

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: September 7, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95684; File No. SR-MSRB-2022-07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MSRB Rule G-3 Continuing Education Program Requirements To Harmonize With Industry-Wide Transformation

September 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 30, 2022 the Municipal Securities Rulemaking Board (“MSRB” or “Board”) 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 the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The MSRB filed with the Commission a proposed rule change to consisting of amendments to MSRB Rule G-3, on professional qualification requirements, to (i) amend the MSRB’s continuing education (“CE”) program requirements for brokers, dealers, and municipal securities dealers (collectively, “dealers”) to align with the Financial Industry Regulatory Authority’s (“FINRA”) rule change³ (“FINRA’s CE

rule amendment”) in furtherance of implementing the recommendations of the Securities Industry/Regulatory Council on Continuing Education (“CE Council”)⁴ and (ii) make technical amendments to renumber certain rule provisions under MSRB Rule G-3 (collectively, the “proposed rule change”).⁵ The proposed rule change is specific to dealers’ professional qualification obligations under MSRB Rule G-3 and this proposed rule change does not modify municipal advisors’ continuing education obligations under the rule.

The MSRB has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A)⁶ of the Act and Rule 19b-4(f)(6)⁷ thereunder, which renders the proposal effective upon receipt of this filing by the Commission. The operative date for the proposed rule change is September 30, 2022.

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2022-Filings.aspx, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

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

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

(September 27, 2021) (File No. SR-FINRA-2021-015) (Order Approving a Proposed Rule Change to Amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements)), (available at <https://www.finra.org/sites/default/files/2021-09/sr-finra-2021-015-approval-order.pdf>). See also FINRA Regulatory Notice 21-41 (November 17, 2021) (available at <https://www.finra.org/sites/default/files/2021-11/Regulatory-Notice-21-41.pdf>).

⁴ The CE Council is composed of 16 industry members and six self-regulatory organization (SRO) members, including the MSRB. Industry members generally serve four-year terms and represent a cross-section of the industry. In collaboration with the CE Council, the day-to-day operations of the CE Program is administered by FINRA.

⁵ The proposed rule change is 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>).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

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

1. Purpose

The MSRB is charged with setting professional qualification standards for dealers and municipal advisors. Specifically, Section 15B(b)(2)(A) of the Act authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.⁸ Sections 15B(b)(2)(A)(i)⁹ and 15B(b)(2)(A)(iii)¹⁰ of the Act also provide that the Board may appropriately classify associated persons of dealers and municipal advisors and require persons in any such class to pass tests prescribed by the Board. Accordingly, over the years, the MSRB has adopted professional qualification standards to ensure that associated persons of dealers and municipal advisors attain and maintain specified levels of competence and knowledge for each qualification category. The purpose of the proposed rule change is to align certain obligations under MSRB Rule G-3 for dealers with Commission approved amendments to FINRA Rules 1210, on registration requirements, and 1240, on continuing education requirements in furtherance of promoting regulatory consistency with respect to CE program requirements. To that end, the MSRB is proposing to (i) transition the Regulatory Element component of CE for dealers to an annual requirement for each dealer qualification category; (ii) extend the Firm Element component of CE for dealers to all registered persons of dealers; (iii) permit maintenance of professional qualifications for dealers after termination of registration; and (iv) make other amendments that are technical in nature. As noted above, the proposed rule filing is not proposing to modify continuing education obligations, under the rule, for registered municipal advisors.¹¹

⁸ See 15 U.S.C. 78o-4(b)(2)(A).

⁹ See 15 U.S.C. 78o-4(b)(2)(A)(i).

¹⁰ See 15 U.S.C. 78o-4(b)(2)(A)(iii).

¹¹ Municipal advisor principals and municipal advisor representatives are not subject to Regulatory Element continuing education requirements that are applicable to dealers under MSRB Rule G-3(i)(i) and instead must satisfy separate continuing education program requirements as specifically provided under MSRB Rule G-3(i)(ii).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On September 21, 2021, the SEC approved FINRA’s rule change to, among other things, require that the Regulatory Element of CE be completed annually rather than every three years and to provide a path for individuals to maintain their qualification following the termination of a registration by way of CE. See Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358

Background

In 1993, the Securities Industry Task Force on Continuing Education (“task force”)¹² was created to study and develop recommendations regarding CE in the securities industry. The task force issued a report calling for a formal, two-part CE program consisting of a (i) Regulatory Element requiring securities industry professionals to obtain periodic and uniform training in regulatory matters, and (ii) Firm Element requiring firms to provide ongoing training to employees to ensure they have up to date knowledge of the job function and securities product-related subjects.

On February 8, 1995, the SEC approved SRO rule changes based on the task force’s recommendations.¹³ In approving the SRO rule changes, the SEC stated that these SROs may require their members, either individually or as part of a group, to provide specific training in any areas the SROs deem necessary.¹⁴ The SEC added that as the program evolves, the SEC expects SROs to define educational standards for products and services where heightened regulatory concerns exist.¹⁵ Since approval of the initial CE rules, SROs have amended their CE rules as industry and market practices evolved.

More recently, the CE Council proposed enhancements to the current CE program requirements that sought to provide a path, through CE, for individuals to step away from the securities industry for a period of time and still maintain their qualification(s) following the termination of registration. Additionally, the CE Council’s suggestions focused on the ability of firms to design effective and efficient Firm Element training by eliminating redundancy with other industry training requirements and providing opportunities for reciprocity with other securities or related credentialing programs.¹⁶ With that,

¹² The task force included representatives from six SROs, including the MSRB, and industry representatives.

¹³ See Exchange Act Release No. 35341 (February 8, 1995), 60 FR 8426 (February 14, 1995) (File No. SR-MSRB-94-17) (approving MSRB Rule G-3(h), on continuing education requirements). The CE Council was formed upon the recommendation from the task force and was tasked with facilitating the development of uniform continuing education requirements for the securities industry.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ On September 6, 2018, the CE Council published “Enhancements Under Consideration for the Securities Industry Continuing Education Program,” noting that providing timely, effective training to registered persons is of the utmost importance, given the increasing complexity of products and services offered through the U.S. financial markets, and that training is a critical factor in ensuring investor protection and

SROs commenced a multi-year effort to advance the recommendations of the CE Council in the form of an initiative to modernize the CE program requirements (“CE program requirements”) for securities industry professionals (“CE Transformation”). The modernization of CE program requirements is meant to ensure that all registered persons receive relevant content with respect to the Regulatory Element and Firm Element components of CE, in a timely manner, in pursuance of enhanced professionalization of the industry.

