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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements)

June 15, 2021

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 3, 2021, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 1240 (Continuing Education Requirements). The proposed rule change also makes conforming amendments to FINRA Rule 1210 (Registration Requirements). 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 text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA 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

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

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

In its filing with the Commission, FINRA 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. FINRA 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

(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, 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 FINRA members is codified under Rule 1240.<sup>3</sup>

a. Regulatory Element

Rule 1240(a) (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>4</sup>

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<sup>3</sup> See also Rule 1210.07 (All Registered Persons Must Satisfy the Regulatory Element of Continuing Education).

<sup>4</sup> See Rules 1240(a)(1) (Requirements) and (a)(4) (Reassociation in a Registered Capacity). An individual’s registration anniversary date is generally the date they initially registered with FINRA in the Central Registration Depository (“CRD<sup>®</sup>”) 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

FINRA may extend these time frames for good cause shown.<sup>5</sup> Registered persons who have not completed the Regulatory Element within the prescribed time frames will have their FINRA 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>6</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>7</sup>

The Regulatory Element consists of a subprogram for registered persons generally, and a subprogram for principals and supervisors.<sup>8</sup> While some of the current Regulatory Element

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requires them to complete the Regulatory Element by a specified date. Non-registered individuals who are participating in the waiver program under Rule 1210.09 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member) (“FSAWP participants”) are also subject to the Regulatory Element. See also Rule 1240(a)(5) (Definition of Covered Person). 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 1240(a)(3) (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>5</sup> See Rule 1240(a)(2) (Failure to Complete).

<sup>6</sup> See supra note 5. 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>7</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>8</sup> The S101 (General Program for Registered Persons) and the S201 (Registered Principals and Supervisors).

content is unique to particular registration categories, most of the content has broad application to both representatives and principals.<sup>9</sup>

The Regulatory Element was originally designed at a time when most individuals had to complete the 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 1240(b) (Firm Element) currently requires each firm to develop and administer an annual Firm Element training program for covered registered persons.<sup>10</sup> The rule requires firms to conduct an annual needs analysis to determine the appropriate training.<sup>11</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>12</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

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<sup>9</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>10</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, trading and investment banking activities, any individual who is registered as an Operations Professional or a Research Analyst, and the immediate supervisors of any such persons. See Rule 1240(b)(1) (Persons Subject to the Firm Element).

<sup>11</sup> See Rule 1240(b)(2) (Standards for the Firm Element).

<sup>12</sup> See supra note 11.

training, such as training relating to the anti-money laundering (“AML”) compliance program and training relating to the annual compliance meeting,<sup>13</sup> 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 requalify 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>14</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

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<sup>13</sup> See FINRA Rules 3310(e) and 3110(a)(7).

<sup>14</sup> See Rule 1210.08 (Lapse of Registration and Expiration of SIE). The two-year qualification period is calculated from the date individuals terminate their registration and the date FINRA 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 FINRA Rule 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 Rule 1210.03 (Qualification Examinations and Waivers of Examinations) or as part of the waiver program under Rule 1210.09.

the North American Securities Administrators Association (“NASAA”), FINRA proposes the following changes to the CE Program under Rule 1240.<sup>15</sup>

a. Transition to Annual Regulatory Element for Each Registration Category

As noted above, currently, the Regulatory Element generally must be 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>16</sup> Therefore, to provide registered persons with more timely and relevant training on significant regulatory developments, FINRA proposes amending Rule 1240(a) to require registered persons to complete the Regulatory Element annually by December 31.<sup>17</sup> The proposed amendment would also require registered persons to complete Regulatory Element content for each

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<sup>15</sup> The proposed 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.

<sup>16</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>17</sup> See proposed Rules 1240(a)(1) and (a)(4). Some commenters supported the proposed change to an annual requirement, while others disagreed with it or expressed concerns with the burdens it would impose on firms and registered persons. See infra Item II.C.(a) and (b)(i).

representative or principal registration category that they hold, which would also further the goals of the Regulatory Element.<sup>18</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>19</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>20</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 Regulatory Element for that registration category in the next calendar year following their reregistration.<sup>21</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>22</sup>

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<sup>18</sup> See proposed Rules 1210.07 and 1240(a)(1). Commenters generally supported the development of tailored content that is specific to each registration category. See *infra* Item II.C.(a). However, some commenters questioned whether there would be sufficient content for certain registration categories in a given year, while others were concerned that some individuals could be subject to duplicate or excessive content. See *infra* Item II.C.(a) and (b)(i).

<sup>19</sup> See proposed Rules 1240(a)(1) and (a)(4).

<sup>20</sup> See proposed Rule 1240(a)(1).

<sup>21</sup> See proposed Rule 1240(a)(4).

<sup>22</sup> See proposed Rule 1240(a)(2). In *Regulatory Notice* 20-05 (February 2020), FINRA had proposed a 15-day grace period prior to being designated as CE inactive, provided that the member documented the reasons for the individual's failure to complete the Regulatory Element within the prescribed calendar year and retained the documentation for recordkeeping purposes. Some commenters noted that the proposed grace period would increase administrative and operational burdens, while one commenter requested that FINRA provide a longer grace period. See *infra* Item II.C.(b)(i). FINRA has determined to eliminate the proposed grace period to avoid any unnecessary burdens.

However, the proposed rule change preserves FINRA's ability to extend the time by which a registered person must complete the Regulatory Element for good cause shown.<sup>23</sup>

FINRA also proposes amending Rule 1240(a) 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>24</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>25</sup> (3) individuals who become subject to a significant disciplinary action may be required to complete assigned continuing education content as prescribed by FINRA;<sup>26</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>27</sup> and (5) the Regulatory Element requirements apply to individuals who are registered, or in the process of registering, as a representative or principal.<sup>28</sup> In addition, FINRA proposes making conforming amendments to Rule 1210.07.

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

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<sup>23</sup> See supra note 22. 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>24</sup> See supra note 22.

<sup>25</sup> See supra note 22.

<sup>26</sup> See proposed Rule 1240(a)(3). As previously noted, Rule 1240(a)(3) currently provides that such individuals may be required to retake the Regulatory Element. See supra note 4.

<sup>27</sup> See proposed Rule 1240(a)(4).

<sup>28</sup> See proposed Rule 1240(a)(5).

expected to be comparable to what most registered persons are currently completing every three years.<sup>29</sup> 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 Firm Element requirement with other required training, FINRA proposes amending Rule 1240(b) 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> FINRA 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 Rule 1210.02 (Permissive Registrations), thereby further

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<sup>29</sup> As previously noted, some commenters questioned whether there would be sufficient annual content for certain registration categories and some commenters were concerned that some individuals might be subject to duplicate or excessive content on an annual basis. See supra note 18; see infra Item II.C.(a) and (b)(i).

