

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49653; File No. SR-NYSE-2004-19)

May 4, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 thereto by the New York Stock Exchange, Inc. Relating to Series 86/87 Examination Development Fee for Research Analysts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4² thereunder, notice is hereby given that on April 30, 2004, the New York Stock Exchange, Inc. (“NYSE”) 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 the NYSE. On April 30, 2004, the NYSE filed Amendment number 1 to the proposed rule change (“Amendment No. 1”).³ The NYSE has designated this proposal as one establishing or changing a due, fee or other charge imposed by the NYSE pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from William Jannace, Director, Rule and Interpretive Standards, NYSE, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated April 29, 2004. In Amendment No. 1, the NYSE clarified that after implementation of the Series 86/87, the NYSE will continue to update, as necessary, the examination content and questions, and maintain statistics related to the maintenance of the exam.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

The NYSE is filing with the Commission a proposed rule change that would establish an examination development fee for the Research Analyst Qualification Examination (“Series 86/87”).

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 NYSE 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 NYSE 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

NYSE Rule 344.10 requires that research analysts be registered with, qualified by, and approved by the NYSE. On July 29, 2003, the Commission approved amendments to NYSE Rule 472 (“Communications With The Public”), Rule 351 (“Reporting Requirements”), Rule 344 (“Research Analysts And Supervisory Analysts”), and Rule 345A (“Continuing Education For Registered Persons”).⁶ The amendments include a new Research Analyst Qualification Examination requirement for research analysts who are primarily responsible for the preparation of the substance of research reports and/or whose names appear on such reports (NYSE Rule 344.10).

Accordingly, the NYSE, together with the National Association of Securities Dealers, Inc. (“NASD”), developed a Research Analyst Qualification Examination, which is a two-part examination that tests competency of fundamental security analysis and valuation (Series 86) and

⁶ See Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 45875 (August 4, 2003) (SR-NYSE-2002-49).

applicable federal rules and regulations and self-regulatory organization (SRO) rules (Series 87).⁷

NYSE Rule 344.10 became effective on March 30, 2004. Concurrently, the NASD filed a proposed rule change establishing an administration fee of \$105.00 and \$55.00 for an associated person to take the Series 86 and Series 87 examinations, respectively.⁸ Its fees are based on the costs to the NASD to administer the examinations, including printing, delivery and systems changes. Associated persons of NYSE only members and member organizations that take the examination must pay the fees stated in the NASD's filing to the NASD.

The NYSE's filing would establish an examination development fee of \$45.00, to be collected by the NASD on behalf of the NYSE, each time an individual takes either of the Series 86 or Series 87 examinations. This development fee, which is the subject of this filing, was determined by the NYSE based on the costs incurred to develop, implement, and maintain the Series 86 and Series 87 examinations.⁹ The NYSE represents that after implementation of the Series 86/87, the NYSE expects to continue to update, as necessary, the examination content and

⁷ On January 27, 2004, the Exchange filed with the Commission for immediate effectiveness the Series 86/87 study outline. 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 NYSE-2003-41). The NYSE previously filed with the Commission on January 16, 2004, a proposed rule change for immediate effectiveness that delayed the effective date of NYSE Rule 344.10 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-NYSE-2004-01). On January 30, 2004, the Exchange filed with the Commission a proposed rule change that would establish certain prerequisites to and exemptions from the Research Analyst Qualification Examination. See Securities Exchange Release No. 49314 (February 24, 2004), 69 FR 9888 (March 2, 2004) (SR-NYSE-2004-03).

⁸ See Securities Exchange Act Release No. 49527 (April 2, 2004), 69 FR 19255 (April 12, 2004) (SR-NASD-2004-49).

⁹ See Amendment No. 1, supra note 3.

questions, and maintain statistics and conduct various examination committee meetings.¹⁰

Accordingly, the NYSE notes that this fee will be assessed on an on-going basis, as is the case with various other qualification examinations, e.g. the Series 7 (General Securities Registered Representative) Examination. 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. In addition, there shall be a service charge of \$15.00 in addition to the fees described above for any examination taken in a foreign test center located outside the territorial limits of the United States. Such fees will be paid to the NASD, with no portion thereof being remitted to the NYSE.

On March 24, 2004, the Commission approved an interpretation to NYSE Rule 344, which permits a research analyst candidate who has passed both Level I and Level II of the Chartered Analyst (CFA) Examination to request an exemption from the Series 86 examination.¹¹ The CFA examination is administered by the Association for Investment Management and Research. To be eligible for the exemption, an applicant must not only have passed Levels I and II of the CFA examination, but also must either (1) have functioned continuously as a research analyst since having passed CFA Level II or (2) have passed CFA Level II within two years of application for registration as a research analyst. Applicants who do not meet these criteria may, based upon previous related employment/experience, make a written request to the NYSE or the NASD for a waiver. The NASD will be processing all requests for

¹⁰ See Amendment No. 1, supra note 3.

¹¹ See Securities Exchange Act Release No. 49464 (March 24, 2004), 69 FR 16628 (March 30, 2004) (SR-NYSE-2004-03).

exemptions from the Series 86. Each candidate who is granted a waiver for the Series 86 shall be assessed as a waiver application fee, the fee for this examination. Associated persons of NYSE-only members and member organizations who are granted a waiver or exemption must still pay the examination fee to the NASD, plus the NYSE development fee that will be collected by the NASD and remitted to the NYSE.

2. Statutory Basis

The NYSE believes that the proposal is consistent with Section 6(b) of the Act,¹² in general, and Section 6(b)(4) of the Act,¹³ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The NYSE does not believe that the proposed rule change will 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 on the proposed rule change were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁴ and subparagraph (f)(2) of Rule 19b-4¹⁵ thereunder because it establishes a fee to be imposed by the NYSE. Accordingly, the proposal has taken effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, the

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

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.¹⁶

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. 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-NYSE-2004-19 on the subject line.

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-NYSE-2004-19. 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

¹⁶ For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 30, 2004, the date the NYSE filed Amendment No. 1.

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 also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2004-19 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).