FINRA’s rule change was by and large based on the CE Council’s 2019 recommendations¹⁷ to enhance the CE program requirements and reflects the extensive discussions with the CE Council, peer SROs, and stakeholders. FINRA’s proposed rule change included, among other things, (i) transitioning the Regulatory Element component of CE to an annual requirement for each of its registration categories; (ii) recognizing other training requirements for the Firm Element component of CE; (iii) expanding the Firm Element component of CE to extend to all registered persons; and (iv) permitting eligible individuals to maintain their professional qualification(s) after the termination of employment with a FINRA member firms and consequently their registrations, if certain conditions are met.

The process leading to FINRA’s CE rule amendment began, in part, in 2018 when FINRA solicited comments on enhancements to CE program requirements under consideration by the CE Council.¹⁸ Subsequently, prior to

preserving the integrity of the U.S. capital markets. See Enhancements Under Consideration for the Securities Industry Continuing Education Program (available at [ce-program-enhancements-final.pdf](https://www.finra.org/ce-program-enhancements-final.pdf) (www.finra.org)).

¹⁷ On September 12, 2019, the CE Council issued the following recommendations: (i) transition to an annual Regulatory Element requirement; (ii) develop Regulatory Element content relevant and tailored to each registration category, using diverse instructional formats; (iii) publish Regulatory Element learning topics in advance each year; (iv) enhance FINRA system functionality to facilitate compliance with the Regulatory Element; (v) recognize other training requirements and credentialing programs for purposes of satisfying the Firm Element; (vi) improve guidance and resources for firms for conducting the Firm Element annual needs analysis and for training planning; (vii) develop a content catalog firms may use to select or supplement Firm Element content; (viii) consider rule changes that would enable individuals who were previously registered to maintain the qualification by participating in an annual continuing education program. See Recommended Enhancements for the Securities Industry Continuing Education Program (available at <http://cecouncil.org/media/266634/council-recommendations-final.pdf>).

¹⁸ See Regulatory Notice 18–26 (FINRA Requests Comment on Enhancements Under Consideration

filing the CE rule amendment with the Commission, FINRA published Regulatory Notice 20–05, soliciting comments on its proposal to amend its registration and CE rules, as described above, to facilitate the implementation of the recommendations of the CE Council regarding enhancements to the CE program requirements for securities industry professionals.¹⁹

On June 15, 2021, FINRA’s CE rule amendment was filed with the SEC and was published for comment in the **Federal Register** on June 24, 2021. The SEC received nine comment letters in response to the proposal,²⁰ which FINRA responded to on August 12, 2021.²¹ The SEC found that the proposal was consistent with the requirements of the Exchange Act and the rules and regulations thereunder and approved FINRA’s CE rule amendment.²²

by the Securities Industry/Regulatory Council on Continuing Education) (September 2018), (available at <https://www.finra.org/rules-guidance/notices/18-26>). FINRA received 22 comment letters in response to Regulatory Notice 18–26 (available at <https://www.finra.org/rules-guidance/notices/18-26#comments>).

¹⁹ See Regulatory Notice 20–05 (FINRA Requests Comment on a Proposal to Implement the Recommendations of the CE Council Regarding Enhancements to the Continuing Education Program for Securities Industry Professionals) (February 2020) (available at <https://www.finra.org/rules-guidance/notices/20-05>). FINRA received 26 comment letters in response to Regulatory Notice 20–05 (available at <https://www.finra.org/rules-guidance/notices/20-05#comments>).

²⁰ See Letters from Anonymous (“Anonymous Letter”), dated July 1, 2021; Brian A. Egwele (“Egwele Letter”), dated July 2, 2021; Frederick T. Greene, Executive Vice President, Portfolio Manager, Woodforest Wealth Strategies (“Woodforest Letter”), dated July 12, 2021; James Rabenstine, Vice President, NFS Chief Compliance Officer, Nationwide Office of the Chief Legal Officer (“Nationwide Letter”), dated July 13, 2021; Kevin Zambrowicz, Managing Director and Associate General Counsel, and Bernard V. Canepa, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association (“SIFMA Letter”), dated July 14, 2021; Carrie L. Chelko, Chief Compliance Officer, Fidelity Brokerage Services LLC, and Janet Dyer, Chief Compliance Officer, National Financial Services LLC, John McGinty, Chief Compliance Officer, Fidelity Distributors Company LLC and Digital Brokerage Services LLC (“Fidelity Letter”), dated July 14, 2021; Lisa Hopkins, President, North American Securities Administrators Association, Inc. (“NASAA Letter”), dated July 14, 2021; Howard Spindel, Senior Managing Director, and Peggy E. Chait, Managing Director, Integrated Solutions (“Integrated Solutions Letter”), dated July 14, 2021; John S. Watts, Senior Vice President and Chief Counsel, PFS Investments Inc., (“PFS Letter”) dated July 15, 2021 (available at <https://www.sec.gov/comments/sr-finra-2021-015/srfinra2021015.htm>).

²¹ See Letter from Afshin Atabaki, Special Advisor and Associate General Counsel, Financial Industry Regulatory Authority. (“FINRA Letter”), dated August 12, 2021.