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

<sup>31</sup> See proposed Rule 1240(b)(2)(D). Commenters overwhelmingly supported this proposed change. See infra Item II.C.(b)(ii).

aligning the Firm Element requirement with other broadly-based training requirements.<sup>32</sup> In conjunction with this proposed change, FINRA proposes modifying the current minimum training criteria under Rule 1240(b) 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

FINRA proposes adopting paragraph (c) under Rule 1240 and Supplementary Material .01 and .02 to Rule 1240 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.<sup>35</sup> 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

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<sup>32</sup> See proposed Rule 1240(b)(1). As noted earlier, the current requirement only applies to “covered registered persons” and not all registered persons. Not all commenters agreed with this proposed change. See *infra* Item II.C.(b)(ii).

<sup>33</sup> See proposed Rule 1240(b)(2)(B). In Regulatory Notice 20-05, FINRA had proposed to retain the current minimum training criteria under Rule 1240(b)(2)(B). One commenter stated that the current criteria is overly prescriptive and that the requirement should be more flexible. See *infra* Item II.C.(b)(ii). FINRA is revising the rule in response.

<sup>34</sup> Commenters overwhelmingly supported this proposed change. See *infra* Item II.C.(b)(iii). The proposed option would also be available to individuals who terminate any permissive registrations as provided under Rule 1210.02. 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> One commenter requested that FINRA eliminate the two-year qualification period. See *infra* Item II.C.(b)(iii).

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>36</sup>
- individuals could elect to participate when they terminate a registration or within two years from the termination of a registration;<sup>37</sup>
- individuals would be required to complete annually all prescribed continuing education;<sup>38</sup>

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<sup>36</sup> See proposed Rule 1240(c)(1).

<sup>37</sup> See proposed Rule 1240(c)(2). 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>38</sup> See proposed Rule 1240(c)(3). However, upon a participant's request and for good cause shown, FINRA 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 FINRA. 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 discussed below. One commenter suggested that the content, subject matter and volume of training be the same for both participants and registered persons. See *infra* Item II.C.(b)(iii). 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. In

- individuals would have a maximum of five years in which to reregister;<sup>39</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>40</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>41</sup>

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Regulatory Notice 20-05, FINRA had proposed that participants complete the prescribed continuing education annually. 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>39</sup> See proposed Rule 1240(c). As described in greater detail in Item II.C. of this filing, in Regulatory Notice 20-05, FINRA had proposed a seven-year participation period, and some commenters suggested that there should not be any time limit on the participation period. See infra Item II.C.(b)(iii). However, based on discussions with NASAA and its support for a participation period of five years, the proposed rule change provides a five-year participation period in the interest of consistency and promoting registration efficiency. See infra Item II.C.(b)(iii). The proposed five-year participation period would continue to serve the diversity and inclusion goals of the proposed rule change. 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>40</sup> See proposed Rules 1240(c)(4) and (c)(5).

<sup>41</sup> See proposed Rules 1240(c)(1) and (c)(6). Individuals who are subject to a statutory disqualification would not be eligible to enter the proposed continuing education program. Individuals who become subject to a statutory disqualification while participating in the proposed continuing education program would not be eligible to continue in the program. Further, any content completed by such 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 resulting from a foreign regulatory action. In that same year, FINRA receives a Form U4 submitted by a member on behalf of Individual A requesting registration with FINRA. The Form U4 discloses the statutory disqualification event. FINRA 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 FINRA, he would be required to requalify by examination. This would be in addition to satisfying the eligibility conditions for

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>42</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>43</sup> Finally, FINRA proposes making conforming

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association with a FINRA member firm. See Exchange Act Sections 3(a)(39) and 15(b)(4) and Article III of the FINRA By-Laws.

<sup>42</sup> See proposed Supplementary Material .01 to Rule 1240. Such individuals would be required to elect whether to participate by the implementation 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 is implemented. 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 implementation of the proposed rule change. See proposed Rule 1210.09. However, individuals who are FSAWP participants immediately prior to the implementation 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 4. In Regulatory Notice 20-05, FINRA had proposed to eliminate the FSAWP given that the participation period of seven years for FSAWP participants would have been the same for participants in the proposed continuing education program. 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, FINRA has determined to preserve that waiver program for individuals who are participating in the FSAWP immediately prior to the implementation 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 implementation of the proposed rule change would be subject to an annual Regulatory Element requirement. See proposed Rule 1240(a)(1). Finally, the proposed rule change preserves FINRA's ability to extend the time by which FSAWP participants must complete the Regulatory Element for good cause shown. See proposed Rule 1240(a)(2).

<sup>43</sup> See proposed Supplementary Material .02 to Rule 1240.

amendments to Rule 1210, including adding references to proposed Rule 1240(c) under Rule 1210.08.

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. Moreover, if the proposed rule change is implemented, FINRA will evaluate its efficacy following implementation to ensure that it is meeting its goals.

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>44</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>45</sup>

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<sup>44</sup> See The Female Face of Family Caregiving (November 2018), available at <https://www.nationalpartnership.org/our-work/resources/economic-justice/female-face-family-caregiving.pdf>.

<sup>45</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-recession-equality/> 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>.

d. Other Enhancements to CE Program

FINRA and the CE Council also plan to enhance the CE Program in other ways.<sup>46</sup> FINRA will work with the CE Council to incorporate a variety of instructional formats to present the Regulatory Element content. In addition, FINRA will work with the CE Council to publish in advance the Regulatory Element learning topics for the next year.<sup>47</sup> This will allow firms to review the Regulatory Element topics when developing their Firm Element training plan to avoid unnecessary duplication of topics. The proposed transition to an annual Regulatory Element requirement would increase the number of registered persons who would be required to complete the Regulatory Element on an annual basis. To assist compliance with this proposed change, FINRA would enhance its systems to provide firms and registered persons with additional notification, management and tracking functionality. In response to comments, FINRA would also make the Regulatory Element available via a mobile compatible format.<sup>48</sup>

FINRA and the CE Council also will improve the guidance and resources available to firms to develop effective Firm Element training programs, such as updated guidance for developing and documenting training plans and specific principles. Further, FINRA and the CE Council will develop a catalog of continuing education content that would serve as an optional resource for firms to select relevant Firm Element content and create learning plans for their registered persons. The catalog would include content developed by third-party training providers, FINRA and the other SROs participating in the CE Program. Firms would have the option of using the content in the catalog for purposes of their Firm Element training; they would not be obligated to select content from the catalog.

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<sup>46</sup> These additional enhancements do not require any changes to the FINRA rules. Most commenters supported these enhancements, while some commenters had concerns and questions. See infra Item II.C.(b)(iv).

