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Page 1 of \* 79

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2022 - \* 07

Amendment No. (req. for Amendments \*)

Filing by Municipal Securities Rulemaking Board

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/>	19b-4(f)(1)	<input type="checkbox"/>	19b-4(f)(4)
<input type="checkbox"/>	19b-4(f)(2)	<input type="checkbox"/>	19b-4(f)(5)
<input type="checkbox"/>	19b-4(f)(3)	<input checked="" type="checkbox"/>	19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
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Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to Amend MSRB Rule G-3 Continuing Education Program Requirements to Harmonize with Industry-Wide Transformation

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name *	Bri	Last Name *	Joiner
Title *	Director, Regulatory Compliance		
E-mail *	bjoiner@msrb.org		
Telephone *	(202) 838-1500	Fax	

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, Municipal Securities Rulemaking Board has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date	08/30/2022	(Title *)
By	Ronald W. Smith (Name *)	Corporate Secretary

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

rsmith@msrb.org  
rg  
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rsmith@msrb.org  
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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

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MSRB-2022-07 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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MSRB-2022-07 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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MSRB-2022-07 Exhibit 2a.pdf  
MSRB-2022-07 Exhibit 2b.docx  
MSRB-2022-07 Exhibit 2c.pdf

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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MSRB-2022-07 Exhibit 5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

## 1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) is hereby filing with the Securities and Exchange Commission (the “Commission” or “SEC”) a proposed rule change 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 change<sup>3</sup> (“FINRA’s CE rule amendment”) in furtherance of implementing the recommendations of the Securities Industry/Regulatory Council on Continuing Education (“CE Council”)<sup>4</sup> and (ii) make technical amendments to renumber certain rule provisions under MSRB Rule G-3 (collectively, the “proposed rule change”).<sup>5</sup> 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)<sup>6</sup> of the Act and Rule 19b-4(f)(6)<sup>7</sup> thereunder, which

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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> 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 (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>).

<sup>4</sup> 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.

<sup>5</sup> 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>).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

renders the proposal effective upon receipt of this filing by the Commission. The operative date for the proposed rule change is September 30, 2022.

(a) The text of the proposed rule change is included as Exhibit 5. Text proposed to be added is underlined, and text proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

## 2. Procedures of the Self-Regulatory Organization

The Board approved the proposed rule change at its January 27-28, 2021, Board meeting. Questions concerning this filing may be directed to Bri Joiner, Director, Regulatory Compliance, and Lisa Wilhelmy, Assistant Director, Market Regulation at 202-838-1500.

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

### (a) 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.<sup>8</sup> Sections 15B(b)(2)(A)(i)<sup>9</sup> and 15B(b)(2)(A)(iii)<sup>10</sup> 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

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<sup>8</sup> See 15 U.S.C. 78o-4(b)(2)(A).

<sup>9</sup> See 15 U.S.C. 78o-4(b)(2)(A)(i).

<sup>10</sup> See 15 U.S.C. 78o-4(b)(2)(A)(iii).

noted above, the proposed rule filing is not proposing to modify continuing education obligations, under the rule, for registered municipal advisors.<sup>11</sup>

## Background

In 1993, the Securities Industry Task Force on Continuing Education (“task force”)<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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

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<sup>11</sup> 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).

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

<sup>13</sup> 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.

<sup>14</sup> Id.

<sup>15</sup> Id.

securities or related credentialing programs.<sup>16</sup> With that, 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 recommendations<sup>17</sup> 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

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<sup>16</sup> 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 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://cecouncil.org/ce-program-enhancements-final-.pdf) ([cecouncil.org](https://cecouncil.org))).

<sup>17</sup> 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>).

by the CE Council.<sup>18</sup> Subsequently, prior to 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.<sup>19</sup>

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,<sup>20</sup> which FINRA responded to on August 12, 2021.<sup>21</sup> The SEC found that the proposal was consistent with the requirements of the Exchange Act and

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<sup>18</sup> See Regulatory Notice 18-26 (FINRA Requests Comment on Enhancements Under Consideration 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>).

<sup>19</sup> 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>).

<sup>20</sup> 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>).

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

the rules and regulations thereunder and approved FINRA’s CE rule amendment.<sup>22</sup> Thereafter, FINRA announced in Regulatory Notice 21-41 that FINRA CE rule amendment ~~change~~ 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 the termination of the Financial Services Affiliate Waiver Program (“FSAWP”) to new participants upon implementation of the FINRA CE rule amendment, would 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.<sup>23</sup>

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.<sup>24</sup> 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

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<sup>22</sup> 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 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.

<sup>23</sup> 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>).

<sup>24</sup> 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>).

MSRB Rule G-3(i)(i) prescribes requirements regarding CE of certain 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.<sup>25</sup> 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 annually<sup>26</sup> 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.<sup>27</sup>

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

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<sup>25</sup> 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).

<sup>26</sup> 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.

<sup>27</sup> For example, a firm could require its registered persons to complete both their Regulatory Element and Firm Element component of continuing education by October 1 of each calendar year.

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.<sup>28</sup> 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 have been satisfied.<sup>29</sup> 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.<sup>30</sup>

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

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

<sup>29</sup> 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.

<sup>30</sup> 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.

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.<sup>31</sup>

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;<sup>32</sup> 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.<sup>33</sup>

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.<sup>34</sup> The retaking of the Regulatory Element

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<sup>31</sup> See FINRA Rule 1240(c)(3).

<sup>32</sup> See FINRA Rule 1240(a)(2).

<sup>33</sup> Id.

<sup>34</sup> 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

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.<sup>35</sup>

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 intervals<sup>36</sup> 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.<sup>37</sup>

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(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.

<sup>35</sup> See FINRA Rule 1240(a)(3).

<sup>36</sup> As aforementioned, the required intervals, pursuant to MSRB Rule G-3(i)(i)(A)(1) are the second registration anniversary and every three years, thereafter.

<sup>37</sup> 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).

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 persons<sup>38</sup> to enhance such persons' securities knowledge, skill and professionalism.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup>

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<sup>38</sup> 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 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.

<sup>39</sup> 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>).

<sup>40</sup> See MSRB Rule G-3(i)(i)(B)(2)(a).

<sup>41</sup> See MSRB Rule G-9(b)(viii)(C).

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 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.<sup>42</sup> 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.<sup>43</sup> 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

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

<sup>43</sup> 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.

ensure that firms provide all registered persons with appropriate learning materials.<sup>44</sup> 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 broadly-based training requirements such as anti-money laundering ("AML") and compliance meetings.<sup>45</sup>

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.

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

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<sup>44</sup> 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>).

<sup>45</sup> 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.

