

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50144; File No. SR-NASD-2004-115)

August 4, 2004

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Amendments to Reduce the Fee for the Regulatory Element of the Continuing Education Program

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 July 27, 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 and II below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

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

NASD is proposing to amend Section 4 of Schedule A to the NASD By-Laws to reduce fees for the Regulatory Element of the continuing education requirements of NASD Rule 1120.³ Below is the text of the proposed rule change. Proposed new language is in *italics*. Proposed deletions are in [brackets].

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NASD filed a proposed rule change (for immediate effectiveness under Section 19(b)(3) of the Act) to reduce the Regulatory Element continuing education fees from \$65 to \$60 on December 24, 2003 (the “original rule proposal”). While a signed receipt for the original rule proposal was obtained upon arrival at the SEC’s premises, the original rule proposal was never delivered to the SEC’s Division of Market Regulation.

SCHEDULE A TO NASD BY-LAWS

Section 4—Fees

(a) through (l) No change.

(m) There shall be a session fee of [~~\$65.00~~] \$60.00 assessed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Rule 1120.

(n) through (o) No change.

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. 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 Regulatory Element, a computer-based education program administered by NASD to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry, is a component of the Securities Industry Continuing Education Program (“Program”) under NASD Rule 1120. The Securities Industry/Regulatory Council on

Continuing Education (“Council”)⁴ was organized in 1995 to facilitate cooperative industry/regulatory coordination of the administration and future development of the Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element component of the Program, and developing and updating information about the Program for industry-wide dissemination.

It is the Council’s responsibility to maintain the Program on a revenue neutral basis while maintaining adequate reserves. In its annual financial review, the Council analyzed projected revenues and expenses through 2008. The analysis showed that the current surplus, which is adequate for the Program’s needs, would likely grow over the next two years if Regulatory Element volumes continue at current levels and the fee is maintained at \$65 per session. The analysis also showed that reserves would remain adequate if the fee for a Regulatory Element session were reduced by \$5 per session. As such, at its December 2003 meeting, the Council unanimously supported a reduction of the fee that firms pay when their registered persons take the Regulatory Element from \$65 to \$60 per session. This is the second reduction in fees since the Program began in 1995. The first was a reduction of \$10 (from \$75 to \$65) that took place in 1999.⁵

⁴ As of the date of this rule filing, the Council consists of 17 individuals, six of whom represent self-regulatory organizations (the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, NASD, the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.) and 11 whom represent the industry.

⁵ Securities Exchange Act Release No. 40851 (December 28, 1998), 64 FR 554 (January 5, 1999) (SR-NASD-98-95).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁶ in general, and with Section 15A(b)(5) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

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

NASD believes that the proposed rule change does not impose 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. 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2004-115 on the subject line.

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(5).

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-115. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<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 inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2004-115 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Finding and Order Granting Accelerated Approval of Proposed Rule Changes

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in

particular, the requirements of Section 15A and the rules and regulations thereunder. After careful review the Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b)(5) of the Act⁸ because it provides for the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or system which the association operates.⁹ Specifically, the proposed fee reduction will enable the Program to be maintained on a revenue neutral basis while simultaneously reducing the fee charged to members.

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The NASD represents that the original rule proposal was delivered to the SEC for filing on December 24, 2003. The Commission notes that while a signed receipt for the original rule proposal was obtained upon arrival at the SEC's premises, the original rule proposal was never received by the SEC's Division of Market Regulation. The original rule proposal was filed for immediate effectiveness under Section 19(b)(3) of the Act with an implementation date of January 1, 2004. As such, NASD made changes to Web Central Registration Depository (Web CRD[®]) to charge members the reduced \$60 fee beginning January 1, 2004 consistent with the actions of the Council. Accordingly, this rule change also is effective retroactive to January 1, 2004. Based on the

⁸ 15 U.S.C. 78o-3(b)(5).

⁹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

above, the Commission believes that there is good cause, consistent with Section 15A(b)(5)¹⁰ and Section 19(b)(2) of the Act¹¹ to approve the proposal on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NASD-2004-115) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland
Deputy Secretary

¹⁰ 15 U.S.C. 78q-3(b)(5).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).