<sup>47</sup> If there are any other critical rule changes or other regulatory developments that arise during a given year, FINRA and the CE Council will work to provide registered persons timely and sufficient training on such rule changes and developments.

<sup>48</sup> See infra Item II.C.(b)(i).

If the Commission approves the proposed rule change, FINRA will announce the implementation dates of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

## 2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>49</sup> which requires, among other things, that FINRA 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 15A(g)(3) of the Act,<sup>50</sup> which authorizes FINRA to prescribe standards of training, experience and competence for persons associated with FINRA members.

FINRA believes that the proposed changes 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, FINRA 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.

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

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. All members would be subject to the proposed rule change.

### Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the

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<sup>49</sup> 15 U.S.C. 78o-3(b)(6).

<sup>50</sup> 15 U.S.C. 78o-3(g)(3).

current baseline, and the alternatives FINRA considered in assessing how best to meet its regulatory objective.

### Regulatory Need

FINRA is proposing to make changes to the CE Program, including the related FINRA rules, as part of ongoing efforts to address and implement the CE Council's recommendations. As described above, the proposed rule change focuses on: (1) ensuring that all registered persons receive relevant and sufficient Regulatory Element and Firm Element training on an annual basis; (2) providing a path through continuing education for individuals to maintain their qualification following the termination of a registration; and (3) providing firms with the guidance and resources necessary to design effective and efficient Firm Element training programs.

The proposed rule change is expected to result in a more efficient CE Program that addresses relevant regulatory requirements and provides individuals with improved tools and resources to understand and comply with such requirements, enhancing investor protection. Moreover, the proposed rule change would provide new channels for individuals to maintain their qualification status for a terminated registration category and, in so doing, could increase the likelihood that professionals who need to step away from the industry for a period could return, subject to satisfying all other requirements relating to the registration process.

### Economic Baseline

The economic baseline for the proposed rule change is the existing CE Program. As described above, registered persons of broker-dealers are required to participate in continuing education consisting of a Regulatory Element and a Firm Element. The Regulatory Element is generally delivered every three years and focuses on regulatory requirements and industry standards, while the Firm Element is an annual requirement and focuses on securities products, services and strategies firms offer, firm policies and industry trends.

As stated above, under the current regime, individuals generally have a two-year window from the termination of their association with a member to reregister without requalifying by examination or obtaining a waiver. According to FINRA's analysis, the total number of registered persons, approximately 620,000, has shown a slow decrease over the past few years even as individual registered persons regularly change their status by ending and renewing their association with a firm.<sup>51</sup> Across this pool of registered persons, approximately 65% hold only one FINRA registration category (for example either a General Securities Representative (Series 7) registration or an Investment Company and Variable Contracts Products Representative (Series 6) registration), 25% hold two FINRA registrations (for example a General Securities Representative registration and an Investment Banking Representative registration), and the remainder hold three FINRA registrations or more. Moreover, across the pool of registered persons, in addition to the FINRA registration, approximately 90% hold at least one state registration, and 50% hold more than five state registrations. With respect to registration with a FINRA member, in recent years, out of the approximately 620,000 registered persons, approximately 90,000 end their registration with all firms with whom they are registered at some point during the year. Out of these, about half do not renew their registration and are considered to have left the securities industry.

Under the current baseline, registered persons who terminate a registration are given a two-year grace period in which they can reregister without being required to retake a qualification examination or obtain an examination waiver. Individuals who seek to reregister more than two years after terminating their association are required to requalify by passing an examination or obtaining an examination waiver. Requalification imposes costs in the form of time spent preparing for and taking the examinations, potential limitations to the activities

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<sup>51</sup> The number of registered persons has been decreasing at an annual rate of approximately 1% per year. See, e.g., 2020 FINRA Industry Snapshot, available at <https://www.finra.org/rules-guidance/guidance/reports-studies/2020-industry-snapshot>.

permitted to be conducted until the requalification is completed, opportunity costs for the individual and the potential employers in terms of lost business, and the direct registration costs. FINRA understands anecdotally that these costs currently deter some significant portion of the population that give up their registrations from reregistering.

Figure 1, as an example, presents a plot of the number of registered persons that reregister within a given number of years after having terminated their registrations for at least 60 days.<sup>52</sup> The focus is on registered persons who terminated their registrations in either 2007, 2008 or 2009 and the period of time until they reregister with the same or a different firm.<sup>53</sup> Each bar in Figure 1 represents a 100-day period and, roughly speaking, three-and-a-half bars represent one year. As can be observed in Figure 1, for all three origination years, there is an increase in the number of previously registered persons who reregister towards the end of the second year from their date of termination. This is consistent with the incentive in the current rule permitting individuals to reregister without having to requalify by passing an examination or having to obtain an examination waiver (*i.e.*, the current two-year qualification period) and supports the assumption that the requalification process imposes direct and indirect economic costs. After this point, there is a significant drop in the number of individuals who reregister.

Moreover, following the end of the second year after terminating their registrations, the number of individuals reregistering remains low and tapers off slowly. Finally, an analysis of the stage in the Regulatory Element cycle at which registered persons terminate their registrations, on average, across the time period of 2007–2016, suggests that registered persons

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<sup>52</sup> The minimum 60 days for employment gap follows the definition used in the 2020 FINRA Industry Snapshot, available at <https://www.finra.org/rules-guidance/guidance/reports-studies/2020-industry-snapshot>.

<sup>53</sup> The period of 2007–2009 covers the events before, during and after the 2008 financial crisis. These events had an effect on the number of individuals leaving the industry, which indeed rose during this period. However, the trends observed for these years do not appear to be extreme outliers and, moreover, potentially reflect changes in labor markets that the proposed rule change is targeting. Further, the three years selected for the analysis provide the means to study the trends of individuals returning to the industry for up to a period of 10 years of being away from it.

who terminate their registrations tend to do so approximately 530 days before their next Regulatory Element would be due (i.e., on average in the middle of a current three-year Regulatory Element cycle).