²² Specifically, the Commission found that the proposed rule change was consistent with Section 15A(b)(6) of the Exchange Act, 15 U.S.C. 78o-3(b)(6), which requires, among other things, that

Thereafter, FINRA announced in Regulatory Notice 21–41 that its rule amendment with respect to permitting eligible individuals to maintain their professional qualification(s) after the termination of their registrations, by way of the accompanying implementation of the Maintaining Qualifications Program (“MQP”), and that the termination of the Financial Services Affiliate Waiver Program (“FSAWP”) to new participants would both become effective on March 15, 2022. FINRA’s CE rule amendment to transition the Regulatory Element component of CE to an annual requirement for each of FINRA’s registration categories, and all other changes, will become effective on January 1, 2023.²³

The MSRB’s proposed rule change reflects the MSRB’s intention to generally align the MSRB’s CE program requirements with FINRA’s CE rule amendment to facilitate the implementation of recommendations by the CE Council and for purposes of promoting regulatory consistency and fostering cooperation between regulators.²⁴ Provided below is a detailed description of the proposed amendments to MSRB Rule G–3(i), on CE requirements.

Description of the Proposed Amendments to MSRB Rule G–3 To Facilitate the Implementation of Recommendations by the CE Council and To Promote Regulatory Consistency With FINRA’s Rule Change

I. Transition the Regulatory Element Component of CE to an Annual Requirement

A. Requirements

MSRB Rule G–3(i)(i) prescribes requirements regarding CE of certain

FINRA rules 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 15(A)(g)(3) of the Exchange Act, 15 U.S.C. 78o–3(g)(3), which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members.

²³ See FINRA Regulatory Notice 21–41 (FINRA Amends Rules 1210 and 1240 to Enhance the Continuing Education Program for Securities Industry Professionals) (November 2021) (available at <https://www.finra.org/rules-guidance/notices/21-41>).

²⁴ On September 6, 2018, the MSRB issued MSRB Notice 2018–21 (CE Council Requests Comment on Continuing Education Program Considerations) (September 2018) (available at <https://www.msrb.org/-/media/Files/Regulatory-Notices/RFCs/2018-21.ashx?n=1>), with a comment period deadline of November 5, 2018. The MSRB received one comment letter in response to MSRB Notice 2018–21. See Letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors (“Wells Letter”), dated November 5, 2018 (available at <https://msrb.org/RFC/2018-21/WFA.pdf>).

registered persons subsequent to their initial qualification and registration with a registered securities association with respect to a person associated with a member of such association, or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act with respect to a person associated with any other dealer (“the appropriate enforcement authority”).

Currently, MSRB Rule G–3(i)(i)(A)(1) provides that no dealer shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the required provisions under subparagraph (i)(i)(A). More specifically, each registered person must complete the Regulatory Element component of CE on the occurrence of their second registration anniversary date and every three years thereafter or as otherwise prescribed by the Board. Additionally, on each occasion, the Regulatory Element component of CE must be completed within 120 days after the person’s registration anniversary date.²⁵ The content of the Regulatory Element component of CE shall be determined by the Board for each registration category of persons subject to the rule.

Under amended FINRA Rule 1240(a), registered persons will be required to complete the Regulatory Element component of CE annually²⁶ by December 31 of each calendar year of every year in which the person remains registered rather than every three years. Specifically, as approved, FINRA Rule 1240(a) requires registered persons to complete the Regulatory Element component of CE for each representative or principal registration category that such person holds. As approved, firms will have the flexibility to require their registered persons to complete the Regulatory Element component of CE sooner than December 31, allowing firms to coordinate the timing of the Regulatory Element component of CE with other training requirements, including the Firm Element component of CE.²⁷

²⁵ A person’s initial registration date, also known as the “base date,” shall establish the cycle of anniversary dates for purposes of this subparagraph (i)(i)(A).

²⁶ Generally, the amount of content required to be completed on an annual basis will be comparable to the continuing education content currently completed every three years, subject to the number of registrations held. For example, persons who hold multiple registrations may be required to complete more continuing education content because such persons would be required to complete content specific to each registration held.

²⁷ For example, a firm could require its registered persons to complete both their Regulatory Element

FINRA Rule 1240(a) also establishes that persons who would be registering as a representative or principal for the first time on or after the implementation date of FINRA’s CE rule amendment would be required to complete their initial Regulatory Element for that registration category in the next calendar year following their registration. In addition, subject to specified conditions, individuals re-registering as a representative or principal on or after the implementation date of FINRA’s CE rule amendment would also be required to complete their initial Regulatory Element for that registration category in the next calendar year following their re-registration.

In order to align with FINRA, the MSRB is proposing changes to MSRB Rule G–3(i)(i)(A)(1) that would similarly require associated persons of a dealer to complete the Regulatory Element component of CE annually by December 31 of each calendar year.²⁸ Municipal securities representatives and municipal securities principals would be required to complete Regulatory Element content appropriate to each qualification held in order to satisfy CE program requirements. Additionally, the MSRB notes it supports the flexibility provided to firms in determining the date by which the Regulatory Element component of CE must be completed by (*i.e.*, at any time during the calendar year, so long as it is completed by December 31 each year) and also believes creating flexibility allows for better efficiency across the CE program requirements. The proposed rule change would also set forth the time frame by which the Regulatory Element component of CE must be completed, after the implementation date of January 1, 2023, based on whether such persons would be registering for the first time or re-registering after the implementation date.

B. Failure To Complete

Currently, MSRB Rule G–3(i)(i)(A)(2), on failure to complete, prescribes, unless otherwise determined by the Board, that any registered persons who have not completed the Regulatory Element component of CE within the required time frames will have their registrations deemed inactive until such time as the requirements of the program

and Firm Element component of continuing education by October 1 of each calendar year.

²⁸ As aforementioned, the requirement to complete the Regulatory Element on an annual basis would become effective on January 1, 2023.

have been satisfied.²⁹ The rule also provides that a registration that is inactive for a period of two years will be administratively terminated; and subsequently, that the qualification requirements must be satisfied prior to a person's registration being reactivated.³⁰

FINRA Rule 1240(a)(2) also provides that individuals who fail to complete their Regulatory Element component of CE within the prescribed time frame would be designated as CE inactive. Further, FINRA Rule 1240(a)(2) preserves the ability for FINRA to extend the time frame by which a registered person must complete the Regulatory Element component of CE for good cause; however, the rule change establishes the requirement for firms to make such request for an extension of time by way of a written application with supporting documentation.³¹

The Commission also approved amendments to FINRA Rule 1240(a)(2) to specify that: (i) persons who are designated as CE inactive would be required to complete all of their pending and upcoming annual Regulatory Element component of CE, including any annual Regulatory Element that becomes due during such persons' CE inactive period, for purposes of returning to an active status;³² and (ii) a registration that is inactive for a period of two years, and thus administratively terminated, is calculated from the date persons become CE inactive and continues to run regardless of whether such persons terminate their registrations.³³

The proposed rule change to amend MSRB Rule G-3(i)(i)(A)(2) would adopt a similar provision to that of FINRA, requiring dealers to make a request for an extension of time in writing and provide supporting documentation. The MSRB believes the proposed rule change would further regulatory

consistency and foster the appropriate enforcement authority's determination on whether to grant additional time to complete the Regulatory Element component of CE.