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.<sup>46</sup> 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.<sup>47</sup> 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)(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 MSRB Rule G-3(i)(i)(B)(2), thereby allowing dealers to count their AML compliance program training<sup>48</sup> towards satisfying registered persons' Firm Element requirement; and would permit the annual compliance meeting, to the

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<sup>46</sup> 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.

<sup>47</sup> 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.

<sup>48</sup> 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).

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.<sup>49</sup> 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 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.<sup>50</sup>

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

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<sup>49</sup> 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.

<sup>50</sup> See supra note 44.

- persons must be registered in the terminated registration category for at least one year immediately prior to the termination of their registration;<sup>51</sup>
- persons can elect to enter the proposed continuing education program upon terminating their registration or within two years from such termination of registration;<sup>52</sup>
- persons would be required to complete annually by December 31 all prescribed continuing education, but may seek an extension of time for good cause;<sup>53</sup>
- 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;<sup>54</sup>
- 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;<sup>55</sup> and
- persons who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the termination of their registration or during their participation in the continuing education program would not be eligible to participate or continue.<sup>56</sup>

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<sup>51</sup> 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).

<sup>52</sup> 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).

<sup>53</sup> See FINRA Rule 1240(c)(3).

<sup>54</sup> 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).

<sup>55</sup> See FINRA Rule 1240(c)(4) and (5).

<sup>56</sup> See FINRA Rule 1240(c)(6).

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 qualifications<sup>57</sup> by participating in the continuing education program administered by FINRA, subject to the specified conditions having been met.<sup>58</sup>

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 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

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<sup>57</sup> 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.

<sup>58</sup> 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.

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).<sup>59</sup> 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 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.

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<sup>59</sup> 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.

## (b) Statutory Basis

The MSRB believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(A) of the Act,<sup>60</sup> 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,<sup>61</sup> 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,<sup>62</sup> 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 market professionals, enhancing and promoting investor protection and the public interest.

In accordance with Section 15B(b)(2)(C) of the Act,<sup>63</sup> 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.

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<sup>60</sup> 15 U.S.C. 78o-4(b)(2)(A).

<sup>61</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>62</sup> 15 U.S.C. 78o-4(b)(2)(A).

<sup>63</sup> 15 U.S.C. 78o-4(b)(2)(C).

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.

#### **4. 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.<sup>64</sup> The MSRB notes that its policy on economic analysis limits its applications regarding rules for which the Board seeks immediate effectiveness.<sup>65</sup> 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.

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

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<sup>64</sup> Id.

<sup>65</sup> 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.

The MSRB solicited comments on the CE Council’s recommended enhancements on September 6, 2018, with the comment deadline of November 5, 2018.<sup>66</sup> As noted above, one comment letter was received from Wells Fargo Advisors (“WFA”).<sup>67</sup> 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.

#### **6. Extension of Time Period for Commission Action**

Not applicable.

#### **7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

The MSRB has designated the proposed rule change as being immediately effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>68</sup> and Rule 19b-4(f)(6) thereunder<sup>69</sup> in that 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) by its terms, become operative for 30 days after filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. As noted above, the operative date for the proposed rule change is September 30, 2022.

In accordance with Rule 19b-4(f)(6),<sup>70</sup> the MSRB provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and any text of

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<sup>66</sup> See supra note 24.

<sup>67</sup> Id.

<sup>68</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>69</sup> 17 CFR 240.19b-4(f)(6).

<sup>70</sup> Id.

the proposed rule change, at least five business days prior to the date of filing the proposed rule change or such shorter time as the Commission may designate.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change conforms with the SEC's approval of FINRA's amendments to its registration and CE rule requirements as filed in SR-FINRA-2021-015.<sup>71</sup>

**9. Security-Based Swap Submission Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervisions Act**

Not applicable.

**11. Exhibits**

- Exhibit 1 Completed Notice of Proposed Rule Change for Publication in the Federal Register
- Exhibit 2a MSRB Notice 2018-21 (September 6, 2018)
- Exhibit 2b List of Comment Letter Received in Response to MSRB Notice 2018-21
- Exhibit 2c Comment Letter Received in Response to MSRB Notice 2018-21
- Exhibit 5 Text of Proposed Rule Change

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<sup>71</sup> See supra note 3.

SECURITIES AND EXCHANGE COMMISSION  
 (Release No. 34-\_\_\_\_\_ ; 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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_ 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 change<sup>3</sup> (“FINRA’s CE rule amendment”) in furtherance of

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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> 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 (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->

implementing the recommendations of the Securities Industry/Regulatory Council on Continuing Education (“CE Council”)<sup>4</sup> and (ii) make technical amendments to renumber certain rule provisions under MSRB Rule G-3 (collectively, the “proposed rule change”).<sup>5</sup> 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)<sup>6</sup> of the Act and Rule 19b-4(f)(6)<sup>7</sup> 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](http://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

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[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>).

<sup>4</sup> 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.

<sup>5</sup> 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>).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

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.

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.<sup>8</sup> Sections 15B(b)(2)(A)(i)<sup>9</sup> and 15B(b)(2)(A)(iii)<sup>10</sup> 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

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<sup>8</sup> See 15 U.S.C. 78o-4(b)(2)(A).

<sup>9</sup> See 15 U.S.C. 78o-4(b)(2)(A)(i).

<sup>10</sup> See 15 U.S.C. 78o-4(b)(2)(A)(iii).

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.<sup>11</sup>

### Background

In 1993, the Securities Industry Task Force on Continuing Education (“task force”)<sup>12</sup> 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.

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<sup>11</sup> 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).

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

On February 8, 1995, the SEC approved SRO rule changes based on the task force's recommendations.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> With that, SROs commenced a multi-year effort

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<sup>13</sup> 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.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> 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 preserving the integrity of the U.S. capital markets. See Enhancements Under Consideration for the Securities

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 recommendations<sup>17</sup> 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

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Industry Continuing Education Program (available at [ce-program-enhancements-final-.pdf \(cecouncil.org\)](https://cecouncil.org/ce-program-enhancements-final.pdf)).

<sup>17</sup> 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>).

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.<sup>18</sup> Subsequently, prior to 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.<sup>19</sup>

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,<sup>20</sup> which FINRA responded to on August 12,

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<sup>18</sup> See Regulatory Notice 18-26 (FINRA Requests Comment on Enhancements Under Consideration 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>).

<sup>19</sup> 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>).

<sup>20</sup> 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

2021.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

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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>).

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

<sup>22</sup> 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 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.

<sup>23</sup> 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>).

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.<sup>24</sup> 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 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

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<sup>24</sup> 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>).

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.<sup>25</sup> 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 annually<sup>26</sup> 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.<sup>27</sup>

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<sup>25</sup> 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).

<sup>26</sup> 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.

<sup>27</sup> For example, a firm could require its registered persons to complete both their Regulatory Element and Firm Element component of continuing education by October 1 of each calendar year.