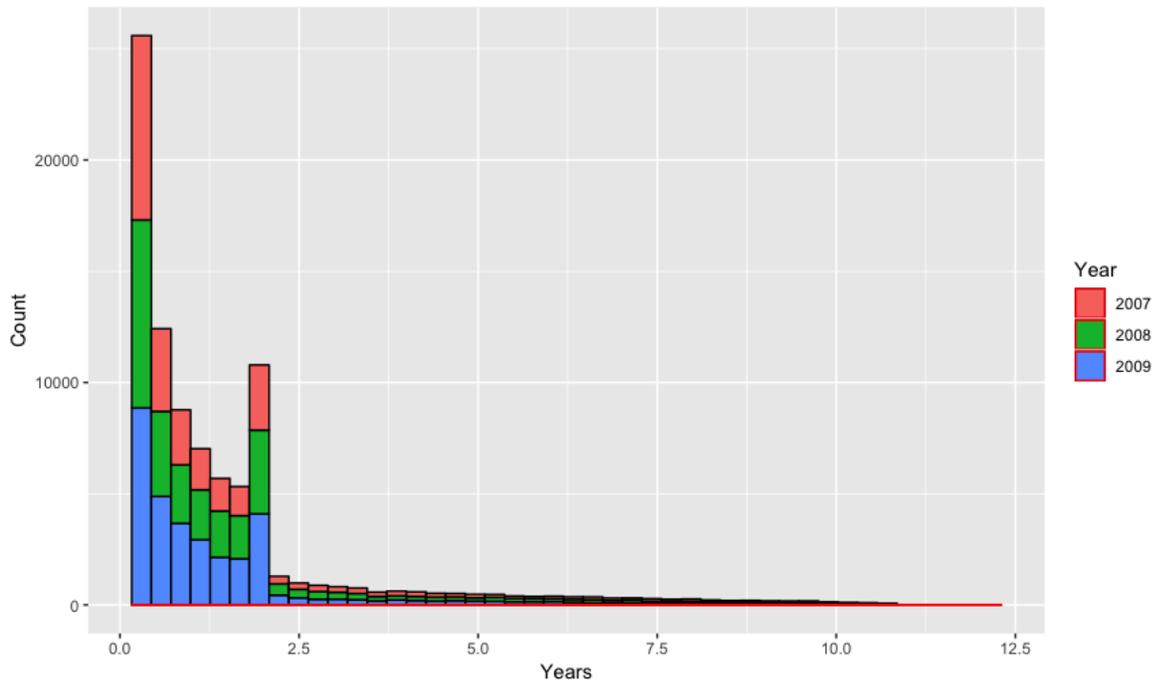


Figure 1: Plot of the number of previously registered persons that reregister within a given number of years after having terminated their registrations for at least 60 days in either 2007, 2008 or 2009. Each bar represents 100 days, and every year is accordingly represented by approximately three-and-a-half bars.

With respect to firms, the economic baseline is derived from the current processes and procedures used to implement the existing CE Program. Firms are currently responsible for the appropriate monitoring of the compliance of their registered persons with the three-year Regulatory Element cycle and for administering the annual Firm Element. Further, firms may experience material negative impact where they are not able to retain qualified experienced persons because of professional and personal events that require such individuals to take an extended leave of absence from the industry.

### Economic Impacts

FINRA believes that economic impacts of the proposed rule change would result in both benefits and costs to firms and registered persons and would potentially benefit the investor community. FINRA will undertake an evaluation of the efficacy of the program within a reasonable period following the implementation date. The aim of such an evaluation is to ensure that the program is meeting its goals and objectives, without resulting in unintended diminished investor protections, or unintended increase in regulatory burden on any relevant parties.

### Anticipated Benefits

FINRA believes that the proposed rule change would result in two main benefits to registered persons.

First, as discussed above, the proposed rule change would transition the Regulatory Element from a three-year requirement to an annual requirement. Such an annual requirement is implemented for other professionals, such as Certified Public Accountants (“CPAs”), Chartered Financial Analysts (“CFAs”) and lawyers.<sup>54</sup> The 2015 transition to CE Online resulted in a more efficient program and added a new dimension of flexibility to the CE Program in terms of the content, timing and availability of the program. This change would allow the Regulatory Element to focus on current issues and recent regulatory changes and enhance registered persons’ understanding of the changes through more frequent assessments. A transition to an annual cycle is expected to benefit registered persons by helping to ensure that they understand

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<sup>54</sup> In general, the CFA requires 20 hours of continuing education on an annual basis. See CFA’s Continuing Education (CE) Program, available at <https://www.cfainstitute.org/en/membership/professional-development/pl>. The American Institute of CPAs (“AICPA”) requires 120 credit hours of continuing education over a three-year period, with the requirement of 40 credit hours per year. See AICPA’s Continuing Professional Education (CPE) Requirements for CPAs, available at <https://www.aicpa.org/cpe-learning/cperequirements.html>. The continuing education requirement for lawyers is different across states, but it generally ranges between 10-15 credit hours per year. See [https://www.americanbar.org/content/dam/aba/directories/policy/aba\\_model\\_rule\\_comparison\\_by\\_state\\_meet\\_model\\_rule\\_noted.pdf](https://www.americanbar.org/content/dam/aba/directories/policy/aba_model_rule_comparison_by_state_meet_model_rule_noted.pdf). None of these three professions requires members to be active practitioners to maintain their credentials.

recent regulatory changes and are thus able to perform their work in a compliant and effective manner. Under the current program, a regulatory change could take place in the beginning of a three-year Regulatory Element cycle and thus result in some portion of the individuals in that cycle being assessed on their knowledge of the change at a significantly later date.

Second, FINRA believes that a significant benefit of the proposed rule change for registered persons would be the increased flexibility in terms of maintaining their qualification for a terminated registration category. As can be observed in Figure 1, there is an increase in the number of individuals who reregister towards the end of the two-year period, which is the current grace period for maintaining their qualification status. Extending this period to five years through the completion of continuing education would provide flexibility to individuals, as well as potentially result in increased retention of expertise in the industry.

With respect to increased flexibility, extending the current two-year period to five years would allow individuals to manage significant life events, including professional changes and development (such as pursuing educational goals, a career change to a role in the firm that is not part of the broker-dealer, working overseas for an extended period due to a career change or an attempt at a different career path) or personal life events (such as birth or adoption of a child, unexpected loss in the family or relocation due to family needs).<sup>55</sup> Through discussions with

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<sup>55</sup> See, e.g., Christy Spivey, *Time Off at What Price? The Effects of Career Interruptions on Earnings*, 59(1) *Indus. & Lab. Rel. Rev.* 119-140 (2005); Jill K. Hayter, *Career Interrupted for What Reason? Job Interruptions and Their Wage Effects*, 30(4) *J. App. Bus. Res.* 1197-1210 (2014). Spivey (2005) uses the National Longitudinal Survey of Youth (“NLSY”) data, and finds that the total time spent out of the labor force for men was 2.9 years on average, with a standard deviation of 3.7. The paper finds that women spent on average 5.3 years out of the labor force, with a standard deviation of 5.1. Finally, the paper reports that the average number of interruptions was 2.53 for women and 0.93 for men. Hayter (2014) also studies the NLSY data. The paper reports the percentage of women and men in the sample who experienced various types of employment disruptions, and the average cumulative length of disruptions by type, conditional on having at least one interruption. Non-family disruptions are found to have similar impacts across genders. However, women are much more likely (15% versus 2%) to experience family-related disruptions and the total reported length out of the work force resulting from the disruption is three times longer for women versus men (150 weeks versus 53 weeks).