C. Disciplinary Actions

Currently, MSRB Rule G-3(i)(i)(A)(3), on disciplinary actions, provides that, unless otherwise determined by the appropriate enforcement authority, a registered person will be required to retake the Regulatory Element and satisfy all of its requirements in instances where a person becomes subject to a stated disciplinary action.³⁴ The retaking of the Regulatory Element must begin within 120 days of a person becoming subject to a statutory disqualification or the completion of an implemented sanction or disciplinary action becomes final.

FINRA Rule 1240(a)(3) provides that the requirements apply to a covered person, other than a covered person designated as eligible for a waiver under the FSAWP. Moreover, this provision provides that persons who become subject to a significant disciplinary action may be required to complete assigned CE content, including retaking the Regulatory Element component of CE.³⁵

The MSRB is proposing to amend MSRB Rule G-3(i)(i)(A)(3) to expressly exempt Financial Services Industry Affiliate-eligible persons (*i.e.*, those individuals eligible for a waiver, pursuant to Supplementary Material .04 of MSRB Rule G-3, from the requirements of this provision).

D. Reassociation

Currently, MSRB Rule G-3(i)(i)(A)(4), on reassociation, states that any registered person who has terminated association with a dealer and who becomes reassociated in a registered capacity with a dealer, within two years, shall participate in the Regulatory Element at the required intervals³⁶ that

apply based on such person's initial registration anniversary date rather than the date of reassociation in a registered capacity. Also, the rule requires former registered persons who become reassociated with a dealer in a registered capacity after a two-year period to satisfy CE program requirements in their entirety based on the most recent registration date.

FINRA Rule 1240(a)(4) provides that persons who have not completed the Regulatory Element component of CE for a registration category by December 31 of each calendar year prior to re-registering, would not be approved for registration for that category until the appropriate qualification requirement is satisfied.³⁷

The MSRB's proposed rule change would amend MSRB Rule G-3(i)(i)(A)(4) to specify the CE requirements that must be satisfied in order for individuals to have their re-registration approved by the appropriate enforcement authority. More specifically, the proposed rule change would require persons who are re-registering with the appropriate examining authority to complete the Regulatory Element component of CE for the registration category annually by December 31 of each calendar year. The MSRB's proposed rule change would also make technical amendments, similar to approved changes to FINRA rules, to add the phrase "or registering" to MSRB Rule G-3(i)(i)(A)(5) to provide that the Regulatory Element requirements apply to individuals who are registered or in the process of registering as a representative or principal. MSRB proposed a second technical amendment to MSRB Rule G-3(i)(i)(A)(6) to delete the phrase "continuing education" that appears before the term "Regulatory Element."

II. Enhancements to the Firm Element Component of CE To Foster Efficiencies

Currently, MSRB Rule G-3(i)(i)(B), on Firm Element, requires that dealers maintain a CE program for their covered registered persons³⁸ to enhance such

second registration anniversary and every three years, thereafter.

³⁷ Under approved amendments to FINRA Rule 1240(a)(4), a person seeking registration who has not completed any Regulatory Element content would be required to either (i) complete the Regulatory Element component of continuing education; (ii) pass an examination for the applicable registration category; or (iii) obtain an unconditional examination waiver for the applicable registration category, as applicable. See FINRA Rule 1240(a)(4).

³⁸ Under MSRB Rule G-3(i)(i)(B)(2)(1), "covered registered persons" is defined to mean any person(s) registered with a dealer and qualified as a representative or principal in accordance with MSRB Rule G-3 or as a general securities principal and who regularly engages in or supervises

²⁹ And, more specifically, the current requirements states, any person whose registration has been deemed inactive is required to cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. Further, such persons may not receive any compensation for transactions in municipal securities, however such person may receive trails, residual commissions or like compensation resulting from such transactions completed before the person's inactive status, unless the dealer with which the person is associated has a policy prohibiting such trails, residual commissions or like compensation.

³⁰ The appropriate enforcement authority may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

³¹ See FINRA Rule 1240(c)(3).

³² See FINRA Rule 1240(a)(2).

³³ *Id.*

³⁴ The specified disciplinary actions, under MSRB Rule G-3(i)(i)(A)(3), include instances in which persons: (a) become subject to any statutory disqualification as defined in Section 3(a)(39) of the Act; (b) become subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, the appropriate enforcement authority or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or (c) is ordered as a sanction in a disciplinary action to retake the Regulatory Element by any securities governmental agency, the appropriate enforcement authority or securities self-regulatory organization.

³⁵ See FINRA Rule 1240(a)(3).

³⁶ As aforementioned, the required intervals, pursuant to MSRB Rule G-3(i)(i)(A)(1) are the

persons' securities knowledge, skill and professionalism.³⁹ The Firm Element is a firm-administered training program that requires dealers to annually conduct a needs analysis to evaluate and prioritize their training needs. A needs analysis generally reflects a firm's assessment of its unique training needs based on various factors, for example, the firm size, organizational structure, business activities the firm and its associated persons engage in, the level of industry experience the firm's associated persons have and any changes to applicable rules or regulations.⁴⁰ Upon completion of a needs analysis, a dealer is required to develop a written training plan, consistent with its analysis of the training priorities identified. Additionally, dealers must maintain records documenting the completion of the needs analysis, the content of the training programs and completion of the training by each of the firm's covered registered persons, in accordance with the written training plan.⁴¹

The MSRB has supported a principles-based approach to compliance with the Firm Element requirement and afforded dealers considerable flexibility in developing the scope and content for their Firm Element, subject to the enumerated minimum content requirements. A dealer's Firm Element, as prescribed in MSRB Rule G-3(i)(i)(B)(2)(b), on minimum standards for training programs, must address, with respect to municipal securities products, services and strategies offered by the dealer, at a minimum:

- (i) General investment features and associated risk factors;
- (ii) Suitability and sales practice considerations; and
- (iii) Applicable regulatory requirements.