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.<sup>28</sup> 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.

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

## 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 have been satisfied.<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup>

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<sup>29</sup> 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.

<sup>30</sup> 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.

<sup>31</sup> See FINRA Rule 1240(c)(3).

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;<sup>32</sup> 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.<sup>33</sup>

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.<sup>34</sup> The retaking of the Regulatory

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<sup>32</sup> See FINRA Rule 1240(a)(2).

<sup>33</sup> Id.

<sup>34</sup> 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;

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.<sup>35</sup>

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

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(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.

<sup>35</sup> See FINRA Rule 1240(a)(3).

at the required intervals<sup>36</sup> 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.<sup>37</sup>

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

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<sup>36</sup> As aforementioned, the required intervals, pursuant to MSRB Rule G-3(i)(i)(A)(1) are the second registration anniversary and every three years, thereafter.

<sup>37</sup> 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).

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 persons<sup>38</sup> to enhance such persons’ securities knowledge, skill and professionalism.<sup>39</sup> 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.<sup>40</sup> 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

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<sup>38</sup> 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 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.

<sup>39</sup> 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>).

<sup>40</sup> See MSRB Rule G-3(i)(i)(B)(2)(a).

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.<sup>41</sup>

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 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.

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<sup>41</sup> See MSRB Rule G-9(b)(viii)(C).

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.<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup> 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

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

<sup>43</sup> 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.

<sup>44</sup> 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>).

with other broadly-based training requirements such as anti-money laundering (“AML”) and compliance meetings.<sup>45</sup>

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

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<sup>45</sup> 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.

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.

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.<sup>46</sup> 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

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<sup>46</sup> 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.

matters that must be addressed as part of the minimum standards for Firm Element content.<sup>47</sup>

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)(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 MSRB Rule G-3(i)(i)(B)(2), thereby allowing dealers to count their AML compliance program training<sup>48</sup> 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.

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<sup>47</sup> 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.

<sup>48</sup> 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).

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.<sup>49</sup> 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 with other professions in which persons are allowed to maintain their qualifications through

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<sup>49</sup> 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.

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.<sup>50</sup>

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;<sup>51</sup>
- persons can elect to enter the proposed continuing education program upon terminating their registration or within two years from such termination of registration;<sup>52</sup>
- persons would be required to complete annually by December 31 all prescribed continuing education, but may seek an extension of time for good cause;<sup>53</sup>

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<sup>50</sup> See supra note 44.

<sup>51</sup> 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).

<sup>52</sup> 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).

<sup>53</sup> See FINRA Rule 1240(c)(3).

- 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;<sup>54</sup>
- 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;<sup>55</sup> and
- persons who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the termination of their registration or during their participation in the continuing education program would not be eligible to participate or continue.<sup>56</sup>

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

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<sup>54</sup> 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).

<sup>55</sup> See FINRA Rule 1240(c)(4) and (5).

<sup>56</sup> See FINRA Rule 1240(c)(6).

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 qualifications<sup>57</sup> by participating in the continuing education program administered by FINRA, subject to the specified conditions having been met.<sup>58</sup>

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 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

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<sup>57</sup> 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.

<sup>58</sup> 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.

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).<sup>59</sup> 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

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<sup>59</sup> 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.

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 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,<sup>60</sup> 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,<sup>61</sup> which provides among other things,

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<sup>60</sup> 15 U.S.C. 78o-4(b)(2)(A).

<sup>61</sup> 15 U.S.C. 78o-4(b)(2)(C).

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,<sup>62</sup> 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 market professionals, enhancing and promoting investor protection and the public interest.

In accordance with Section 15B(b)(2)(C) of the Act,<sup>63</sup> 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

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<sup>62</sup> 15 U.S.C. 78o-4(b)(2)(A).

<sup>63</sup> 15 U.S.C. 78o-4(b)(2)(C).

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.<sup>64</sup> The MSRB notes that its policy on economic analysis limits its applications regarding rules for

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<sup>64</sup>

Id.

which the Board seeks immediate effectiveness.<sup>65</sup> 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.

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.<sup>66</sup> As noted above, one

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<sup>65</sup> 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.

<sup>66</sup> See supra note 24.

comment letter was received from Wells Fargo Advisors (“WFA”).<sup>67</sup> 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 Act<sup>68</sup> and Rule 19b-4(f)(6)<sup>69</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the

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<sup>67</sup> Id.

<sup>68</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>69</sup> 17 CFR 240.19b-4(f)(6).

protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-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 am and 3:00 pm. 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 [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.<sup>70</sup>

Secretary

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<sup>70</sup> 17 CFR 200.30-3(a)(12).

# MSRB Notice

2018-21

**Publication Date**  
September 6, 2018

**Stakeholders**  
Municipal Securities  
Dealers

**Notice Type**  
Request for Comment

**Comment Deadline**  
November 5, 2018

**Category**  
Professional  
Qualification,  
Continuing Education

## CE Council Requests Comment on Continuing Education Program Considerations

### Introduction

The Securities Industry/Regulatory Council on Continuing Education (“CE Council”) oversees the development, implementation and ongoing operation of the Securities Industry Continuing Education Program (“CE Program”) through its members, including the Municipal Securities Rulemaking Board (MSRB), other self-regulatory organizations (SROs) and representatives from broker-dealers, as well as liaisons from the Securities and Exchange Commission (SEC) and the North American Securities Administrators Association.<sup>1</sup> The CE Program consists of a Regulatory Element and a Firm Element component and is designed to ensure that registered persons in the securities industry receive timely, effective continuing education.

The CE Council is exploring enhancements to the CE Program and, through the coordinated efforts of its SRO members, is requesting comment from securities industry participants on the enhancements under consideration. The MSRB is issuing this notice to highlight the enhancements under consideration, which are described in further detail in the [CE Council’s Concept Release](#).

The MSRB appreciates the value of the varied perspectives of securities industry participants and encourages comment on the CE Council’s Concept Release to help inform the CE Council on the enhancements under



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<sup>1</sup> In collaboration with the CE Council, the day-to-day operations of the CE Program is administered by the Financial Industry Regulatory Authority.

consideration.<sup>2</sup> Comments for the CE Council can be submitted to the MSRB and/or other SRO members. [Comments may be submitted electronically by clicking here](#). Comments submitted in paper form can be sent to Ronald W. Smith, Corporate Secretary, MSRB, 1300 I Street NW, Washington, DC 20005. All comments will be provided to CE Council and will generally be made available for public inspection on the MSRB's website.<sup>3</sup>

Comments should be submitted no later than November 5, 2018.

Questions about this notice should be directed to Erik Dolan, Director, or Bri Joiner, Manager, Professional Qualifications, at 202-838-1500.