industry representatives, FINRA has learned that the proposed rule change could potentially lower the barrier to reentry to the industry. Some firms indicated that a significant benefit may arise in cases where an individual leaves the broker-dealer to gain experience in an affiliate of a parent company, for instance in an affiliated commercial bank, investment adviser or foreign affiliate. Other firms indicated that the proposed rule change could potentially be relevant for under-represented populations in the securities industry, such as, for example, female registrants.<sup>56</sup>

With respect to firms, FINRA believes that the proposed rule change will result in three main benefits. First, FINRA believes that the transition to an annual Regulatory Element cycle will reduce firms' regulatory risk, as well as enhance compliance and reduce compliance-related costs. This benefit would potentially result from the enhanced timeliness and relevance afforded by the proposed annual cycle.

Second, the proposed rule change would further enhance and streamline the Firm Element requirement. These changes include an express recognition of existing firm training programs, such as the annual compliance meeting, toward satisfying a registered individual's Firm Element requirement, potentially saving firms compliance resources currently devoted to developing and implementing different training programs. In addition, in conjunction with the proposed rule change, FINRA and the CE Council would develop a content catalog, managed by FINRA, that would serve as an optional resource from which firms could select or supplement their Firm Element content.<sup>57</sup> Such a catalog could provide firms with a more cost-efficient resource for Firm Element content.

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<sup>56</sup> FINRA has repeated the analysis presented in Figure 1, separating registered persons by gender. The analysis found that female registered persons are underrepresented, at an approximate ratio of one to four. With respect to the pattern of reregistering under the baseline that is presented in Figure 1, the analysis found that the pattern was similar for either male or female registered persons, when studied separately. However, this does not rule out that female registrants could especially benefit from the proposed rule change, for the reasons discussed above.

<sup>57</sup> See supra Item II.A.1.(ii)d.

Third, with respect to the extended time period for maintaining a qualification status, FINRA believes that the proposed rule change could result in added flexibility for firms in terms of hiring qualified candidates. This could ultimately extend the potential pool of securities industry professionals and potentially benefit firms regardless of their size. Through discussions with industry representatives, FINRA has learned that this could permit firms to better retain skilled professionals, more easily provide individuals with professional development outside the broker-dealer, and facilitate the hiring process for experienced professionals who have required the career flexibility.

In addition, FINRA believes that the investor community will ultimately benefit from the proposed rule change. These benefits will stem from the potential increase in the knowledge and ongoing training of registered persons, as well as through the increased flexibility of retention of skill and experience in the industry.

Finally, FINRA notes that these benefits may be limited for individuals seeking to maintain FINRA and state registrations if there are significant differences between the relevant requirements across the various regulatory frameworks. For instance, currently, state regulators require an individual to retake examinations for terminated licenses after two years. Some individuals may be dissuaded from remaining in the industry where the state requirements are more binding than those proposed in this filing. Others may be dissuaded from taking advantage of the flexibility provided by the proposed rule change at the expense of other obligations. As discussed above, approximately 90% of registered individuals hold some combination of FINRA and state registrations. This may serve as an upper bound on an estimate of the proportion of the population that may be limited in the full advantages of the proposed rule change, depending on the combinations of registrations held and individual state rules.<sup>58</sup>

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<sup>58</sup> As of November 2020, out of the approximately 620,000 FINRA registered persons, approximately 84% held a Series 7 or a Series 6. This population is expected to potentially be impacted by regulatory differences (or an estimate of the percentage of the relevant population that may be constrained by differences between FINRA and state

## Anticipated Costs

FINRA believes that, alongside the anticipated benefits discussed above, the proposed rule change would also result in costs for both firms and registered persons.

With respect to registered persons, FINRA anticipates three main costs that may result from the proposed rule change. First, the move to an annual Regulatory Element cycle will increase the frequency of the required training and the associated impact of failing to complete the annual content.<sup>59</sup> Further, this anticipated increase in burdens is expected to be smaller for individuals with a single registration category than for individuals with more than one registration category. Individuals with more than one registration category (approximately 35% of registered persons) may have more Regulatory Element content (including the associated time commitment) in a given year, in comparison to individuals with only a single registration category. Second, the introduction of Regulatory Element notifications directly to registered persons could shift some of the time management burden to them. Third, the eligibility requirements for maintaining a qualification status for a terminated registration category will

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rules). Further, approximately 78% of the total registered persons population have at least one state license. Depending on roles and responsibilities of FINRA registered persons, there is not always a state licensure requirement (specifically, non-customer-facing roles). The anticipated benefits of the proposed rule change might be more fully achieved for these individuals. Finally, the impacts of the potential differences may be particularly pronounced in a few states that have more than 200,000 individuals licensed in them. For these states, approximately 90% of these individuals (on average across these states) hold a Series 7 or a Series 6.

<sup>59</sup> However, as discussed above, 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. See *supra* Item II.A.1.(ii)a. Some commenters expressed concerns regarding the costs and burdens that the proposed annual requirement would impose on firms and registered persons. See *infra* Item II.C.(a) and (b)(i). FINRA recognizes that the transition to an annual Regulatory Element requirement may result in potential costs and burdens. However, FINRA believes that any such costs and burdens are appropriate and justified given the significant regulatory benefit of more tailored and timelier Regulatory Element. Further, FINRA believes that some of the potential costs and burdens would be mitigated by the proposed enhancements to the program.

require an individual to have been registered with FINRA in that registration category for at least one year, which could limit potential career changes that may occur within a shorter period.

With respect to firms, FINRA anticipates some costs that may result from the proposed rule change. The transition to an annual Regulatory Element requirement could ultimately increase the administrative and operational burden on firms due to changes to compliance systems. This is anticipated in terms of the resources required to implement and monitor compliance with the program on an annual basis. These resources would also need to be potentially further increased to address the proposed extension of the Firm Element requirement to all registered persons.<sup>60</sup>

It is anticipated that costs stemming from the change to an annual Regulatory Element requirement will tend to increase with the number of representatives at a firm and thus be higher in aggregate at larger firms. However, economies of scale likely exist in the application of the proposed requirements. Thus, the average additional cost per representative at larger firms will likely be lower than that at smaller firms.<sup>61</sup>

#### Alternatives Considered

FINRA has considered a range of alternatives in developing the proposed rule change. These included alternative frequency of the Regulatory Element requirement (periodic versus annual), alternative time periods for becoming eligible to maintain a qualification status for a terminated registration category (one year versus more than one year) and alternative time periods for maintaining a qualification status (seven years versus 10 or five years).