MSRB Rule G-3(i)(i)(B)(4) also provides that the appropriate enforcement authority may require a dealer, individually or as part of a larger

municipal securities activities. Currently, covered registered persons include only those registered persons who have direct contact with customers in the conduct of a dealer's securities sales, trading and investment banking activities, along with their immediate supervisors. Dealers must determine as part of their evaluation of training needs analysis which registered persons are regularly engaged in such municipal securities activities and therefore are required to participate in annual training.

³⁹ See Exchange Act Release No. 72705 (July 29, 2014), 79 FR 45529 (August 5, 2014) (File No. SR-MSRB-2014-05) (available at <https://www.msrb.org/-/media/Files/SEC-Filings/2014/MSRB-2014-05-Federal-Register-Approval.ashx?la=en&hash=5D9AC0B57D72F677B503E7FA7ACA3DE3>).

⁴⁰ See MSRB Rule G-3(i)(i)(B)(2)(a).

⁴¹ See MSRB Rule G-9(b)(viii)(C).

group, to provide specific training to its covered persons in such areas that the enforcement authority deems appropriate.

A. Persons Subject to Firm Element

As mentioned above, MSRB Rule G-3(i)(i)(B), on Firm Element, requires that dealers maintain a CE program for their covered registered persons. Pursuant to MSRB Rule G-3(i)(i)(B)(1), "covered registered persons" includes any person registered and qualified as a representative or principal with a dealer in accordance with MSRB Rule G-3 or as a general securities principal and who regularly engages in or supervises municipal securities activities.

Prior to its rule change, FINRA applied Firm Element requirements to "covered registered persons," who were defined to include any registered person who had direct contact with a customer in the conduct of their securities sales, trading and investment banking activities; operations persons, research analysts and immediate supervisors of such persons.⁴² FINRA deleted the reference to "covered" in its present definition of registered persons, expanding the definition to be inclusive of all registered persons, including any person permissively registered as a representative or principal pursuant to FINRA Rule 1210.02, on permissive registrations.⁴³ FINRA extended the definition to help ensure that firms enhance the securities knowledge, skill and professionalism of all registered persons. In addition, the expanded definition is intended to ensure that firms provide all registered persons with appropriate learning materials.⁴⁴ FINRA's extension of the definition to all registered persons also means that individuals who maintain solely a permissive registration under FINRA Rule 1210.02 are also subject to Firm Element, thus aligning FINRA's Firm Element requirement with other

⁴² See FINRA Rule 1240(b)(1), as effective prior to January 1, 2023.

⁴³ See FINRA Rule 1240(b)(1). See also prior FINRA Rule 1240(a)(5) definition of "Covered Person." Permissive registrations as representatives or principals under Rule 1210.02 (Permissive Registrations) may be granted upon application or to maintain the registration of individuals who are associated persons of a FINRA member firm or individuals engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of a FINRA member. Individuals holding such permissive registrations are subject to all FINRA rules relevant to their activities.

⁴⁴ See Exchange Act Release No. 92183 (June 15, 2021), 86 FR 33427, 33430 (June 24, 2021) (File No. SR-FINRA-2021-015) (Proposed Rule Change To Amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements)) (available at: <https://www.govinfo.gov/content/pkg/FR-2021-06-24/pdf/2021-13286.pdf>).

broadly-based training requirements such as anti-money laundering ("AML") and compliance meetings.⁴⁵

The MSRB is proposing to likewise extend Firm Element training requirements to all registered persons; thereby deleting the specific requirement for dealers to conduct annual municipal securities training for registered representatives who regularly engage in, and municipal securities principals who regularly supervise, municipal securities activities. Accordingly, the proposed rule change would amend MSRB Rule G-3(i)(i)(B)(1) to delete the term "covered" from the phrase "covered registered persons" and update all applicable cross references under MSRB Rule G-3(i)(i)(B).

As the MSRB has previously stated, from the inception of the rule, the MSRB has intended for dealers to consider the scope of their municipal securities activities and regulatory developments in preparing their annual written training plan. Dealers are reminded that in developing a written training plan, each dealer must take into consideration the firm's size, organizational structure, scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element.

This broader and expanded definition aligns with FINRA's amended definition of "registered persons" under FINRA Rule 1240(b)(1), on persons subject to the Firm Element. Also consistent with FINRA, the MSRB's proposed rule change would result in inclusion of individuals who maintain solely a permissive registration, consistent with MSRB Rule G-3 Supplementary Material .03 (Permissive Qualification), in Firm Element training requirements. The MSRB believes that expansion of the definition to include all registered persons, including individuals subject to permissive registrations, in Firm Element training will serve to ensure that all registered persons receive relevant and comprehensive Firm Element training, increasing their knowledge and understanding of applicable rules in furtherance of investor protection.

⁴⁵ *Id.* FINRA stated in its filing that it would provide firms with flexibility, consistent with their needs analysis, in determining what types of training, including industry conferences, may be applied to Firm Element. FINRA expects that firms will provide Firm Element training that is more specific and relevant to the day-to-day activities of registered persons, including their roles, activities or responsibilities, as well as ethics and professional responsibility.

B. Recognition of Other Outside Training and Credentialing Programs To Satisfy Firm Element

The MSRB does not currently have a rule that expressly provides for the use of other training and credentialing programs to satisfy the Firm Element requirements.

