* note 4. As described in more detail in the FINRA Rule Change, FINRA will work with the CE Council to develop and incorporate additional resources in connection with the Regulatory and Firm Elements. Similar to FINRA, these additional enhancements do not require any changes to the Exchange rules.

<sup>46</sup> See FINRA Regulatory Notice 21-41 at <https://www.finra.org/rulesguidance/notices/21-41>.

<sup>47</sup> *Id.*

<sup>48</sup> 15 U.S.C. 78f(b).

<sup>49</sup> 15 U.S.C. 78f(b)(5).

<sup>50</sup> See *supra* note 4.

<sup>51</sup> 15 U.S.C. 78f(b)(5).

<sup>52</sup> 15 U.S.C. 78f(c)(3).

<sup>53</sup> See *supra* note 4.

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSENAT-2022-07 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-NYSENAT-2022-07. This file number should be included on the subject line if email 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-NYSENAT-2022-07 and should be submitted on or before July 5, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>58</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95060; File No. SR-CboeEDGX-2022-029]

#### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

June 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 1, 2022, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/edgx/](http://markets.cboe.com/us/options/regulation/rule_filings/edgx/)) [sic], at the Exchange's Office of the Secretary, 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 Item IV below. The Exchange has prepared summaries, set

forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("EDGX Equity") to modify certain tiers offered under the Add/Remove Volume Tiers, including certain Add Volume Tiers, a Growth Tier, and a Remove Volume Tier. The Exchange proposes to implement these changes effective June 1, 2022.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,<sup>3</sup> no single registered equities exchange has more than 17% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a "Maker-Taker" model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity. For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher

<sup>58</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (May 30, 2022), available at [https://www.cboe.com/us/equities/market\\_statistics/](https://www.cboe.com/us/equities/market_statistics/).