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<sup>60</sup> Some commenters noted that the extension of the Firm Element to all registered persons could result in unnecessary costs and burdens, and they also noted that this proposed change could have a disparate impact on firms with large home offices and firms with large numbers of registered support staff and others holding permissive registrations. See infra Item II.C.(b)(ii).

<sup>61</sup> One commenter suggested that the transition to an annual Regulatory Element could increase administrative workloads and costs on smaller firms and independent contractors. See infra Item II.C.(b)(i).

The proposed rule change reflects a consideration of the various alternatives. Within each of these alternatives there is a trade-off between providing the flexibility to encourage more registered persons to remain in the industry when other, outside demands arise versus ensuring that those individuals are likely to be aware of current regulations and best practices. For example, with respect to maintaining qualifications, FINRA believes that a length of five years could achieve the main goals and anticipated benefits of the program. FINRA considered whether a seven-year period would better balance flexibility against investor protection risks. Such a seven-year period would also likely provide a reasonable upper limit on the length of the proposed requalification option, in so far as a longer period might erode the benefits of the proposed option. While the proposed participation period of five years may limit some individuals' ability to remain in the industry, it may better mitigate the impact of differences with state licensing requirements.<sup>62</sup> Considering the discussion above regarding economic impacts, issues stemming from other regulatory frameworks, as well as the views expressed by commenters in response to Regulatory Notice 20-05, including NASAA's support for a participation period of five years, FINRA believes that a five-year period is more appropriate.<sup>63</sup>

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

(a) Comments Relating to Regulatory Notice 18-26

In September 2018, the CE Council published an initial document outlining several potential enhancements to the CE Program under consideration by the CE Council. In support of the CE Council, FINRA published Regulatory Notice 18-26 (September 2018) ("Notice 18-26") requesting comment on the potential enhancements. In response to Notice 18-26, FINRA, on behalf of the CE Council, received 22 comment letters. A copy of Notice 18-26 is available on

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<sup>62</sup> Some commenters expressed support for an indefinite participation period. See infra Item II.C.(b)(iii).

<sup>63</sup> See infra Item II.C.(b)(iii).

FINRA's website at <http://www.finra.org>. Copies of the comment letters received in response to Notice 18-26 are also available on FINRA's website.

Most commenters generally supported the potential enhancements outlined by the CE Council. The commenters expressed overwhelming interest in implementing a mechanism for allowing previously registered individuals to maintain their qualification after the termination of their registrations for longer than the current two-year period. In addition, most commenters agreed that there is value in moving to an annual Regulatory Element requirement in order to provide registered persons with more timely and relevant education and training. However, many expressed concern that doing so could increase the administrative and operational burden on both firms and registered persons, particularly for firms with a narrowly focused business model (e.g., the sale of mutual funds and variable annuities). One commenter expressed concern that increasing the frequency of the Regulatory Element may exacerbate the existing burden on those without ready access to a high-speed internet connection, which is currently required for online access. Many commenters supported Regulatory Element content that is tailored and specific to each registration category rather than content that applies generally to all registered persons. Some of these commenters questioned whether there are sufficient regulatory developments occurring annually that would be relevant to individuals with limited registrations, such as registered persons engaged in the sale of mutual funds and variable annuities. Further, commenters widely supported the creation of a content catalog that firms could leverage for administering education and training for their Firm Element programs. Finally, several commenters requested more guidance on the Firm Element component, including express guidance that other training requirements may count toward satisfying the Firm Element requirement.

Following a review of the public comments and further discussions with industry and SRO participants, in September 2019, the CE Council published its recommendations to enhance

the CE Program.<sup>64</sup> As previously noted, the proposed rule change is based on the CE Council's recommendations.<sup>65</sup>

(b) Comments Relating to Regulatory Notice 20-05

The proposed rule change was published for comment in Regulatory Notice 20-05 (February 2020) ("Notice 20-05"). FINRA received 26 comment letters in response to Notice 20-05. A copy of Notice 20-05 is available on FINRA's website at <http://www.finra.org>. Copies of the comment letters received in response to Notice 20-05 are also available on FINRA's website.<sup>66</sup>

Below is a summary of the comments on Notice 20-05 and FINRA's responses.

(i) Transition to Annual Regulatory Element for Each Registration Category

Most of the commenters addressing the proposed annual Regulatory Element requirement supported the change. Some of these commenters qualified their support. ARM supported the proposed change if individuals with multiple registrations would not be subject to additional or duplicative requirements. SIFMA, Morgan Stanley, LPL and Fidelity suggested an annual "cap" on the number of modules that individuals must complete. Huntington was concerned about the potential increase in compliance and supervisory burdens and duplicative training. Monahan & Roth requested that the cost of the annual requirement be proportionately less. STANY requested that FINRA be mindful of the impact of costs and compliance efforts, especially for smaller firms.

Further, Integrated Solutions suggested that registrations that have been held for longer periods be subject to less frequent Regulatory Element. CFA suggested that an individual's "primary" registration be subject to an annual requirement and that the individual's other registrations be subject to less frequent Regulatory Element. PFS requested that Investment

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<sup>64</sup> See supra note 15.

<sup>65</sup> See supra note 15.

<sup>66</sup> See SR-FINRA-2021-015 (Form 19b-4, Exhibit 2d) for a list of abbreviations assigned to commenters (available on FINRA's website at <http://www.finra.org>).

Company and Variable Contracts Products Representatives be subject to less frequent Regulatory Element because there may not be enough material to develop annual content for such individuals. Morgan Stanley suggested that FINRA consider a phased approach followed by a cost-benefit analysis to further assess the impact of the transition. ARM and Foreside stated that the 15-day grace period for completing the Regulatory Element, which was originally proposed in Regulatory Notice 20-05, would increase administrative and operational burdens. Morgan Stanley requested that FINRA provide a 30-day grace period. Morgan Stanley and SIFMA also requested that FINRA provide hiring firms with information regarding an individual's Regulatory Element status at the prehire stage, subject to the individual's consent.

Several commenters did not support the proposed annual Regulatory Element requirement or raised other concerns with the proposed change. Executive Advisors, MML, Nationwide and Pacer did not support the proposed annual requirement. FSI stated that the proposed change would potentially increase administrative workloads and costs on smaller firms and independent contractors as well as duplicative training. FSI also requested clarification regarding the impact of a CE inactive status on an individual's state registrations, including advisory registrations, and adequate time for firms to implement the proposed rule change. PFS stated that the proposed change to an annual requirement would disparately impact those without broadband internet, which is currently required to complete the Regulatory Element.