## Background

The CE Council's mission is to facilitate uniform CE requirements for registered securities industry professionals in the operation of the CE Program. The Regulatory Element component requires each covered registered person<sup>4</sup> to complete their CE requirements on the second anniversary date of their initial registration and every three years thereafter, and the Firm Element component requires dealers to annually conduct a needs analysis, develop a written training plan and administer the CE training programs in accordance with the needs analysis conducted and the written training plan.

The mission of the CE Council aligns with SRO rules requiring uniform industry-wide periodic training of registered securities industry professionals, including MSRB Rule G-3, on professional qualification requirements, which requires, in part, that brokers, dealers and municipal securities dealers

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<sup>2</sup> This notice is intended to elicit public feedback that will inform the CE Council, and the MSRB is not seeking comment as a precursor to initiating rulemaking. If the CE Council decides to take steps to introduce any program changes, the MSRB along with the other SROs will provide notice of any proposed changes to the CE Council's program and any corresponding proposed rule changes that would, as a result, be necessary to implement the CE Council's enhancements. Any proposed rule changes must be authorized by the Board for filing with the SEC, and then filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934.

<sup>3</sup> Comments generally are posted on the MSRB website without change. For example, personal identifying information such as name, address, telephone number or email address will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.

<sup>4</sup> Under MSRB Rule G-3(i)(i)(B), a "covered registered person" means "any person registered with a broker, dealer or municipal securities dealer and qualified as a representative or principal in accordance with this rule or as a general securities principal and who regularly engages in or supervises municipal securities activities."

("dealers") maintain a continuing education program for their covered registered persons.

The CE Council is exploring various improvements to the current CE Program with the goal of, among other things

- Improving coordination between the Regulatory Element component and Firm Element component of the training programs;
- Reducing redundancy among training requirements and programs;
- Defining with more specificity the minimum standards of CE for the industry; and
- Enabling previously registered individuals to maintain their qualification status by satisfying CE requirements while out of the securities industry.

Based on an analysis completed so far by the CE Council of the current CE Program, the CE Council has identified possible program improvements as well as a few additional areas the CE Council is interested in gathering additional information on regarding the current practices and needs of dealers.

Below is a summary of a few key areas the CE Council is seeking comment on as part of the enhancements under consideration. Again, the MSRB encourages securities industry participants to read the full release that more expansively describes program enhancements under consideration by the CE Council.

## **Enhancements Under Consideration**

### *Regulatory Element Component*

An enhancement under consideration would allow SROs, in consultation with the CE Council, to better identify and analyze regulatory issues and significant rule changes to determine which subject matters should be addressed within the Regulatory Element component of the CE Program and the amount of CE content necessary to address each subject matter. With that in mind, the CE Council is also considering an enhancement that would establish an annual Regulatory Element component of the CE Program in an effort to improve the timeliness of providing content related to significant rule changes and regulatory issues.

### *Maintaining Qualifications*

The CE Council is exploring the idea of recommending revisions to current SRO rules governing lapse of registration. As currently prescribed, persons

who cease to act in a capacity requiring a qualification for two or more years, at any time after having qualified in such capacity, must requalify by examination or obtain a waiver of the examination requirement in order to re-register. Under the enhancement being contemplated by the CE Council, persons previously registered who have been terminated for more than two years would not be required to requalify by examination but would complete an annual Regulatory Element component of the CE Program as well as additional content equivalent to the Firm Element component of the CE Program in order to maintain such person's qualifications upon re-entry into the industry.

#### *Firm Element Component*

Additionally, the CE Council is interested in feedback on: (i) the redundancy of the Firm Element component of the CE Program with other training requirements; (ii) whether there are opportunities for reciprocity with other securities or related credentialing programs; and (iii) the source and availability of content for the Firm Element component of the CE Program as being used by firms. Since the Firm Element component of the CE Program is a firm-administered training program, such programs are relatively unstructured; therefore, the CE Council is interested in understanding the typical amount of Firm Element content provided by firms and the various types of educational material and formats used. Additionally, the CE Council is seeking input as to whether a centralized source of content would be helpful and the value of providing one to the industry.

September 6, 2018

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**COMMENT LETTER ON NOTICE 2018-21 (SEPTEMBER 6, 2018)**

Wells Fargo Advisors: Letter from Robert J. McCarthy, Director of Regulatory Policy, dated November 5, 2018

**Wells Fargo Advisors**

Regulatory Policy  
One North Jefferson Avenue  
H0004-05C  
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**Member FINRA/SIPC**

November 5, 2018

Via e-mail: [pubcom@finra.org](mailto:pubcom@finra.org)

Via Online Submission at: <http://www.msrb.org/CommentForm.aspx>

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

Mr. Ronald W. Smith  
Corporate Secretary  
Municipal Securities Rulemaking Board  
1300 Street, NW, Suite 1000  
Washington, DC 20005

**Re: MSRB Notice 2018-21: CE Council Requests Comment on Continuing Education Program Considerations; FINRA Notice 18-26: Continuing Education Program**

Dear Ms. Asquith & Mr. Smith:

Wells Fargo Advisors (“WFA”) appreciates the opportunity to comment on the above-referenced notices from the Municipal Securities Rulemaking Board (“MSRB” or the “Board”) and the Financial Industry Regulatory Authority (“FINRA”) (together, the “Proposal”)<sup>1</sup> requesting feedback on the Securities Industry/Regulatory Council on Continuing Education (“Council”) proposed enhancements to the Continuing Education Program (“Program”). We are

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<sup>1</sup> FINRA Notice 18-26: Continuing Education Program (September 6, 2018); available at: <https://www.finra.org/sites/default/files/Regulatory-Notice-18-26.pdf>. MSRB Regulatory Notice 2018-21: CE Council Requests Comment on Continuing Education Program Considerations (September 6, 2018); available at: <http://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2018-21.ashx?n=1>.

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supportive of efforts to enhance the Program and hope our comments will assist the Council in further developing the Program.

WFA's position as one of this nation's largest brokerage firms with over 28,000 registered persons places us in a unique position to provide insight into how modernization of the Program affects the registered population in furtherance of the Council's goals. WFA is a dually registered broker-dealer and investment adviser that administers approximately \$1.6 trillion in client assets. As such, we work closely with individuals and families of varying means – from those just beginning their investing journey to those living in retirement – to understand their financial needs and help them develop plans to realize their financial goals.<sup>2</sup> We believe many of the Program enhancements under consideration will lead to more informed and educated securities professionals, which is the foundation to better advising the investing public.

## **I. WFA SUPPORTS THE COUNCIL'S GOALS**

WFA applauds the Council for exploring options to enhance the Program and supports the goal of utilizing advances in technology and learning theory to ensure registered persons receive timely and relevant education regarding the securities business. We believe those advances provide the Council an opportunity to update the Program in a manner that would result in a better learning experience for registered persons. Moreover, the Council can materially improve the Program by focusing enhancement planning on the following principles:

- Holistic view of continuing education that incorporates the various training and credentialing programs available to registered persons into the Program; and
- Expansion of the pool of educated securities professionals.

