



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97184; File No. SR-FINRA-2023-005]

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 1240.01 to Provide Eligible Individuals Another Opportunity to Elect to Participate in the Maintaining Qualifications Program**

March 22, 2023.

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 March 14, 2023, 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 and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 1240.01 (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Paragraph (c) of this Rule) to provide eligible individuals another opportunity to elect to participate in the Maintaining Qualifications Program (“MQP”).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

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## **1200. REGISTRATION AND QUALIFICATION**

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### **1240. Continuing Education**

This Rule prescribes requirements regarding the continuing education of registered persons. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below. This Rule also sets forth continuing education programs through which specified persons may maintain their qualification in a representative or principal registration category following the termination of that registration category.

(a) through (c) No Change.

#### **• • • Supplementary Material: -----**

##### **.01 Eligibility of Other Persons to Participate in the Continuing Education Program**

**Specified in Paragraph (c) of this Rule.** A person registered in a representative or principal registration category with FINRA within two years immediately preceding March 15, 2022 shall be eligible to participate in the continuing education program under paragraph (c) of this Rule, provided that he or she satisfies the conditions set forth in paragraphs (c)(1) and (c)(3) through (c)(6) of this Rule. In addition, a person participating in the Financial Services Affiliate Waiver Program under Rule 1210.09 immediately preceding March 15, 2022 shall be eligible to participate in the continuing education program under paragraph (c) of this Rule, provided that he or she satisfies the conditions set forth in paragraphs (c)(3), (c)(5) and (c)(6) of this Rule. Persons eligible under this Supplementary Material .01 shall make their election to participate in the continuing education program under paragraph (c) of this Rule either (1) between January 31, 2022, and March 15, 2022; or (2) between March 15, 2023, and December 31, 2023 [by March 15, 2022]. If such persons elect to participate in the continuing education program, their

participation period shall also be for a period of five years following the termination of their registration categories, as with other participants under paragraph (c) of this Rule [FINRA shall adjust their participation period by deducting from that period the amount of time that has lapsed between the date that such persons terminated their registration categories and March 15, 2022]. In addition, eligible persons who elect to participate in the continuing education program between March 15, 2023, and December 31, 2023, must complete any prescribed 2022 and 2023 continuing education content by March 31, 2024.

.02 No Change.

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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 21, 2021, the Commission approved a proposed rule change to amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements) to, among other things, provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual continuing education through a new program, the MQP.<sup>4</sup>

Prior to the MQP, individuals whose registrations as representatives or principals had been terminated for two or more years could reregister as representatives or principals only if they requalified by retaking and passing the applicable representative- or principal-level examination or if they obtained a waiver of such examination(s) (the “two-year qualification period”). The MQP provides these individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration.<sup>5</sup> Specifically, the MQP provides eligible individuals a maximum of five years following the termination of a representative or principal registration category to reregister without having to requalify by examination or having to obtain an examination waiver, subject to satisfying the conditions and limitations of the MQP, including the annual completion of all prescribed continuing education.

Under FINRA Rule 1240.01, the MQP has a look-back provision that, subject to specified conditions, extended the option to participate in the MQP to individuals who: (1) were

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<sup>4</sup> See Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR-FINRA-2021-015).

<sup>5</sup> The MQP does not eliminate the two-year qualification period. Thus, eligible individuals who elect not to participate in the MQP can continue to avail themselves of the two-year qualification period (*i.e.*, they can reregister within two years of terminating a registration category without having to requalify by examination or having to obtain an examination waiver).

registered as a representative or principal within two years immediately prior to March 15, 2022 (the implementation date of the MQP); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program (“FSAWP”) under FINRA Rule 1210.09 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member) immediately prior to March 15, 2022 (collectively, “Look-Back Individuals”).<sup>6</sup>

In Regulatory Notice 21-41 (November 17, 2021), FINRA announced that Look-Back Individuals who wanted to take part in the MQP were required to make their election between January 31, 2022, and March 15, 2022 (the “First Enrollment Period”). In addition to the announcement in Regulatory Notice 21-41, FINRA notified the Look-Back Individuals about the MQP and the First Enrollment Period via two separate mailings of postcards to their home addresses and communications through their FINRA Financial Professional Gateway (“FinPro”) accounts.<sup>7</sup>

Shortly after the First Enrollment Period had ended, a number of Look-Back Individuals contacted FINRA and indicated that they had only recently become aware of the MQP. FINRA has received anecdotal information that a number of these individuals may not have learned of the MQP, or the First Enrollment Period, in a timely manner, or at all, due to communication and operational issues.<sup>8</sup> In addition, the original six-week enrollment period may not have provided Look-Back Individuals with sufficient time to evaluate whether they should participate in the

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<sup>6</sup> The FSAWP is a waiver program for eligible individuals who have left a member firm to work for a foreign or domestic financial services affiliate of a member firm. FINRA stopped accepting new participants for the FSAWP beginning on March 15, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

<sup>7</sup> Look-Back Individuals were able to notify FINRA of their election to participate in the MQP through their FinPro accounts.

<sup>8</sup> This may have been a result of the timing of FINRA’s announcements relating to the MQP, which coincided with the holiday season and the transition to the New Year. Further, given that Look-Back Individuals were out of the industry at the time of these announcements, it was unlikely that they would have learned of the MQP, or the First Enrollment Period, through informal communication channels.