Registered persons would not be subject to duplicative regulatory content in any given year, regardless of how many registrations they hold. Further, FINRA does not believe that it is necessary to establish an annual "cap" on the amount of regulatory content as suggested by some commenters. Rather, with respect to individuals who hold a significant number of registrations, FINRA and the CE Council would review the amount of content that such individuals would be required to complete each year and, if necessary, the amount would be adjusted so that it is reasonable and balanced. FINRA will file a separate proposed rule change to establish the session fee for the proposed annual Regulatory Element; we generally expect that the fee for the

annual Regulatory Element would be reduced and be the same for all registered persons, regardless of the amount of content that they would be required to complete (that is, an individual who holds multiple registrations would be subject to the same annual fee as an individual who holds a single registration).

FINRA believes that the implementation of less frequent Regulatory Element for certain registration categories or a phased implementation as suggested by some commenters would be overly complex and cause confusion. FINRA will work with the CE Council to ensure that there is sufficient and appropriate content for each registration category. With respect to the originally proposed 15-day grace period prior to being designated as CE inactive, FINRA has eliminated the grace period from the proposed rule change to avoid any unnecessary burdens on firms and registered persons, as was suggested by some commenters. However, the proposed rule change preserves the ability of a firm to request an extension of time for an individual, if necessary. In addition, as is currently the case, an individual's CE inactive status would impact the individual's ability to function in a FINRA-registered capacity. As is the case today, any questions regarding the impact of a CE inactive status on state registrations should be directed to the appropriate state securities regulator.

Finally, in conjunction with the proposed rule change, FINRA would enhance its systems to reduce the overall burden on firms and registered persons. As part of these enhancements, FINRA would work with firms to determine what information would be helpful and appropriate prior to associating with or hiring individuals. FINRA would also provide firms with adequate time to implement the proposed rule change. Further, to mitigate any potential disparate impact on individuals who do not have ready access to a high-speed internet connection, FINRA would make the Regulatory Element available via a mobile compatible format.

(ii) Recognition of Other Training Requirements for Firm Element and Extension of Firm Element to All Registered Persons

Commenters overwhelmingly supported the express recognition of AML compliance program training and annual compliance meeting training toward satisfying the Firm Element.

Some of these commenters requested additional flexibility and clarification regarding the Firm Element requirement.

Foreside requested that firms be provided with the flexibility to combine the requirements of the Regulatory Element, Firm Element and annual compliance meeting. Cambridge suggested that completion of additional modules of Regulatory Element be applied toward satisfying the Firm Element. Cambridge also recommended that ethics and professional responsibility training be included in the Regulatory Element rather than the Firm Element. Monahan & Roth stated that the current Firm Element training criteria is overly prescriptive and that the requirement should be more flexible, allowing firms to train to the scope of their business and changing environment. NRS stated that other training should count toward satisfying Firm Element training if the other training is applicable to an individual's job function. STANY requested that industry conferences count toward satisfying the Firm Element. SIFMA requested that firms should continue to have the flexibility to determine if leveraging other training makes sense given their business model and the flexibility to cover the topics in the Regulatory Element in Firm Element training. SIFMA also requested that the Firm Element requirement recognize the unique needs of limited purpose broker-dealers and suggested that Firm Element training be designed to apply to other professional designations or training requirements. NASAA stated that satisfaction of AML compliance program training or annual compliance meeting training alone should not satisfy Firm Element training.

Not all commenters supported the extension of the Firm Element requirement to all registered persons. FSI and STANY recommended that it be optional for registered persons who are not currently covered under the rule. STANY stated that extending the requirement to individuals holding permissive registrations could create unnecessary burdens and discourage permissive registrations. LPL stated that the proposed change may result in unnecessary costs. MML stated that it would have a disparate impact on firms with large home offices. SIFMA stated that it would be overly burdensome, particularly for firms with large numbers of registered

support staff and others holding permissive registrations who are not currently covered under the rule.

The Regulatory Element cannot be combined with other training requirements. Registered persons must complete prescribed regulatory content provided by FINRA to establish that they have an appropriate level of knowledge relating to regulatory requirements. However, the Firm Element and annual compliance meeting may be combined, provided that the criteria for each requirement is satisfied.

FINRA and the CE Council will consider the possibility of making additional Regulatory Element topics available to firms, which they could apply toward satisfying Firm Element training based on their needs analysis. FINRA and the CE Council will also consider whether ethics and professional responsibility training should be covered in the Regulatory Element.

In response to comments, FINRA has revised the proposed rule change to replace the current prescriptive Firm Element criteria with a requirement that the training cover topics related to the role, activities or responsibilities of the registered person and to professional responsibility. Nothing in the proposed rule change would preclude firms from covering the Regulatory Element topics in their Firm Element training, consistent with their needs analysis. Further, consistent with their needs analysis, firms would continue to have the flexibility to determine whether other training, including industry conferences, may be applied toward the Firm Element. In addition, the CE Council will consider issuing best practices and guidance to help firms evaluate other financial industry continuing education programs for purposes of satisfying the Firm Element.

The recognition of other training requirements toward satisfying the Firm Element would still require firms to conduct a needs analysis to determine the appropriateness of applying such other training toward the Firm Element. However, based on a needs analysis, a firm may determine that such other training requirements fully satisfy the Firm Element requirement. FINRA is not considering developing Firm Element training specifically to satisfy other

professional designations or training requirements, but some existing training is, and would continue to be, appropriate for both Firm Element and other professional requirements.

The extension of the Firm Element requirement to all registered persons would ensure that firms enhance the securities knowledge, skill and professionalism of all registered persons, which is consistent with the overall goal of the Firm Element. It would also ensure that registered persons are provided more specific learning materials relevant to their day-to-day activities, which will provide each registered person a more complete training cycle. As indicated by commenters, some firms already require that all their registered persons complete Firm Element training. In addition, while firms with a larger number of registered persons, including individuals who are permissively registered, may incur additional burdens in implementing the proposed rule change, some of that burden would be mitigated based on the express recognition of other training requirements toward satisfying the Firm Element requirement. In some cases, registered persons may not have to complete any additional training beyond what they are required to complete today. For example, with respect to permissively registered persons working in a clerical or administrative capacity for a firm, the firm may determine, based on a needs analysis, that such individuals have satisfied the annual Firm Element requirement by participating in the firm-wide annual compliance meeting.

(iii) Maintenance of Qualification After Termination of Registration

Commenters overwhelmingly supported the proposed change to provide individuals the option of maintaining their qualification following the termination of a registration by completing annual continuing education. Some commenters requested additional changes, which are discussed below.