The seven enhancement goals<sup>3</sup> and many of the recommended Program enhancements detailed in the Proposal are consistent with the above principles. We set forth below our specific comments and recommendations concerning the Program.

## **II. DISCUSSION AND RECOMMENDATIONS**

### **A. Background**

Among the Council's stated goals in issuing the Proposal is to gather information on current training requirements imposed on registered persons, the overlap of such training requirements and understanding whether opportunities exist for reciprocity with other securities or related educational programs.

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<sup>2</sup> Wells Fargo Advisors" is the trade name for Wells Fargo Clearing Services, LLC ("WFCS"), a dually-registered broker-dealer and investment adviser, member FINRA/SIPC, and a separate non-bank affiliate of Wells Fargo & Co. "First Clearing" is the trade name for WFCS's clearing business, providing services to unaffiliated introducing broker-dealers. WFCS is affiliated with Wells Fargo Advisor Financial Network ("FiNet"), a broker-dealer also providing advisory and brokerage services. For the ease of this discussion, this letter will use WFA to refer to all of these brokerage operations.

<sup>3</sup> CE Council Enhancement Goals; available at: <http://cecouncil.com/media/266531/ce-program-enhancements-final-pdf>.

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It is our view that registered persons at many firms face a host of mandated training requirements that when viewed individually serve an important educational purpose, yet when viewed collectively, include overlapping and duplicative topical information. Therefore, we believe there is significant opportunity for the Council to adopt a more holistic view of training and education for securities professionals. In support of this view, we have set forth below an overview of the current training requirements at WFA followed by our recommendations to enhance the Firm and Regulatory Elements of the Program.

## **B. The Training and Educational Requirements at WFA**

The annual Firm Element program at WFA consists of at least two, 45-minute training courses. One course typically focuses on sales practices topics while the other focuses on securities products and services offered by the firm. We design different versions of these training modules for supervisory and non-supervisory registered persons. In certain years, additional priorities and firm needs will lead WFA to require registered persons to complete a third course typically targeted to a particular topic. Furthermore, we supplement this training with targeted modules for specialty positions such as research analysts, operational professionals and those registered with the National Futures Association.

The training at WFA is web-based and contains interactive features and knowledge checks to reinforce the educational material. A participant cannot complete a course without demonstrating their knowledge of all topics. We also typically seek Certified Financial Planning Board credit for all training developed and offered to our registered advisor population. On occasion, the training also qualifies for Investment Management Consultants Association credit.

We not only require all registered persons to complete required training but also require non-registered persons to take an Annual Compliance Meeting (“ACM”) training that covers key topics from our Firm Element courses. WFA takes this approach to ensure that all associated persons maintain a requisite level of skill and knowledge. We view it to be critical that all parties involved have a solid level of securities industry knowledge.

WFA’s approach to delivery of the ACM is similar to the delivery of the Firm Element described above. The ACM is delivered in a module format, assigned to the same audience, and tracked in the same manner as the WFA Firm Element modules. A number of other training requirements also apply to WFA’s registered population to satisfy a myriad of federal and state regulations and laws. In a typical year, a registered person at WFA will have at least 15 training modules to complete in addition to the Firm Element and the ACM. For example, the AML training required by FINRA Rule 3310(e) may apply to other areas of a registered team member’s work. Additional examples include training required by other financial regulators, such as state mandated insurance training to offer insurance products, or ethics training required for licensed attorneys. Because many of the same regulatory concerns (*e.g.*, sales practices, confidentiality, financial products, and cybersecurity) exist across the financial services industry, this training can be duplicative of the current Firm Element training. Finally, many of our

registered persons also earn and maintain professional designations that requires regular continuing education that may overlap with Firm Element training.

### **C. Our Recommended Changes to Firm Element Requirements**

We recommend the Council allow training for other programs – such as the ACM, AML training, and other credentialing programs – to count toward satisfying the Firm Element requirement. By granting formal reciprocity for credentialing program-training requirements, where appropriate, the Council would allow registered persons to avoid potentially unnecessary and duplicative requirements that result in registered persons receiving training multiple times on the same topic.<sup>4</sup> This course of action would have the added benefit of permitting each registered person to tailor his or her training path for professional development purposes.

We believe a logical extension of the more integrated approach set forth above is for the Council to consider combining Firm Element and Regulatory Element training and only have one annual learning requirement. A single annual learning requirement would further enhance the overall learning experience while reducing inefficiencies, lessen duplication, and enable firms and registered persons to design holistic educational plans without compromising training requirements.

We also recommend the Council publish Regulatory Element topics and learning objectives for the upcoming plan year at the beginning of the 4<sup>th</sup> quarter of the current plan year. Currently, many firms begin planning and development of Firm Element and ACM training prior to publication of the Regulatory Element topics from FINRA. Utilizing this proposed timeframe would allow firms more time to effectively plan and manage learning and development strategies and reduce duplicative training between the current Regulatory Element, Firm Element and ACM requirements.

Finally, WFA is also supportive of the Council's ideas to create a centralized content catalog that would serve as a helpful and valuable resource to the industry. While, as noted above, WFA primarily develops its own content internally, such a resource could serve as an important supplement for the securities industry. WFA would further recommend the Council form working groups that could share ideas and industry best practices. Furthermore, we also support increased transparency around who serves on the Council and how members are selected.

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<sup>4</sup> WFA recommends that FINRA consider the continuing education undergone by registered persons to maintain the following designations for formal reciprocity with the Firm Element: Accredited Asset Management Specialist (AAMS), Certified Financial Planner (CFP), Chartered Financial Consultant (CHFC), Chartered Financial Analyst (CFA), Chartered Life Underwriter (CLU), Chartered Retirement Planning Counselor (CRPC), Chartered Retirement Planning Specialist (CRPS), Accredited Domestic Partnership Advisor (ADPA), and Certified Investment Management Analyst (CIMA).

#### **D. Our Recommended Changes to Regulatory Element Requirements**

Currently, Regulatory Element training is required on the second anniversary of a registered person's initial registration date and every three years thereafter. The Council seeks feedback regarding potentially transitioning the Regulatory Element to an annual requirement consisting of approximately one-third of the amount of content contained in the current program (and refocusing the content on rule changes) and charging a fee of approximately one-third of the current fee.

We believe the Regulatory Element's current, scenario-based format and content provides a high quality learning experience. We are concerned that focusing the Regulatory Element on rule changes will degrade the learning experience. We believe the registered person may feel the content is less connected to their day-to-day activities than the current program and may view an annual Regulatory Element requirement as merely adding training, even though the actual amount overall will not increase. In addition, for firms, especially for large firms like WFA that manage training needs for thousands of registered persons, the work and expense involved in moving the Regulatory Element to an annual training requirement would significantly increase. Consequently, we recommend maintaining the current timing and format of the Regulatory Element for persons currently registered in the securities industry.

