

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-49527; File No. SR-NASD-2004-049)**

**April 2, 2004**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish Examination and Development Fees in Connection with Series 86/87 Fees for Research Analysts**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 19, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which the NASD has prepared. On March 31, 2004, the NASD filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").<sup>3</sup> The NASD has designated this proposal as one establishing or changing a due, fee or other charge imposed by the NASD pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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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> See letter from Marc Menchel, Executive Vice President and General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 31, 2004. In Amendment No. 1, the NASD amended the effective date of proposed Section (f) of Section 4 of Schedule A to the NASD By-Laws to April 2, 2004.

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

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

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

The NASD is filing with the Commission a proposed rule change to amend Section 4 of Schedule A of the NASD By-Laws to establish the examination fee for the new Research Analyst Qualification Examination (“Series 86/87”) program.<sup>6</sup> The proposed rule change also sets forth a pass-through examination development fee for the Series 86 and Series 87 examinations, to be collected by the NASD on behalf of the New York Stock Exchange (“NYSE”).<sup>7</sup> The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

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**Schedule A to NASD By-Laws**

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

**Section 1 through 3** – No Change.

**Section 4 – Fees**

(a) through (b) No Change.

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<sup>6</sup> On January 28, 2004, NASD filed with the Commission for immediate effectiveness the Series 86/87 examination program. See Securities Exchange Act Release No. 49253 (February 13, 2004), 69 FR 8257 (February 23, 2004) (notice of filing and immediate effectiveness of File No. SR-NASD-2004-17). NASD previously filed with the Commission on January 16, 2004, a proposed rule change for immediate effectiveness that delayed the effective date of NASD Rule 1050 to “not later than March 30, 2004.” See Securities Exchange Act Release No. 49119 (January 23, 2004), 69 FR 4337 (January 29, 2004) (notice of filing and immediate effectiveness of File No. SR-NASD-2004-10). NASD Rule 1050 became effective on March 30, 2004.

<sup>7</sup> See supra note 3.

(c) There shall be an examination fee of \$60.00 assessed as to each individual who is required to take an examination for registration as a registered representative pursuant to the provisions of the Rule 1030 Series, except that the examination fee for general securities representatives shall be \$110.00. This fee is in addition to the registration fee described in Item (b). Persons for whom an examination is waived pursuant to Rule 1070 shall pay a fee as set forth in paragraph [(j)] (l) of this Section.

(d) No Change.

(e) There shall be an examination fee of \$105.00 assessed as to each individual who takes a Series 86 examination for registration as a research analyst pursuant to Rule 1050. There shall be an examination fee of \$55.00 assessed as to each individual who takes a Series 87 examination for registration as a research analyst pursuant to Rule 1050. This fee is in addition to the registration fee described in paragraph (b). Persons for whom an examination is waived pursuant to Rule 1070 shall pay a fee as set forth in paragraph (l) of this Section.

(f) There shall be a New York Stock Exchange examination development fee of \$45.00 assessed as to each individual who takes a Series 86 or Series 87 examination for registration as a research analyst pursuant to Rule 1050. This fee is in addition to the registration and examination fees described in paragraphs (b) and (e) respectively.<sup>8</sup>

[(e)] (g) There shall be an examination fee of \$110.00 assessed as to each individual taking the General Securities-Sales Supervisor Examination. There shall be an examination fee of \$75.00 assessed as to each individual who is required to take any other examination for principals pursuant to the provisions of the Rule 1020 Series.

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<sup>8</sup> Amendment No. 1 establishes the effective date for proposed Section (f) of Section 4 to Schedule A of the NASD By-Laws as April 2, 2004.

Persons for whom an examination is waived pursuant to Rule 1070 shall pay a fee as set forth in paragraph [(j)] (l) of this Section.

[(f)] (h) There shall be a service charge fee of \$15.00 in addition to those fees specified in (b), (c), [and] (d), (e), and (f) above for any examination taken in a foreign test center located outside the territorial limits of the United States.