MQP. For these reasons, FINRA is proposing to amend Rule 1240.01 to provide Look-Back Individuals a second opportunity to elect to participate in the MQP (the “Second Enrollment Period”).<sup>9</sup> The Second Enrollment Period will be between March 15, 2023, and December 31, 2023. In addition, the proposed rule change requires that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024.<sup>10</sup>

FINRA believes that Look-Back Individuals generally have greater awareness of the MQP, including due to news coverage, since the program’s launch.<sup>11</sup> As part of the rollout of the Second Enrollment Period, FINRA will also reach out to any Look-Back Individuals who specifically expressed an interest in participating in the MQP on or after March 15, 2022.<sup>12</sup> To further help ensure that all Look-Back Individuals are aware of the MQP as well as the availability of the Second Enrollment Period, FINRA plans to engage in a robust second communication campaign. Specifically, FINRA plans to send postcards to their home addresses and deliver the information to their FinPro accounts, similar to the first campaign. In addition,

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<sup>9</sup> The current rule text also provides that if Look-Back Individuals elect to participate in the MQP, their five-year participation period will be adjusted by deducting from that period the amount of time that has lapsed between the date that they terminated their registrations and March 15, 2022. To reflect the availability of the Second Enrollment Period, the proposed rule change clarifies that for all Look-Back Individuals who elect to participate in the MQP, their participation period would also be for a period of five years following the termination of their registration categories, as with other MQP participants.

<sup>10</sup> Look-Back Individuals who elect to enroll in the MQP during the Second Enrollment Period would also need to pay the annual program fee of \$100 for both 2022 and 2023 at the time of their enrollment.

<sup>11</sup> See, e.g., Joanne Cleaver, FINRA Sets Big Change in Motion with New Option for Licensing Grace Period, InvestmentNews (June 23, 2022), <https://www.investmentnews.com/finra-sets-big-change-in-motion-with-new-option-for-licensing-grace-period-222942>.

<sup>12</sup> As noted, a number of Look-Back Individuals contacted FINRA directly on or after March 15, 2022. FINRA will reach out to these individuals to make them aware of the availability of the Second Enrollment Period.

FINRA plans to engage in active outreach to journalists and social and media outlets to further enhance public awareness.

FINRA believes that greater public awareness of the MQP and FINRA's additional outreach efforts, coupled with a nine-month enrollment period, should help ensure that all Look-Back Individuals are aware of the MQP and the availability of the Second Enrollment Period and should provide them with ample time to decide whether to participate in the MQP.

Look-Back Individuals who elect to enroll during the Second Enrollment Period would need to notify FINRA of their election to participate in the MQP through a manner to be determined by FINRA.<sup>13</sup> FINRA also notes that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period would continue to be subject to all of the other MQP eligibility and participation conditions. For example, as clarified in the proposed rule change, Look-Back Individuals electing to participate during the Second Enrollment Period would have only a maximum of five years following the termination of a registration category in which to reregister without having to requalify by examination or having to obtain an examination waiver.<sup>14</sup>

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The operative date will be the date of filing of the proposed rule change, if the SEC grants the waiver.

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<sup>13</sup> FINRA anticipates that Look-Back Individuals will make their selection to enroll in the MQP during the Second Enrollment Period through their FinPro accounts. See Enrolling in the MQP, <https://www.finra.org/registration-exams-ce/finpro/mqp> (describing the MQP enrollment process). FINRA will inform Look-Back Individuals if it determines to provide an alternative enrollment method.

<sup>14</sup> For example, if a Look-Back Individual terminated a registration category on May 1, 2020, and elects to participate in the MQP on December 1, 2023, the individual's maximum participation period would be five years starting on May 1, 2020, and ending no later than May 1, 2025. If the individual does not reregister with a member firm by May 1, 2025, the individual would need to requalify by examination or obtain an examination waiver in order to reregister after that date.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>15</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. FINRA believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP is warranted because participation in the MQP would reduce unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the proposed rule change is consistent with other goals, such as the promotion of diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals. The MQP also allows the industry to retain expertise from skilled individuals, providing investors with the advantage of greater experience among the individuals working in the industry. FINRA believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP will further these goals and objectives.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Further, FINRA provided an extensive economic impact assessment relating to the MQP as part of the original rule filing.<sup>16</sup>

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

Written comments were neither solicited nor received.

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

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

<sup>16</sup> See Securities Exchange Act Release No. 92183 (June 15, 2021), 86 FR 33427 (June 24, 2021) (Notice of Filing of File No. SR-FINRA-2021-015).

FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>20</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. FINRA has indicated that immediate operation of the proposed rule change is appropriate because it would help to ensure that there is sufficient time for FINRA to provide adequate notification of the Second Enrollment Period to Look-Back Individuals, as well as for these individuals to consider whether they wish to participate in the program before the December 31, 2023 deadline.<sup>21</sup> FINRA intends to engage in outreach efforts and provide a nine-month enrollment period in order to ensure that all Look-Back Individuals are aware of the MQP and the availability of the Second Enrollment Period. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>21</sup> See supra Item II.

operative delay and designates the proposal operative upon filing.<sup>22</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>23</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2023-005 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-2023-005. 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

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<sup>22</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>23</sup> 15 U.S.C. 78s(b)(2)(B).

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 a.m. and 3 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-2023-005 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>24</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-06322 Filed: 3/27/2023 8:45 am; Publication Date: 3/28/2023]

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<sup>24</sup> 17 CFR 200.30-3(a)(12).