We do, however, believe that moving to an annual requirement for the Regulatory Element would be appropriate and beneficial for those registered persons who are currently outside of the securities industry. Allowing individuals to maintain their registrations through participation in an annual program while outside the securities industry would be an effective approach to keep individuals informed and trained on important industry developments. Furthermore, it would be consistent with the approach taken by individuals providing professional services in other industries, such as the legal profession, where individuals are permitted to maintain their professional licenses by participating in continuing education programs during periods of time when they are not acting in a professional capacity.<sup>5</sup>

We believe that implementing a continuing education program for such individuals, subject to minimum eligibility requirements and readily available programs designed to keep individuals informed on current compliance, regulatory, and sales practice standards, would render the two-year (2) termination rule unnecessary for individuals satisfying the program's eligibility requirements.

For registered persons that are not currently working in the industry and thus not continually encountering regulatory situations or managing client or regulator interactions, the relevance and depth of content becomes an essential component of the training. Therefore, we recommend having a robust training platform for that segment of registered persons, designed to

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<sup>5</sup> Professional licensing requirements are regulated at the state level. The requirements, including continuing education, for maintaining a professional license, such as for CPAs, real estate agents, professional engineers and land surveyors, licensed marriage and family therapists, licensed mental health counselors, licensed social workers, vary by state.

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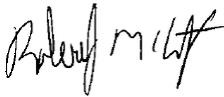
be comparable to Firm Element training required for registered persons associated with a firm. Such a program could be managed by utilizing FinPro. In the future, FinPro accounts could be initially set up using the Form U-4 and the required training to maintain qualification status post termination could be subsequently managed through their Form U-5 filing.

Lastly, the current structure of the Regulatory Element Program assigns each registered person to one of four programs based on the individual's active registrations. Such a structure provides little flexibility for a registered person to customize the program per their specific job function, which essentially limits the ability to select training based on the specific registrations they hold or the roles they have within an organization. We believe technological advances in FINRA's systems offers the Council the opportunity to provide additional flexibility for firms to customize the Regulatory Element training to better align with the various roles and responsibilities of their registered persons.

### **III. CONCLUSION**

WFA appreciates the opportunity to provide feedback to FINRA and the MSRB in regards to the Proposal. If you would like to discuss this matter further, please feel free to contact me directly at (314) 242-3193 or [robert.j.mccarthy@wellsfargoadvisors.com](mailto:robert.j.mccarthy@wellsfargoadvisors.com).

Sincerely,



Robert J. McCarthy  
Director of Regulatory Policy

**Rule G-3: Professional Qualification Requirements**

No change.

(a) No change.

(i) No change.

(ii) Qualification Requirements.

(A) – (B) No change.

(C) Any person who ceases to be associated with a broker, dealer or municipal securities dealer (whether as a municipal securities representative or otherwise) for two or more years at any time after having qualified as a municipal securities representative in accordance with subparagraph (a)(ii)(A) or (B) shall again meet the requirements of subparagraph (a)(ii)(A) or (B) of this rule prior to being qualified as a municipal securities representative, unless such person has maintained his or her qualification status in accordance with Rule G-3(i)(i)(C) or as otherwise permitted by the Board.

(b) No change.

(i) No change.

(ii) Qualification Requirements.

(A) - (B) No change.

(C) Any person who ceases to act as a municipal securities principal for two or more years at any time after having qualified as such shall meet the requirements of subparagraphs (b)(ii)(A) and (B) of this rule prior to being qualified as a municipal securities principal, unless such person has maintained his or her qualification status in accordance with Rule G-3(i)(i)(C) or as otherwise permitted by the Board.

(D) No change.

(iii) No change.

(iv) No change.

(A) – (B) No change.

(1) – (2) No change.

(3) Any person who ceases to act as a municipal fund securities limited principal for two or more years at any time after having qualified as such shall meet the requirements of clauses (b)(iv)(B)(1) and (2) of this rule prior to being qualified as a municipal fund securities limited principal, unless such person has maintained his or her qualification status in accordance with Rule G-3(i)(i)(C) or as otherwise permitted by the Board.

(4) No change.

(C) – (D) No change.

(c) No change.

(i) No change.

(ii) No change.

(A) – (B) No change.

(C) Any person who ceases to act as a municipal securities sales principal for two or more years at any time after having qualified as such shall meet the requirements of subparagraphs (c)(ii)(A) and (B) of this rule prior to being qualified as a municipal securities sales principal, unless such person has maintained his or her qualification status in accordance with Rule G-3(i)(i)(C) or as otherwise permitted by the Board.

(D) No change.

(d) – (g) No change.

(h) Waiver of Qualification Requirements.

(i) The requirements of paragraphs (a)(ii), [(a)(iii),] (b)(ii), (b)(iv)(B) and (c)(ii) may be waived in extraordinary cases for any associated person of a broker, dealer or municipal securities dealer who demonstrates extensive experience in a field closely related to the municipal securities activities of such broker, dealer or municipal securities dealer or as permitted pursuant to Supplementary Material .04 of this rule. Such waiver may be granted by

(A) – (B) No change.

(ii) No change.

(i) Continuing Education Requirements

(i) *Continuing Education Requirements for Brokers, Dealers, and Municipal Securities Dealers*—This paragraph prescribes requirements regarding the continuing education of [certain] specified 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 broker, dealer or municipal securities dealer ("the appropriate enforcement authority"). The requirements shall consist of a Regulatory Element and a Firm Element as set forth below. This subsection of this rule also sets forth a continuing education program through which specified persons may maintain their qualification in a representative or principal registration category following the termination of that registration category.

(A) *Regulatory Element.*

(1) – *Requirements* – No broker, dealer or municipal securities 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 requirements of subparagraph (i)(i)(A) hereof.

Each [registered] covered person qualified in a representative or principal category immediately preceding January 1, 2023, shall complete the Regulatory Element [on the occurrence of their second anniversary registration anniversary date and] for each applicable registration category annually by December 31, 2023, and by December 31 of every [three] year[s] thereafter in which the person remains registered, or as otherwise prescribed by the Board.

