

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49464; File Nos. SR-NYSE-2004-03; SR-NASD-2004-020)

March 24, 2004

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Relating to Certain Prerequisites to and Exemptions from Taking the Research Analyst Qualification Examination (“Series 86/87”)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² on January 30, 2004, the New York Stock Exchange, Inc. (“NYSE” or the “Exchange”), and on February 3, 2004, the National Association of Securities Dealers, Inc. (“NASD”), filed with the Securities and Exchange Commission (“SEC” or the “Commission”) proposed rule changes to set forth certain prerequisites and exemptions from the requirement that all members who function as research analysts be registered as such and pass a qualification examination. Specifically, the proposed rule changes would (1) establish, as a prerequisite to be registered as a research analyst, the requirement that an applicant also be registered as a General Securities Representative and (2) provide for an exemption from the analytical portion of the Research Analyst Qualification Examination (Series 86) for certain applicants who have passed both Levels I and II of the Chartered Financial Analyst (“CFA”) Examination.

The proposed rule changes were published for comment for fifteen days in the Federal Register on March 2, 2004.³ The Commission received one comment on SR-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 49314 (February 24, 2004), 69 FR 9888.

NASD-2004-020.⁴ This order approves the proposed rule changes on an accelerated basis.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the regulations thereunder applicable to the NYSE and NASD.⁵ In particular, the Commission believes that the proposals are consistent with Sections 6(b)(8) and 6(c)(3)(B) of the Act,⁶ and Sections 15A(b)(6) and 15A(b)(9) of the Act.⁷

The Commission finds that the NYSE's proposed rule change is consistent with Section 6(c)(3)(B) of the Act.⁸ Section 6(c)(3)(B) of the Act⁹ provides that a national securities exchange may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the exchange. Section 6(c)(3)(B) of the Act¹⁰ also provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and

⁴ The Commission received one comment letter on SR-NASD-2004-020, which generally supported the proposal but mainly addressed the issue of soft dollar payments for third-party research.

⁵ See 15 U.S.C. 19(b)(2).

⁶ 15 U.S.C. 78f(b)(8) and (c)(3)(B).

⁷ 15 U.S.C. 78o-3(b)(6) and (b)(9).

⁸ 15 U.S.C. 78f(c)(3)(B).

⁹ Id.

¹⁰ Id.

require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

In addition, the Commission finds that the NYSE's proposed rule change is consistent with Section 6(b)(8) of the Act,¹¹ which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission finds that the NASD's proposed rule change is consistent with Section 15A(g)(3).¹² Section 15A(g)(3) of the Act¹³ provides that a registered securities association may bar a natural person from becoming associated with a member or condition the association of a natural person with a member if such natural person does not meet such standards of training, experience, and competence as are prescribed by the rules of the association. Section 15A(g)(3) of the Act¹⁴ also provides that a registered securities association may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the association and require a natural person associated with a member, or any class of such natural persons, to be registered with the association in accordance with procedures so established.

In addition, the Commission finds that the proposed rule change is consistent with Section 15A(b)(9) of the Act,¹⁵ which requires that the rules of an association not impose

¹¹ 15 U.S.C. 78f(b)(8).

¹² 15 U.S.C. 78o-3(g)(3).

¹³ Id.

¹⁴ Id.

¹⁵ 15 U.S.C. 78o-3(b)(9).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission finds good cause for approving the NYSE and NASD proposed rule changes prior to the thirtieth day after the date of publication of notice thereof in the Federal Register.¹⁶ The proposals set forth certain prerequisites and exemptions from the research analyst registration requirements. The NYSE and the NASD stated their intentions to file proposed rule changes to require that applicants also be registered as General Securities Representatives as a prerequisite to being registered as research analysts, in related rule filings that were published in the Federal Register on February 13, 2004.¹⁷ In addition, the proposals to provide for an exemption from the analytical portion of the Research Analyst Qualification Examination for certain applicants who have passed certain portions of the CFA Examination, are responsive to comments received in response to the SRO's rule changes that mandated registration requirements for research analysts. Those rule changes were approved on July 29, 2003.¹⁸

The Commission believes, moreover, that approving these proposed rule changes further the public interest and the investor protection goals of the Exchange Act. Finally, the Commission also finds that it is in the public interest to approve the rules as soon as possible to expedite the implementation of the research analyst registration requirements.

Accordingly, the Commission finds good cause, consistent with Sections

¹⁶ In approving the NYSE's proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁷ See note 3 *supra*.

¹⁸ See Securities Exchange Act Release No. 48252, 69 FR 45875 (August 4, 2003).

6(c)(3)(B), 15A(b)(6) and 19(b) of the Exchange Act,¹⁹ to approve the proposed rule changes on an accelerated basis.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule changes (SR-NYSE-2004-03; SR-NASD-2004-020) are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland
Deputy Secretary

¹⁹ 15 U.S.C. 78f(c)(3)(B), 78o-3(b)(6), and 78s(b).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).