

## V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-NASD-2003-183) be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49253; File Nos. SR-NYSE-2003-41; SR-NASD-2004-17]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. and Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Research Analyst Qualification Examination (Series 86/87)

February 13, 2004.

Pursuant to 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> notice is hereby given that on December 3, 2003, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange"), and on January 29, 2004, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or the "Commission") proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations ("SROs"). On December 22, 2003, NYSE filed amendment No. 1 to the proposed rule change, and on January 29, 2004, NYSE filed Amendment No. 2 to the proposed rule change.<sup>3</sup>

The SROs filed the proposals pursuant to section 19(b)(3)(A)<sup>4</sup> of the Act and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>5</sup> which renders the proposals effective upon filing with the Commission.<sup>6</sup> The Commission is

publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons.

### I. Self-Regulatory Organizations' Statements of Substance of the Proposed Rule Changes

The Exchange hereby submits the Study Outline and Examination Specifications for the Research Analyst Qualification Examination ("Series 86 and 87").<sup>7</sup> The Exchange seeks approval of the Study Outline and Examination Specifications.

NASD is filing with the SEC the selection specifications and study outline for the Research Analyst Qualification Examination program.<sup>8</sup> The Series 86/87 examination program is proposed in connection with NASD Rule 1050, which requires all persons associated with a member who function as research analysts to register with NASD and to pass a qualification examination for research analysts specified by NASD. NASD is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD.

A description of the Series 86/87 examination is included in the Study Outline.<sup>9</sup> Additional information on the examination is included in the Series 86/87 selection specifications, which NASD has omitted from this filing and has submitted under separate cover with a request for confidential treatment to the Commission's Secretary pursuant to Rule 24b-2 under the Act.<sup>10</sup>

### II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, NASD and the NYSE included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. NASD and the NYSE have prepared summaries, set forth in Sections A, B, and C below.

<sup>7</sup> The Commission has not published the Study Outline. Interested persons may view the Study Outline at the places specified in Item IV below.

<sup>8</sup> According to NASD, based upon instruction from the Commission staff, NASD is submitting SR-NASD-2004-17 for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder, and is not filing the question bank for Commission review. See Letter from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation (July 24, 2000). The question bank is available for Commission review.

<sup>9</sup> See note 7 *supra*.

<sup>10</sup> 17 CFR 240.24b-2.

### A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

#### 1. NYSE's Purpose

Exchange Rule 344 requires, in part, that research analysts must be registered with, qualified by, and approved by the Exchange.

#### Background

On July 29, 2003, the SEC approved amendments to Exchange Rules: 472 ("Communications with the Public"), 344 ("Research Analysts and Supervisory Analysts" (formerly titled "Supervisory Analysts")), and 345A ("Continuing Education for Registered Persons") (collectively referred to as the "Research Analysts" Conflicts Rules).<sup>11</sup>

The amendments included, among other things, a new registration category and qualification examination for research analysts. The amendments also impose requirements regarding continuing education for this new registration category consisting of a Regulatory Element and Firm Element to address applicable rules and regulations, ethics, and professional responsibility.

According to NYSE, the recent amendments were part of a continuous and ongoing joint regulatory effort among the NYSE, NASD, and the SEC to address potential conflicts of interest relating to research analysts. This joint regulatory effort has already resulted in SEC approval of major self-regulatory organization ("SRO") rule changes in May 2002<sup>12</sup> and July 2003.<sup>13</sup>

According to NYSE, the Research Analyst Qualification Examination represents another phase of the SRO regulatory effort to safeguard the investing public from potential conflicts of interest relating to research analysts. As noted above the Research Analysts' Conflicts Rules were promulgated to mitigate and/or eliminate potential conflicts of interest, and also to require disclosure in research reports and during public appearances by research analysts of other potential conflicts of interest.

NYSE believes that a new qualification examination, in conjunction with new rules, will benefit the investing public by helping to ensure that research analysts are competent to perform their jobs and are knowledgeable about the new regulatory

<sup>11</sup> See Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 4575 (August 4, 2003).

<sup>12</sup> See Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34969 (May 16, 2002).

<sup>13</sup> See note 11 *supra*.

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Amendment No. 2 replaces SR-NYSE-2003-41 and Amendment No. 1 thereto in its entirety.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4 (f)(6).

<sup>6</sup> For SR-NYSE-2003-41, the effective date is the date of the filing of Amendment No. 2.

requirements affecting them. Given the scope and magnitude of these requirements, the SROs have developed an examination, discussed in more detail below, with a part designed specifically to address the new requirements.