Each covered person registering with the appropriate enforcement authority in a representative or principal registration category for the first time on or after January 1, 2023 shall complete the Regulatory Element for each applicable registration category annually by December 31 of the subsequent calendar year following the calendar year in which the person becomes registered and by December 31 of every year thereafter in which the person remains registered, or as otherwise prescribed by the Board. Nothing in this subparagraph (A)(1) shall prohibit a broker, dealer, or municipal securities dealer from requiring its covered persons to complete their Regulatory Element for each applicable registration category at any time during the calendar year. [On each occasion, the Regulatory Element must be completed within 120 days after the person’s registration anniversary date. 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).] The content of the Regulatory Element shall be determined by the Board [for each registration category of persons subject to the rule] and shall be appropriate to each representative or principal registration category. A covered person shall complete Regulatory Element content for each

applicable registration category that such person holds. The content of the Regulatory Element for a covered person designated as eligible for a waiver pursuant to Supplementary Material .04 shall be determined based on the person's most recent registration(s), and the Regulatory Element shall be completed based on the same annual cycle had the person remained registered.

(2) *Failure to Complete*—Unless otherwise determined by the Board, as provided in this paragraph (i)(i)(A)(2), any [registered] covered person[s], other than a covered person designated as eligible for a waiver pursuant to Supplementary Material .04, who has[ve] not completed the Regulatory Element within the prescribed [time frames] calendar year in which the Regulatory Element is due will have [their] such person's registration(s) deemed inactive until such time as [the requirements of the program have been satisfied] such person completes all required Regulatory Element, including any Regulatory Element that becomes due while such person's registration(s) [are] is deemed inactive.

Any covered person, other than a covered person designated as eligible for a waiver pursuant to Supplementary Material .04, whose registration(s) has been deemed inactive under this clause (i)(i)(A)(2) shall cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. Such covered person may not receive any compensation for transactions in municipal securities, however, such covered person may receive trails, residual commissions or like compensation resulting from such transactions completed before the covered person's inactive status, unless the dealer with which the covered person is associated has a policy prohibiting such trails, residual commissions or like compensation.

A registration that [is] remains inactive for a period of two consecutive years will be administratively terminated by the appropriate enforcement authority. A person whose registration(s) is so terminated or who otherwise fails to complete the required Regulatory Element for two consecutive years may reactivate the registration(s) only by reapplying for registration and meeting the qualification requirements of the applicable provisions of this rule. The two-year period under this clause (i)(i)(A)(2) is calculated from the date a person's registration(s) is deemed inactive. If a covered person designated as eligible for a waiver pursuant to Supplementary Material .04 fails to complete the Regulatory Element within the prescribed time frames, the person shall no longer be eligible for such a waiver. The appropriate enforcement authority may, upon written application, with supporting documentation, and a showing of good cause, allow for additional time for a [registered] covered person to satisfy the [program] Regulatory Element requirements.

(3) *Disciplinary Actions*— [Unless otherwise determined] A covered person, other than a covered person designated as eligible for a waiver pursuant to Supplementary Material .04, may be required to complete assigned continuing education as prescribed by the appropriate enforcement authority[, a registered person will be required to retake the Regulatory Element and satisfy all of its requirements] in the event such person:

(a) - (b) No change.

(c) is ordered as a sanction in a disciplinary action to [retake the Regulatory Element] complete continuing education by any securities governmental agency, the appropriate enforcement authority or securities self-regulatory organization.

[The retaking of the Regulatory Element shall commence with participation] Such covered person must complete any continuing education required under subparagraph (A)(3) of this rule within 120 days of the [registered] covered person becoming subject to the statutory disqualification, in the case of clause (a) above, or the completion of the sanction or the disciplinary action becomes final, in the case of clause (b) or clause (c) above. [The date that the disciplinary action becomes final will be deemed the person's new base date for purposes of subparagraph (i)(i)(A).]

(4) [Reassociation] Re-registration - Any [registered] covered person who re-registers with the appropriate enforcement authority in a representative or principal registration category shall complete [who has terminated association with a broker, dealer or municipal securities dealer and who has, within two years of the date of termination, become reassociated in a registered capacity with a broker, dealer or municipal securities dealer shall participate in] the Regulatory Element content for each applicable registration category [at such intervals that apply (second registration anniversary and every three years thereafter) based on the initial registration anniversary date rather than based on the date of reassociation in a registered capacity.] annually by December 31 of the subsequent calendar year following the calendar year in which the person becomes re-registered and by December 31 of every year thereafter in which the person remains registered, or as otherwise prescribed by the appropriate enforcement authority, provided that such person has already completed the Regulatory Element content for that registration category for the calendar year in which such person is re-registering; such person is re-registering by having passed an examination for that registration category; or such person is re-registering by having obtained an unconditional examination waiver for that registration category.

Any covered person who is re-registering with the appropriate enforcement authority in a representative or principal registration category without having completed any Regulatory Element content for that registration category for the calendar year in which such person is re-registering or without having passed an examination for that registration category or without having obtained an unconditional examination waiver for that registration category shall complete the Regulatory Element content for that registration category annually by December 31 of the calendar year in which such person re-registers and by December 31 of every year thereafter in which such person remains registered, or as otherwise prescribed by the Board.

If a covered person has not completed any Regulatory Element content for a registration category in the prior calendar year(s) to re-registering, such persons would need to either: (i) complete the requisite Regulatory Element content; (ii) pass an examination for that registration category; or (iii) obtain an unconditional examination waiver for that registration category, as applicable, for purposes of the appropriate enforcement authority to consider approving the registration request.

Nothing in this paragraph (A)(4) shall prohibit a broker, dealer or municipal securities dealer from requiring its covered persons, other than a covered person designated as eligible for a waiver pursuant to Supplementary Material .04, to complete their Regulatory Element for their registration categories at any time during the calendar year.

*(5) Definition of [Registered] Covered Person*—For purposes of this subparagraph, the term "[registered] covered person" means any person registered or registering with the appropriate enforcement authority as a municipal securities representative, municipal securities principal, municipal fund securities limited principal or municipal securities sales principal [or financial and operations principal], including any person who is permissively registered as such pursuant to Supplementary Material .03, and any person who is designated as eligible for a waiver pursuant to Supplementary Material .04.

*(6) Delivery of the Regulatory Element*—The [continuing education] Regulatory Element [program will] shall be administered through Web-based delivery or such other technological manner and format as specified by the Board.

*(B) Firm Element*

*(1) Persons Subject to the Firm Element*—The requirements of this subparagraph shall apply to any person registered or registering with a broker, dealer or municipal securities dealer, including any person who is

permissively registered as a representative or principal pursuant to Supplementary Material .03 of this rule and who qualified as a representative or principal in accordance with this rule or as a general securities principal and who regularly engages in or supervises municipal securities activities [(collectively, "covered registered persons")].

(2) *Standards for the Firm Element*

(a) Each broker, dealer and municipal securities dealer must maintain a continuing and current education program for its [covered] registered persons to enhance their securities knowledge, skill, and professionalism. At a minimum, each broker, dealer and municipal securities dealer shall at least annually evaluate and prioritize its training needs, develop a written training plan, and conduct training annually on municipal securities for [covered] registered persons. The plan must take into consideration the broker, dealer and municipal securities dealer's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of [covered] registered persons in the Regulatory Element.

