

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40851; File No. SR-NASD-98-95]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Reduction of Fee for the Regulatory Element of the Securities Industry Continuing Education Program

December 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 21, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned regulatory subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. 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 NASD is proposing the amend Schedule A of the NASD By-Laws to reduce the session fee for the Regulatory Element of the Securities Industry Continuing Education Program ("Program") under NASD Rule 1120 and to correct a cross-reference to the NASD's continuing education rule. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Schedule A to the NASD By-Laws

* * *

Section 2—Fees

* * *

(k) There shall be a session fee of [\$75.00] *\$65.00* assessed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to [the provisions of Part XII of Schedule "C" of the By-Laws] *Rule 1120*.

* * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the NASD Regulation 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 NASD 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 purpose of the proposed rule change is to reduce the session fee charged for the Program under NASD Rule 1120, effective January 1, 1999. The Program was established in 1994 by the Securities Industry/Regulatory Council on Continuing Education ("Council"). The Council comprises six self-regulatory organizations ("SROs")³ and thirteen broker-dealers to represent the interests and needs of a wide cross-section of the securities industry. The Program was not intended to generate revenue. The Council has voted to reduce the Program fee from \$75 to \$65 because the Council has determined that the revenue generated by the reduced fee will be sufficient to maintain the Program. The Council will reassess the fee structure each year in order to ensure that the existing fee is consistent with the costs of operating the program. The NASD proposes to amend Section 2(k) of Schedule A of the NASD By-Laws to reflect the agreed upon fee and to correct a cross-reference to the NASD's continuing education rule.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁴ which require, among other things, that the Association's rules must provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system

³The SROs include the American Stock Exchange; Chicago Board Options Exchange, Incorporated; Municipal Securities Rulemaking Board; NASD; New York Stock Exchange, Inc.; and Philadelphia Stock Exchange. The Commission and the North American Securities Administrators Association have each assigned liaisons to the Council.

⁴ 15 U.S.C. 78o-3(b)(5).

which the Association operates or controls. The NASD believes that the reduced fee is fair in that it will enable the Program to be maintained on a revenue neutral basis.

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

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act,⁵ and Rule 19b-4(e)(2)⁶ thereunder, in that it establishes or changes a due, fee, or other charge imposed by the NASD. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the foregoing is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. 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 inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(e)(2).

⁷ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital information. 15 U.S.C. 78c(f).

the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-95 and should be submitted by January 26, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40853; File No. SR-NASD-98-57]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2, and Order Granting Accelerated Approval to Amendment No. 5 Thereto, by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Membership and Registration, Investigation and Sanctions, Conduct and Code of Procedure Rules

December 28, 1998.

I. Introduction

On August 7, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its regulatory subsidiary, NASD Regulation, Inc. ("NASD Regulation") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the NASD Membership and Registration, Investigation and Sanctions, Conduct and Code of Procedures rules. The proposed rule change was amended on August 17, 1998,³ and further amended on August 26, 1998.⁴ These amendments both clarified and corrected the language of the proposal.⁵

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Joan C. Conley, Secretary, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated August 17, 1998 ("Amendment No. 1").

⁴ E-mail from Eric Moss, Attorney, NASD Regulation to Mandy Cohen, Attorney, Division, SEC, dated August 26, 1998 ("Amendment No. 2").

⁵ In addition, on September 25, 1998 and October 30, 1998, NASD Regulation filed nonstantive amendments granting extensions of time for Commission action. See Letters from Eric Moss, Attorney, NASD Regulation to Katherine A. England, Assistant Director, Division, SEC, dated September 25, 1998 and October 29, 1998 ("Amendment No. 3 and Amendment No. 4,"

On November 13, 1998,⁶ the NASD further amended the proposal, to respond to suggestions in a comment letter.^{7 8}

The proposed rule change was published for comment in the Federal Register on September 3, 1998.⁹ One comment letter was received on the proposal.¹⁰ This Order approves the proposed rule change, as amended and grants accelerated approval to Amendment No. 5 to the proposed rule change.¹¹

II. Background

In November 1994, the NASD Board of Governors appointed the Select Committee on Structure and Governance ("Select Committee") to review the NASD's corporate governance structure and to recommend changes to enable the NASD to better meet its regulatory and business obligations, including its oversight of the Nasdaq market.