FINRA's amended rules regarding the Firm Element are meant to better align Firm Element requirements with other required training. More specifically, as also noted above, FINRA's amendments to Rule 1240(b)(1), on persons subject to Firm Element, extends the Firm Element requirements to all registered persons, including persons who maintain solely a permissive registration consistent with FINRA Rule 1210.02, on permissive registrations, thereby further aligning the Firm Element requirement with other broadly-based training requirements.⁴⁶ Furthermore, FINRA's approved amendments modify its minimum training criteria under Rule 1240(b)(2)(B) to, by and large, require that Firm Element training must cover topics related to the role, activities or responsibilities of the registered person, as well as ethics and professional responsibility. Hence, FINRA is no longer prescribing specific subject matters that must be addressed as part of the minimum standards for Firm Element content.⁴⁷ Additionally, FINRA Rule 1240(b)(2)(D), on participation in other required trainings, expressly permits firms to consider training relating to the AML compliance program and the annual compliance meeting towards satisfying a person's annual Firm Element requirement.

The MSRB's proposed rule change would amend MSRB Rule G-3(i)(B)(2)(b), on minimum standards for training programs, to require dealers' training programs to, at a minimum, cover training topics related to the role, activities or responsibilities of the registered person, and professional responsibility, and would delete reference to other specific subject matters specified in the rule. The proposed rule change, consistent with amended FINRA requirements, would also insert subparagraph (d) under

⁴⁶ Consistent with MSRB requirements, FINRA's current Firm Element requirements only apply to "covered registered persons" and not all registered persons, until January 1, 2023, when the new Rule 1240(b)(1) definition of "registered persons" becomes effective.

⁴⁷ FINRA's rule, prior to being amended, required, at a minimum, in addition to ethics and professional responsibility that firms' CE programs covered the following: general investment features and associated risk factors; suitability and sales practice considerations; and regulatory requirements related to securities products, services and strategies.

MSRB Rule G-3(i)(B)(2), thereby allowing dealers to count their AML compliance program training⁴⁸ towards satisfying registered persons' Firm Element requirement; and would permit the annual compliance meeting, to the extent appropriate, to satisfy Firm Element requirements for those persons associated with a member of a registered securities association.

III. Facilitate Maintaining Qualifications Through Continuing Education for Previously Registered Persons

A. Permit Previously Registered Persons To Maintain Qualification Through Continuing Education

FINRA's CE rule amendment added FINRA Rule 1240(c) and Supplementary Material .01 and .02 to Rule 1240 to provide eligible individuals who terminate any representative or principal registrations with the option to maintain their qualification for such terminated registrations by completing the required content in the proposed continuing education program.⁴⁹ The proposed continuing education program content, for such persons who have terminated their registration(s), would consist of a combination of Regulatory Element and Firm Element content selected by FINRA and the CE Council.

FINRA's amended rule does not affect the two-year qualification period—meaning eligible persons who would prefer not to participate in the proposed continuing education program for those with terminated registration(s) would continue to be subject to the current two-year qualification period. Rather, the amended rule would provide such persons an alternative means of keeping up with regulatory developments and securities knowledge following the termination of their registration(s). FINRA's rule changes generally align

⁴⁸ Title III of the USA PATRIOT Act, also known as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 ("AML Act") imposes certain obligations on financial institutions and the dealer community. Section 352 of the AML Act requires financial institutions to establish certain minimum anti-money laundering standards and to develop and implement a written anti-money laundering compliance program by April 24, 2002. See 31 U.S.C. 5318(h) (amended by section 352 of the AML Act).

⁴⁹ As approved, the rule changes include a look-back provision that would, subject to specified conditions, allow persons who have been registered as a representative or principal within two years immediately prior to the implementation date, January 1, 2023, of the proposed rule change to maintain their qualification by completing the required CE program requirements. Additionally, as addressed later within this filing, persons who have been FSAWP participants immediately prior to the implementation date of the proposed rule change would have the option to enter the proposed continuing education program.

with other professions in which persons are allowed to maintain their qualifications through continuing education during a period of absence from their careers, such as accountants and attorneys. FINRA anticipates making enhancements to its systems to notify individuals of their eligibility to participate in the proposed continuing education program and also notify them of their annual continuing education requirement if entered into the program.⁵⁰

In order to maintain qualifications after terminating registration(s), FINRA Rule 1240(c)(1)–(6) requires the following conditions to be satisfied:

- persons must be registered in the terminated registration category for at least one year immediately prior to the termination of their registration;⁵¹
- persons can elect to enter the proposed continuing education program upon terminating their registration or within two years from such termination of registration;⁵²
- persons would be required to complete annually by December 31 all prescribed continuing education, but may seek an extension of time for good cause;⁵³
- persons would have a maximum of five years in which to re-register with a FINRA member firm and would be required to satisfy all other requirements relating to the registration process;⁵⁴
- persons 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;⁵⁵ and
- persons who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the

⁵⁰ See *supra* note 44.

⁵¹ In addition to the one-year requirement, persons cannot be the subject of a statutory disqualification, as defined in Section 3(a)(39) of the Exchange Act, during the person's registration period. See FINRA Rule 1240(c)(1).

⁵² Persons who elect to participate at the later date, and not upon terminating their registration(s), would be required to complete 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. See FINRA Rule 1240(c)(2).

⁵³ See FINRA Rule 1240(c)(3).

⁵⁴ Pursuant to FINRA Rule 1240(c), persons that avail themselves of the proposed continuing education program in order to maintain their qualifications after terminating their registration(s), can re-gain eligibility to participate in the program, so long as such persons re-register with a firm for a period of at least one year, provided they satisfy the other participation conditions and limitations. See FINRA Rule 1240(c)(3).

⁵⁵ See FINRA Rule 1240(c)(4) and (5).

termination of their registration or during their participation in the continuing education program would not be eligible to participate or continue.⁵⁶

Finally, FINRA's rule change made conforming amendments to Rule 1210, on registration requirements.