(b) Minimum Standards for Training Programs—Programs used to implement a broker, dealer or municipal securities dealer's training plan must be appropriate for the business of the broker, dealer or municipal securities dealer and, at a minimum must cover training topics related to the role, activities or responsibilities of the registered person [in ethics] and to professional responsibility. [and the following matters concerning municipal securities products, services and strategies offered by the broker, dealer or municipal securities dealer:]

[(i) General investment features and associated risk factors;]

[(ii) Suitability and sales practice considerations; and]

[(iii) Applicable regulatory requirements.]

(c) Administration of Continuing Education Program—A broker, dealer or municipal securities dealer must administer its continuing education programs under this subparagraph (B) in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by [covered] registered persons.

(d) Participation in Other Required Training - A broker, dealer or municipal securities dealer may consider a registered person's

participation in the broker, dealer or municipal securities dealer's anti-money laundering compliance training as required by a registered securities association of which the broker, dealer or municipal securities dealer is a member or the appropriate regulatory agency; and a registered person's participation in such broker, dealer or municipal securities dealer's annual compliance training as required by a registered securities association towards satisfying the registered person's continuing education requirement under this subparagraph (B).

(3) Participation in the Firm Element— [Covered r]Registered persons included in a broker, dealer or municipal securities dealer's plan under this subparagraph (B) must take all appropriate and reasonable steps to participate in continuing education programs as required by the broker, dealer or municipal securities dealer.

(4) Specific Training Requirements—The appropriate enforcement authority may require a broker, dealer or municipal securities dealer, individually or as part of a larger group, to provide specific training to its [covered] registered persons in such areas the appropriate enforcement authority deems appropriate. Such a requirement may stipulate the class of [covered] registered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.

*(C) Continuing Education Program for Persons Maintaining Their Qualification Following the Termination of a Registration Category*

A person who terminates any of his or her representative or principal registration categories with the appropriate enforcement authority may maintain qualification for any of the terminated registration categories for a period of five years following the termination of the registration category, subject to the following conditions:

(1) The person was registered in the registration category for at least one year immediately preceding the termination of the registration category and the person was not subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act during the registration period;

(2) Prior to entering, or during the course of, the CE Program, the person does not have a continuing education deficiency with respect to his or her Regulatory Element for two consecutive years as provided in subclause (i)(i)(A)(2) of this rule under this subparagraph (C);

(3) The person does not become subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act following the termination

of his or her registration category or while participating in the program under this subparagraph (C); and

(4) The person completes annually by December 31 of the calendar year in the manner specified, all prescribed continuing education during such person's participation in the program under this subparagraph (C).

A person must elect to participate in the continuing education program under this subparagraph (C) within two years from the termination of such person's registration category, provided that if the person commences participation at a later date, the person shall complete within two years from the termination of such person's registration category any continuing education that was due under the program between the date of termination of such person's registration category and the later date such person commences participation in the program.

(ii) No change.

### **Supplementary Material**

**.01 - .03** No change.

**.04 Waiver from Requalification by Examination for Individuals Working for a Financial Services Industry Affiliate of a Broker, Dealer or Municipal Securities Dealer.** The requirement to requalify by examination for a lapsed qualification pursuant to subparagraphs (a)(ii)(C), (b)(ii)(C) and (b)(iv)(B)(3) of this rule shall be waived upon request to the proper registered securities association or the appropriate regulatory agency consistent with paragraph (h) of this rule for an individual if the following conditions are satisfied:

(1) No change.

(2) The waiver request is made within seven years of the individual's initial designation[.];

(3)-(5) No change.

As used under this Supplementary Material, the term "financial services industry affiliate of a broker, dealer or municipal securities dealer" means any legal entity that controls, is controlled by or is under common control with a broker, dealer or municipal securities dealer and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

On or after March 15, 2022, individuals are no longer able to be designated as an FSA-eligible individual for the waiver program set forth under this Supplementary Material .04 of this rule.

**.05 Eligibility of Other Persons to Participate in the Continuing Education Program.** A person qualified in a representative or principal registration category with the MSRB within two years immediately preceding March 15, 2022, shall be eligible to participate in the continuing

education program under subparagraph (i)(i)(C), provided that such person satisfies the conditions set forth in subparagraph (i)(i)(C)(1) through (5) of this rule. In addition, a person who previously obtained a waiver from requalification by examination by participating in the Financial Services Affiliate Waiver Program under Supplementary Material .04 immediately preceding March 15, 2022, shall be eligible to participate in the continuing education program under subparagraph (i)(i)(C), provided that such person satisfies the conditions set forth in subparagraph (i)(i)(C)(3), and (C)(5) through (C)(6) of this rule.

Persons eligible under this Supplementary Material .05 shall make their election to participate in the continuing education program under subparagraph (i)(i)(C) of this rule. If such persons elect to participate in the continuing education program, such persons must comply with the requirements of the registered securities association, with respect to the timeframe for making such an election.

**.06 Re-Eligibility to Participate in the Continuing Education Program.** A person who previously participated in the continuing education program pursuant to subparagraph (i)(i)(C) of this rule may become re-eligible to participate in the program if such person re-registers with a member of a registered securities association or appropriate regulatory agency and subsequently satisfies the conditions set forth in subparagraph (i)(i)(C)(1) and (C)(3) of this rule. In such an event, the person may elect to again participate in the program subject to satisfying the remaining conditions set forth in subparagraph (i)(i)(C) of this rule.

**.07 All Registered Representatives and Principals Must Satisfy the Regulatory Element of Continuing Education.** If a registered person has a continuing education deficiency with respect to that registration as provided under Rule G-3(i)(i)(A), such persons shall not be permitted to be qualified in another registration category under Rule G-3 until such persons have satisfied the deficiency.

**.08 Extension of Time Period to Complete Continuing Education Under the CE Maintenance Program.** If a person is unable to complete the prescribed continuing education, as provided under Rule G-3(i)(i)(C) by December 31 of the required calendar year, such person may apply for an extension of time by submitting a written application with supporting documentation to the registered securities association.

**.0[5]9 Status of Qualified Persons Serving in the Armed Forces of the United States**

(a) – (c) No change.

**.0[6]10 Temporary Relief for Municipal Securities Principal.**

**.0[7]11 Temporary Relief for Municipal Securities Limited Principal.**

**.0[8]12 Temporary Relief for Municipal Securities Sales Principal.**

**.0[9]13 Temporary Relief for Municipal Advisor Principal.**

**.1[0]4 Temporary Relief for Regulatory Element Standards.**

**.1[1]5 Temporary Relief for Firm Element Standards.**

**.1[2]6 Temporary Relief for Municipal Advisor Continuing Education Requirements.**