On August 8, 1996, the Commission issued an order pursuant to Section 19(h)(1) of the Act¹² ("SEC Order"),¹³

respectively). On December 22, 1998, the NASD filed another non-substantive amendment changing the effective date of the proposed rule change to 30 days after publication of the proposal in the NASD Notices to Members. Letter from Alden S. Adkins, Sr. Vice President and General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division, SEC, dated December 22, 1998 ("Amendment No. 6").

⁶ Letter from Alden S. Adkins, Sr. Vice President and General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division, SEC, dated November 10, 1998 (Amendment No. 5").

⁷ This comment letter is more fully discussed below in Section IV, *Comments and Responses*, See. Letter from Anne C. Flannery and Ben A. Indek, Morgan Lewis & Bockius, LLP, to Jonathan G. Katz, Secretary, SEC, dated October 6, 1998 ("Flannery Letter").

⁸ The NASD again agreed to extend the time for Commission action by letter from Eric Moss, Office of General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division, SEC, dated November 30, 1998.

⁹ Securities Exchange Act Release No. 40378 (August 27, 1998), 63 FR 47064 (September 3, 1998). Amendment Nos. 1 and 2 were included in this release.

¹⁰ See *supra* note 7, and *infra* Section IV, *Comments and Responses*.

¹¹ The Commission also solicits comments on Amendment No. 5. Amendment Nos. 3 and 4, which extend the time for Commission action, are non-sustantive, and therefore do not require publication for notice and comment. Amendment No. 6 is also non-substantive, and therefore does not require publication for notice and comment.

¹² 15 U.S.C. 78s(h)(1).

¹³ Securities Exchange Act Release No. 37538 (August 8, 1996), SEC's Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of the National Association of Securities Dealers, Inc. Administrative Proceeding File No. 3-9056. Section 21(a) of the Act is set forth at 15 U.S.C. 78u(a).

¹⁴ SEC, Report and Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of

including fourteen undertakings ("Undertakings"), and a related report pursuant to Section 21(a) of the Act ("21(a) Report").¹⁴ In these documents, the Commission indicated that the NASD had not complied with its own rules and had failed to satisfy its self-regulatory obligations under the Act to enforce such rules and the federal securities laws. Shortly thereafter, following the recommendations of the Select Committee, the NASD proposed to reorganize its corporate structure. The NASD retained ultimate policymaking, oversight, and corporate authority as the parent holding company and statutory self-regulatory organization, while granting substantial deference to the operating subsidiaries in the areas of their respective jurisdictions. Nasdaq was given sole responsibility to operate and oversee the Nasdaq market and other over-the-counter markets, while NASD Regulation was given responsibility for regulation and member and constituent services. The Rules of the Association ("Rules"), including those sections governing the conduct and review of disciplinary proceedings, member admissions procedures and denial of access decisions, were substantially revised. The revisions to the corporate structure were first proposed and adopted in mid-1996 and were approved by the Commission on August 7, 1997,¹⁵ Additional revisions to the corporate structure were approved on November 14, 1997,¹⁶ and in the months following,¹⁷ while various other proposals, including revision of the procedures governing the automated systems, are still pending.¹⁸ The proposed amendments supplement previous changes to the Rules of the Associations adopted in response to the SEC Order and related documents.

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¹² 15 U.S.C. 78s(h)(1).

¹³ Securities Exchange Act Release No. 37538 (August 8, 1996), SEC's Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of the National Association of Securities Dealers, Inc. Administrative Proceeding File No. 3-9056. Section 21(a) of the Act is set forth at 15 U.S.C. 78u(a).

¹⁴ SEC, Report and Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and the Nasdaq Stock Market (August 8, 1996).

¹⁵ Securities Exchange Act Release No. 38908 (August 7, 1997) 62 FR 43385 (August 13, 1997) (File No. SR-NASD-97-28).

¹⁶ Securities Exchange Act Release No. 39326 (November 14, 1997) 62 FR 62385 (November 21, 1997) (File No. SR-NASD-97-71).