As aforementioned, under current MSRB rules a person whose registration(s) as a representative or principal has been terminated for two or more years does not have a path to maintain qualifications and must requalify by taking and passing the applicable examination(s) or by obtaining a waiver of such requirements. More specifically, the MSRB does not have a mechanism in place for persons to maintain their qualification(s) after the expiration of two years since the date of termination of any registration(s). The proposed rule change would adopt MSRB Rule G-3(i)(i)(C) to provide a mechanism for persons who have terminated their registration(s) to maintain their qualifications⁵⁷ by participating in the continuing education program administered by FINRA, subject to the specified conditions having been met.⁵⁸

The ability for persons to maintain qualification(s) after terminating their registration(s) with a firm is consistent with other professions (e.g., law and accounting) and promotes the desired outcome of preserving market knowledge and expertise by providing knowledgeable professionals with the opportunity to re-enter the industry

⁵⁶ See FINRA Rule 1240(c)(6).

⁵⁷ As previously mentioned, the proposed rule change is specific to dealers' professional qualification obligations under MSRB Rule G-3 and the MSRB is not proposing to modify municipal advisors' obligations under the Rule.

⁵⁸ More specifically, the proposed rule change would provide those persons who have terminated their registration(s) would be permitted to maintain their qualification(s) beyond the current two-year timeframe for up to five years by satisfying annual CE requirements, if such a person: (i) was registered in the terminated registration category for at least one year immediately prior to the termination of his/her registration; (ii) elects to enter the proposed continuing education program upon terminating their registration or within two years from such termination of registration; (iii) completes the prescribed continuing education annually by December 31st; (iv) re-registers with a FINRA member firm and would be required to satisfy all other requirements relating to the registration process; and (v) is not subject to a statutory disqualification or becomes subject to a statutory disqualification. Proposed MSRB Rule G-3(i)(i)(C) and the prescribed eligibility requirements shall apply to any registered persons associated with a member of a registered securities association at the time of their termination from registration. For example, an associated person of a member of a registered securities association can associate with a bank dealer firm for the prescribed five-year period and still maintain qualification by way of the new CE Program.

with greater ease after stepping away for a period of time to address other life issues. Retention of industry professionals who know and understand securities laws, regulations and MSRB rules will protect investors and serve the market. In addition, the proposed rule contains rigorous continuing education standards that ensure that these persons maintain up-to-date knowledge about securities laws, regulations and MSRB rules, among other things, promoting investor protection and the public interest.

IV. Facilitate Eligibility of Persons Enrolled in the Financial Services Industry Affiliate Program To Transition to Proposed Continuing Education Program

Supplementary Material .01 of FINRA Rule 1240, states that a person participating in the Financial Services Affiliate Waiver Program under Rule 1210.09 immediately preceding the effective date of the proposed rule change shall be eligible to participate in the continuing education program under Rule 1240(c), on continuing education program, for persons maintaining their qualification after the termination of a registration, subject to certain conditions being met under paragraphs (c)(3), (c)(5) and (c)(6).⁵⁹ If such persons elect to participate in the continuing education program, FINRA will adjust the time remaining to participate by deducting from that period the amount of time that has lapsed between the date that such persons terminated their registration categories and the March 15, 2022 effective date of the rule.

Supplementary Material .04 of MSRB Rule G-3, similarly, contains an exception to the present requalification by examination by granting a waiver from the examination requirement for individuals who work for a financial services industry affiliate of a dealer. Under current Supplementary Material .04, such individuals can be designated as FSAWP-eligible, if the eligibility requirements are met, which include: (1) a requirement that such persons be registered as a representative or principal for a total of five years within the most recent 10-year period; (2) the

⁵⁹ Persons eligible for participation shall make their election to participate in the maintaining qualification CE Program by the March 15, 2022, effective date. Generally, the conditions that must be satisfied include: the person completes annually by December 31 of the calendar year; the person does not become subject to a continuing education deficiency with respect to his or her Regulatory Element, for two consecutive years; and the person does not become subject to a statutory disqualification following the termination of his or her registration category or while participating in the CE program.

waiver request is made within seven years of such persons' initial designation; (3) persons continuously worked for a financial services affiliate of a dealer since terminating association with a dealer; (4) persons who completed the Regulatory Element portion of CE consistent with Rule requirements based on such persons' most recent registration status and on the same Regulatory Element cycle, if they remained registered; and (5) such persons have no pending or adverse regulatory matters or termination and have not otherwise been subject to a statutory disqualification while working for a financial services industry affiliate(s) of a dealer.

Supplementary Material .04 of MSRB Rule G-3, would state that FINRA is not accepting any new persons to enter its waiver program due to the establishment of the new continuing education program, which allows persons who have terminated their registration(s) to maintain their qualifications, subject to meeting specified conditions, by completing the requisite annual continuing education requirements.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(A) of the Act,⁶⁰ which authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons; and Section 15B(b)(2)(C) of the Act,⁶¹ which provides among other things, that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination among regulators, [. . .] in general, to protect investors, municipal entities, obligated persons, and the public interest [. . .].

Under Section 15B(b)(2)(A) of the Act,⁶² the proposed rule change is necessary, appropriate and in the public interest because it enhances investor protection through enhanced training standards for municipal securities professionals, and also includes more efficient, effective and flexible continuing education requirements for municipal market professionals that will lead to better retention of knowledgeable municipal securities

⁶⁰ 15 U.S.C. 78o-4(b)(2)(A).

⁶¹ 15 U.S.C. 78o-4(b)(2)(C).

⁶² 15 U.S.C. 78o-4(b)(2)(A).

market professionals, enhancing and promoting investor protection and the public interest.

In accordance with Section 15B(b)(2)(C) of the Act,⁶³ the proposed rule change would continue to prevent fraudulent and manipulative acts by ensuring that municipal securities market professionals meet operational competence, training, experience and qualification standards, and such protections would not be diminished by the proposed rule change. The proposed rule change would help promote just and equitable principles of trade, and protect investors, municipal entities, obligated persons and the public interest because municipal securities professionals receiving Regulatory Element content and just-in-time training on a more frequent basis will enhance understanding of federal securities laws and regulations, and MSRB rules. The proposed rule change would require that all registered persons, rather than just covered registered persons, receive the Firm Element component of CE; thereby ensuring that all individuals receive core training pertaining to their firm's practices, changes in municipal market practices, and other regulatory developments, which furthers the prevention of manipulative acts and practices and protection of investors, municipal entities, and the public interest.