The Research Analyst Qualification Examination is a five-and-a-half hour examination, consisting of 150 questions. The exam is divided into two parts. Part I, the Series 86, consists of 100 questions, which address fundamental security analysis and valuation of equity securities. Candidates will be allotted 240-minutes to complete Part I. Part II, the Series 87, consists of 50 questions, which primarily address pertinent SRO and SEC rules and regulations, including the recent Research Analysts' Conflict Rules. Candidates will be allotted 90 minutes to complete Part II.

The requirement to take and pass the proposed Series 86/87 examination applies to all prospective and current research analysts, as the term is defined in Exchange Rule 344.10. Exchange Rule 344.10 provides that the term "research analyst" includes a member, allied member, or employee who is primarily responsible for the preparation of the substance of a research report and/or whose name appears on such report. As noted above, Exchange Rule 344 requires that such analysts must pass a qualification examination acceptable to the Exchange.

The NYSE intends for the Series 86/87 examination to have a pre-requisite. Each candidate would have to pass the General Securities Registered Representative Examination (Series 7) prior to taking either Part I or Part II of the examination.

The NYSE also intends to allow a research analyst candidate that has passed both Level I and Level II of the Chartered Financial Analysts ("CFA") Examination to request an exemption from Part I (Series 86) of the Research Analyst Qualification Examination. Candidates will be registered and qualified as Research Analysts after passing the Series 86 and Series 87 examinations (or the Series 87 only, if the candidate is exempt from Part I, the Series 86 examination).

In a separate filing, the Exchange will propose amendments to NYSE Rule 344 to require the Series 7, 17, 37 or 38 Examinations as a pre-requisite to the Series 86/87 examination and also to accept the CFA Level I and II accreditations as an exemption from

taking Part 1 (Series 86) of the examination.<sup>14</sup>

#### *Study Outline for Series 86/87 Examination*

The Study Outline for the examination, details the scope of the Series 86 and 87 examinations. According to NYSE, a fee, to be determined at a later date, will be imposed per exam administration, and this fee will be the subject of a separate filing. Implementation of the examination is scheduled to take place not later than March 30, 2004. Research analysts, as defined in Exchange Rule 344.10, must be registered with and qualified and approved by the Exchange within 365 days of the implementation date. In addition, persons currently performing the function of a research analyst shall have one year from the implementation date of March 30, 2004 to be qualified and approved by the Exchange. In light of the March 30, 2004 implementation date, the Exchange will publish the Study Outline expeditiously in order to provide prospective candidates time to prepare for and complete the examination within the prescribed time frames. According to NYSE, in no event will the examination requirement be implemented until 30 days after the Study Outline is published by the NYSE.

Due to the confidential nature of the material, the specifications for the examination have been omitted and will be filed separately with the Commission pursuant to 17 CFR 200.83(c).

#### 2. NYSE's Statutory Basis

The statutory basis for this proposed rule change is section 6(c)(3)(B) of the Exchange Act.<sup>15</sup> Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations.

In addition, under section 6(c)(3)(B) of the Exchange Act,<sup>16</sup> the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has developed an examination that will be administered to establish that Research Analysts have attained

specified levels of competence and knowledge.

#### 3. NASD's Purpose

NASD Rule 1050 requires all persons associated with a member who function as research analysts to register with NASD and to pass a qualification examination for research analysts specified by NASD.<sup>17</sup> Rule 1050 defines "research analyst" as an associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report. NASD intends for the term "research report" in Rule 1050 to be defined as it is in Rule 2711(a)(8), which applies only to equity securities. Accordingly, fixed income analysts do not need to be registered as research analysts.

Pursuant to section 15A(g)(3) of the Act,<sup>18</sup> NASD is required to prescribe standards of training, experience, and competence for persons associated with NASD members. According to NASD, the proposed Series 86/87 examination program has been developed to ensure that persons associated with NASD members who are seeking to register with NASD as research analysts have attained specified levels of competence and knowledge.

The proposed Series 86/87 examination program will partially qualify<sup>19</sup> an associated person of a member to function as a research analyst. The program consists of two parts (Series 86 and Series 87) that collectively test the knowledge, skills, and abilities associated with critical job functions of a research analyst, including a candidate's knowledge of applicable federal and industry rules and regulations.

According to NASD, the Series 86/87 examination (the selection specifications, study outline, and question bank) program was developed by NASD and NYSE staff in consultation with a committee of industry representatives.