(g) through (i) Renumbered as (i) through (k)

[(j)] (l) Each individual who is granted a waiver(s) for any qualification examination specified in paragraphs (c), [or] (e), or (g) of this section shall be assessed as an application fee the examination fee as set forth in paragraph (c), [or] (e), (f), or (g) for each qualification examination so waived.

(k) through (l) Renumbered as (m) through (n)

**Section 5 through 13 – No Change.**

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## **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 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**

Pursuant to NASD Rule 1050, an associated person who functions as a research analyst must be registered and pass a qualification examination. To that end, the NASD

and the NYSE jointly have developed a Research Analyst Examination program, a two-part examination that tests competency of fundamental analytical skills (Series 86) and applicable laws, rules, and regulations (Series 87).<sup>9</sup> NASD Rule 1050 became effective on March 30, 2004. The proposed rule change would amend Section 4 of Schedule A of the NASD By-Laws to establish a fee of \$105.00 and \$55.00 for an associated person to take the Series 86 and Series 87 examinations, respectively. These fees are based on the costs to the NASD to administer the examinations, including printing, delivery, and systems charges.

In addition, the proposed rule change authorizes a pass-through examination development fee of \$45.00, to be collected by the NASD on behalf of the NYSE, each time an individual takes one of the examinations. The amount of the development fee was determined by the NYSE, and the NASD understands that a proposal to establish this fee is being filed with the Commission contemporaneously by the NYSE for immediate effectiveness.<sup>10</sup>

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<sup>9</sup> On February 2, 2004, NASD filed with the Commission a proposed rule change to amend NASD Rule 1050 to set forth certain prerequisites and exemptions for the requirement that all associated persons who function as research analysts be registered with NASD and pass a qualification examination. Specifically, the proposed rule change would (1) establish as a prerequisite to be registered as a research analyst the requirement that an applicant first be registered pursuant to NASD Rule 1032 as a General Securities Representative and (2) provide for an exemption from the Series 86 portion of the Research Analyst Examination for certain applicants who have passed both Levels I and II of the Chartered Financial Analyst Examination. See Securities Exchange Act Release No. 49314 (February 24, 2004), 69 FR 9888 (March 2, 2004) (notice of filing of File No. SR-NASD-2004-20). See also File No. SR-NYSE-2004-19 which establishes the exam development fee for the Series 86/87 exam for the NYSE.

<sup>10</sup> The NYSE represents that the NYSE will file the corresponding filing with the Commission on April 2, 2004. Telephone conversation between Bill Jannace, Director, Rule and Interpretive Standards, NYSE, and Katherine England,

Accordingly, the total examination and development fees assessed on each individual who takes a Series 86 examination for registration as a research analyst will be \$150.00. The total examination and development fees assessed on each individual who takes a Series 87 examination for registration as a research analyst will be \$100.00. NASD proposes to implement the proposed rule change on March 30, 2004, except for proposed Section (f) of Section 4 of Schedule A to the NASD By-Laws, which will become effective on April 2, 2004.

## **2. Statutory Basis**

The NASD believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,<sup>11</sup> which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls. The Series 86/87 examination and development fees are equitably allocated to NASD members, and the NASD believes the fee levels are reasonable because they seek only the recovery of the costs associated with developing and administering the examination program.

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

The NASD does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the Act.

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

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Assistant Director, and Elizabeth MacDonald, Attorney, Division, Commission, March 31, 2004.

<sup>11</sup> 15 U.S.C. 78q-3(b)(5).

The NASD neither solicited nor received written comments on this proposal.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder. Accordingly, the proposal has taken effect upon filing with the Commission. The NASD proposes to implement the proposed rule change on March 30, 2004, except for proposed Section (f) of Section 4 of Schedule A to the NASD By-Laws, which will become effective April 2, 2004.

At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the 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.

### **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. 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 e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NASD-2004-049. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently,

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

comments should be sent in hard copy or by e-mail, but not by both methods. 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 the principal office of the NASD. All submissions should refer to File No. SR-NASD-2004-049 and should be submitted by [insert 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).