NASAA supported the goals of the proposed rule change, but it had concerns regarding the seven-year participation period originally proposed in Regulatory Notice 20-05. NASAA has expressed support for a participation period of five years. CFA, Fidelity, Foreside, Integrated Solutions and STANY stated that there should not be any time limit on the participation period.

FSI, Foreside, MML, SIFMA and STANY requested that the proposed rule change also extend to state licenses.

Cambridge suggested that the content, subject matter and volume of training be the same for both participants and registered persons. Cambridge also suggested that the learning topics for participants be available to firms so that they may elect to apply it to their registered persons. FSI recommended that individuals who elect to participate at a later date following their Form U5 submission should not be required to complete any content that is outdated. MML wanted to know what would happen if a participant misses an annual cycle. In addition, MML requested that individuals who became CE inactive within three years prior to the implementation date of the proposed rule change should be able to participate. SIFMA requested that hiring firms be provided with information regarding a participant's status. CFA recommended that the current two-year qualification period be eliminated.

The proposed time limit for participation is necessary to ensure that previously registered individuals maintain an appropriate level of securities experience throughout their professional careers. FINRA believes that a seven-year period better serves the diversity and inclusion goals of the proposed rule change. However, FINRA also recognizes the benefits to the industry of having further alignment between FINRA qualification requirements and state licensing requirements. Therefore, in the interest of consistency and promoting registration efficiency, the proposed rule change provides individuals a maximum of five years in which to reregister, which will still serve the diversity and inclusion goals. As noted above, following implementation of the proposed rule change, FINRA will review the efficacy of the program, which will include a review of the participation period. In addition, FINRA will work with NASAA and state regulators to provide for an appropriate process and system support to allow states to track and process registration requests for individuals operating under the two- or five-year examination provisions.

Participants, including registered persons who elect to participate for a terminated registration category, may be subject to more overall content compared to registered persons who are not participants because participants would be required to complete a minimum amount of non-regulatory content selected by FINRA and the CE Council. FINRA and the CE Council will consider publishing the learning topics for participants for those firms that may elect to apply it to their registered persons. FINRA and the CE Council will also work to ensure that eligible individuals who elect to participate are not subject to outdated content.

Participants who miss an annual cycle for a registration category would be provided with an opportunity to continue by completing any missed content, provided that the registration category has not been terminated for two or more years.<sup>67</sup> Individuals who have been CE inactive for two consecutive years prior to the implementation date of the proposed rule change would not be eligible to participate because of the long lapse in continuing education. FINRA would work with firms to determine what information regarding a participant's status would be helpful and appropriate. The current two-year qualification period would not be eliminated because participation is optional and eligible individuals may elect not to participate.<sup>68</sup>

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<sup>67</sup> Participants who fail to complete the required annual content for a registration category that has been terminated for two or more years would not be eligible to continue. For example, if the proposed rule change were implemented on January 1, 2022, a participant who completes the required annual content for the General Securities Representative category in 2022, 2023 and 2024 but fails to complete the 2025 annual content would not be eligible to continue beyond 2025. In the example above, if the individual reregisters with a firm as a General Securities Representative in 2025, the individual would be required to complete any annual Regulatory Element applicable to the General Securities Representative registration category by December 31, 2025. If the individual fails to complete such Regulatory Element by December 31, 2025, the individual would be designated as CE inactive in the CRD system beginning on January 1, 2026. Alternatively, if the individual decides to reregister with a firm as a General Securities Representative at any point beyond 2025, the individual would be required to requalify by examination, or obtain an examination waiver, in order to reregister.

<sup>68</sup> In this regard, it should be noted that if an individual who holds a single registration terminates that registration and elects not to participate, the registration would be subject to the two-year qualification period. Similarly, if an individual with multiple registration categories terminates only some of those registration categories (that is, files a partial termination) and elects not to participate, the terminated registration category or

(iv) Other Enhancements to CE Program

Most commenters supported the other enhancements to the CE Program. However, some commenters had concerns and questions. SIFMA requested that consideration be given to potential technical limitations and challenges of registrants when designing diverse instructional formats for the Regulatory Element. FSI, MML and SIFMA requested that the Regulatory Element learning topics for each upcoming year be published early.

SIFMA suggested that firms be allowed to set the timing and frequency of FINRA-generated notifications to registered persons, especially where the firm's Regulatory Element deadline is sooner than December 31. SIFMA also suggested that FINRA should consider providing firms with the means to "audit" notifications sent to registered persons regarding the Regulatory Element via the FINRA Financial Professional Gateway ("FinPro<sup>®</sup>") system and that continuing education completion information, including information relating to participants who elect the proposed option, should be displayed on BrokerCheck<sup>®</sup>. Morgan Stanley requested that FINRA provide firms with the option to communicate directly with registered persons so firms may set their own internal timelines to fulfill the annual Regulatory Element requirement. MML suggested that sending a notification to the personal email of a registered person via the FinPro system is inconsistent with general supervision and recordkeeping requirements relating to business-related electronic communications.

NRS supported the development of a centralized Firm Element content directory, which includes course title, description and length, intended audience, learning objectives and skill level, rather than the development of a content catalog. Among other reasons, NRS stated that SROs should not create Firm Element content because it may have the unintended consequence of being considered regulatory guidance.

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categories would also be subject to the two-year qualification period, unless the terminated category is a subset of a broader registration category for which they remain qualified.

FINRA and the CE Council will work to create optimal instructional formats for the Regulatory Element, taking into consideration the user experience. Further, FINRA and the CE Council will consider the possibility of publishing the Regulatory Element learning topics for each upcoming year early to provide firms with sufficient time to design their training for the upcoming year. FINRA will work with firms to determine the necessary enhancements to the FinPro system to facilitate the proposed transition to an annual Regulatory Element requirement. The use of the FinPro system notification functionality would not be inconsistent with the requirements relating to electronic communications. Firms that elect to use the functionality would receive copies of the system-generated notifications, which they could review and retain.

With respect to the availability of continuing education information on BrokerCheck, an individual's CE inactive status is currently displayed on BrokerCheck and it will continue to be displayed under the proposed rule change. FINRA will also consider whether the continuing education status of participants who elect the proposed option should be displayed on BrokerCheck. Finally, with respect to the development of a Firm Element content catalog, which most commenters supported, SROs have historically created Firm Element content and have provided firms with the option of using such content. FINRA and the CE Council are considering creating a centralized location for such content and to partner with third-party training providers to include their content in the catalog. Based on the comments and industry feedback, a content catalog would be a valuable resource and would facilitate compliance by all firms, regardless of firm type.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

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

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2021-015 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-FINRA-2021-015. 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 such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2021-015 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>69</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>69</sup> 17 CFR 200.30-3(a)(12).