The Series 86/87 examination will be a 5½-hour, 150 multiple-choice question examination. Since multiple forms of the examination will be administered, the passing score will fluctuate moderately from examination to examination. Candidates are allotted

<sup>17</sup> See note 11 *supra*.

<sup>18</sup> 15 U.S.C. 78o-3(g)(3).

<sup>14</sup> On January 30, 2004, NYSE filed an amendment to establish certain requirements for, prerequisites to, and exemptions from, taking the Research Analyst Qualification Examination. See SR-NYSE-2004-03.

<sup>15</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>16</sup> *Id.*

<sup>19</sup> Each candidate also would have to pass the General Securities Representative (Series 7), the Limited Registered Representative (Series 17), or the Canada Modules of the Series 7 (Series 37 or Series 38) examinations before taking the Series 86/87 examination. NASD filed a separate proposed rule change regarding the prerequisite requirement. See SR-NASD-2004-20 (February 3, 2004).

4 hours to complete the first part (Series 86) and 1½ hours to complete the second part (Series 87).

The Series 86 is the "Analysis" portion of the examination and consists of 100 multiple-choice questions covering the critical job functions of "Information and Data Collection" (10 questions) and "Analysis, Modeling, and Valuation" (90 questions). The second part, the Series 87, is the "Regulatory Administration and Best Practices" portion of the examination and consists of 50 multiple-choice questions covering the critical job functions of "Preparation of Research Reports" (32 questions) and "Dissemination of Information" (18 questions). This portion of the examination focuses on rules and regulations applicable to the work of a research analyst.

The selection specifications for the Series 86/87 examination, which NASD has omitted from this filing and has submitted under separate cover with a request for confidential treatment to the Commission's Secretary pursuant to Rule 24b-2 under the Act,<sup>20</sup> describe additional confidential information regarding the examination.

#### 4. NASD's Statutory Basis

NASD believes that the proposed Series 86/87 examination program is consistent with the provisions of sections 15A(b)(6)<sup>21</sup> and 15A(g)(3) of the Act,<sup>22</sup> which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

#### B. Self-Regulatory Organizations' Statements on Burden on Competition

NASD and NYSE do not believe that the proposed rule changes, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

#### C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The NASD and NYSE have neither solicited nor received written comments on the proposed rule changes.

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

The proposed rule changes, as amended, are effective upon filing<sup>23</sup>

pursuant to section 19(b)(3)(A)<sup>24</sup> of the Act and paragraph (f)(6) of Rule 19b-4<sup>25</sup> thereunder, in that the proposed rule changes (1) do not significantly affect the protection of investors or the public interest; (2) do not impose any significant burden on competition; and (3) by their terms, do not become operative for 30 days after the date of filing.<sup>26</sup> At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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.<sup>27</sup>

The SROs requested that the Commission waive the five-day pre-filing notice requirement. The Commission finds good cause to designate the proposals effective upon filing with the Commission<sup>28</sup> because such designation is consistent with the protection of investors and the public interest.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes, as amended, are 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 20549-0609. Comments may also be submitted electronically at the following email address: *rule-comments@sec.gov*. All comment letters should refer to File Nos. SR-NYSE-2003-41; SR-NASD-2004-17. These file numbers should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by email but not by both methods.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings will also be available for inspection and copying at the principal offices of the NASD and NYSE. All submissions should refer to the file numbers File Nos. SR-NYSE-2003-41; SR-NASD-2004-17 and should be submitted by March 15, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>29</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SMALL BUSINESS ADMINISTRATION

#### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before March 24, 2004. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and

*David\_Rostker@omb.eop.gov*, fax number 202-395-7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205-7044.

**SUPPLEMENTARY INFORMATION:** *Title:* Disaster Survey Worksheet.

*No.:* 987.

*Frequency:* On Occasion.

<sup>29</sup> 17 CFR 200.30-3(a)(12).

<sup>20</sup> 17 CFR 240.24b-2.

<sup>21</sup> 15 U.S.C. 78o-3(b)(6).

<sup>22</sup> 15 U.S.C. 78o-3(g)(3).

<sup>23</sup> See note 6 *supra*.

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 17 CFR 240.19b-4 (f)(6).

<sup>26</sup> The NASD notes that the proposed rule change does not alter the effective dates of Rule 2711 (as amended by this proposed rule change) that the Commission approved on May 10, 2002.

<sup>27</sup> For SR-NYSE-2003-41, the 60-day period would run from the date of filing of Amendment No. 2.

<sup>28</sup> See note 6 *supra*.