In the same vein, by the proposed rule change expressly stating that other outside required regulatory training and credentialing programs can be used to satisfy the Firm Element component of CE, municipal market professionals may receive more current, flexible, comprehensive and effective training, enhancing the overall skill and professionalism of municipal securities professionals, which advances investor protection.

Additionally, the proposed rule change would also remove burdens on re-entry for certain previously registered municipal securities professionals who terminated their registrations for more than two years by enabling them to maintain their qualifications(s) by participating in a rigorous, annual CE program, much like professionals in other fields such as law and accounting. Specifically, the proposed rule change would provide that such municipal securities professionals stay abreast of rules and regulatory developments, promoting industry retention of a deeper and broader pool of knowledgeable municipal securities

professionals, in support of the public interest.

Lastly, aligning the proposed rule change with FINRA's amended CE requirements fosters cooperation between regulators and allows for regulatory consistency, which promotes investor protection and the public interest.

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

Section 15B(b)(2)(C) of the Act requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁶⁴ The MSRB notes that its policy on economic analysis limits its applications regarding rules for which the Board seeks immediate effectiveness.⁶⁵ The proposed rule change reflects the MSRB's belief that its CE requirements should be generally harmonized with FINRA's rule change for purposes of regulatory consistency and efficiency; thereby reducing potential dealer confusion, and that such changes do not attach additional burdens on dealers. Moreover, the MSRB contends that the proposed rule change would enhance municipal securities professionals' knowledge and learning opportunities by ensuring that all registered persons receive timely and relevant training, which would, in turn, enhance compliance and investor protection. Further, the MSRB believes that the proposed rule change would aid skilled industry professionals in returning to the industry by reducing unnecessary impediments to maintaining qualification(s). Finally, the proposed rule change would be applied equally to all registered dealers. Therefore, the MSRB believes, by aligning the CE requirements with those of FINRA, the proposed rule change would not impose a burden on competition. Accordingly, the MSRB does not believe the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

⁶⁴ *Id.*

⁶⁵ The Board's "Policy on the Use of Economic Analysis in MSRB Rulemaking" ("policy"), available at: <https://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>, maintains that proposed rule changes filed for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act are not subject to the policy. With such filings, the MSRB usually focuses its economic analysis exclusively on the burden of competition to regulated entities. However, the MSRB may include further analysis based upon facts and circumstances if it believes that such analysis may inform the rulemaking process.

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

The MSRB solicited comments on the CE Council's recommended enhancements on September 6, 2018, with the comment deadline of November 5, 2018.⁶⁶ As noted above, one comment letter was received from Wells Fargo Advisors ("WFA").⁶⁷ WFA generally supported the CE Council's goals and recommendations, but recommended changes, discussed below.

WFA recommended maintaining the current Regulatory Element training format and timing requirements for currently registered persons, expressing concern that moving to an annual requirement that focuses on rule changes would degrade the learning experience and also subject the firm to added work and expense. WFA next recommended allowing firms to customize Regulatory Element training based on registered persons' specific registrations and job functions.

As noted earlier, the MSRB believes that moving the Regulatory Element to an annual requirement would provide municipal securities professionals with more frequent, timely training that would enhance their understanding of federal securities laws, regulations and MSRB rules, enhancing their knowledge and compliance in furtherance of investor protection.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁶⁸ and Rule 19b-4(f)(6)⁶⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

⁶⁶ See *supra* note 24.

⁶⁷ *Id.*

⁶⁸ 15 U.S.C. 78s(b)(3)(A).

⁶⁹ 17 CFR 240.19b-4(f)(6).

⁶³ 15 U.S.C. 78o-4(b)(2)(C).

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MSRB-2022-07 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-MSRB-2022-07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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-MSRB-2022-07 and should be submitted on or before October 4, 2022.

For the Commission, pursuant to delegated authority.⁷⁰

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95696; File No. SR-
NYSE-NAT-2022-16]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Transfer the Services and Fees Related to Colocation

September 7, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on August 24, 2022, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to (1) transfer the services and fees related to colocation from its Schedule of Fees and Rebates ("Fee Schedule") to the schedule of Wireless Connectivity Fees and Charges, and (2) change the name of the schedule of Wireless Connectivity Fees and Charges to the "Connectivity Fee Schedule." The proposed change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

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

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

1. Purpose

The Exchange proposes to (1) transfer the services and fees related to colocation from the Fee Schedule to the schedule of Wireless Connectivity Fees and Charges ("Connectivity Fee Schedule"), and (2) change the name of the schedule of Wireless Connectivity Fees and Charges to the "Connectivity Fee Schedule." There would be no changes to the existing colocation services and fees as a result of these administrative changes.

Background

The colocation services and related fees offered by the Exchange are currently listed in the Exchange's Fee Schedule. Each of the Exchange's Affiliate SROs⁴ similarly includes the colocation services and related fees in its own separate price list or fee schedule.⁵ The colocation portions of each of these price lists and fee schedules are substantively identical.

In December 2020, the Exchange and the Affiliate SROs created the Connectivity Fee Schedule to list their wireless connectivity services and related fees. Instead of including the wireless connectivity services and related fees in the seven price lists and fee schedules of the Exchange and the Affiliate SROs, the Connectivity Fee Schedule contains the wireless connectivity services and charges for the

⁴ The "Affiliate SROs" are the Exchange's affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc.

⁵ See "Co-Location Fees" in "New York Stock Exchange Price List 2022" at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf; "NYSE American Equities Price List" at https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_American_Equities_Price_List.pdf; "NYSE American Options Fee Schedule" at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf; "NYSE Arca Equities Fees and Charges" at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf; "NYSE Arca Options Fees and Charges" at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca-options/NYSE_Arca_Options_Fee_Schedule.pdf; "Fee Schedule of NYSE Chicago, Inc." at https://www.nyse.com/publicdocs/nyse/NYSE_Chicago_Fee_Schedule.pdf; and "NYSE National, Inc. Schedule of Fees and Rebates" at https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.

⁷⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.