

ITS national market system, as described above. This interpretation also preserves the status quo and avoids creating potential confusion for investors and market participants that currently trade these securities on the Nasdaq InterMarket.

Dually listed securities will be regarded as CQS securities in all cases where NASD rules governing quotation, trading, and transaction reporting refer to CQS securities or Nasdaq listed securities or both. For example, Nasdaq will not exercise its authority under NASD Rule 4120(a)(1), (4), (5), and (6) to halt trading in Nasdaq listed securities but will instead defer to the trade halt authority of the primary market under the CQ and CT Plans and apply NASD Rule 4120(a)(2) and (3) governing CQS securities. Rule 10a-1 under the Act<sup>8</sup> governing short sales of CQS securities shall continue to apply to dually listed securities, rather than NASD Rule 3350 governing short sales of Nasdaq listed securities. Market makers in dually listed securities will retain all obligations imposed by the NASD Rule 5200, 6300, and 6400 Series regarding quoting, trading, and transaction reporting of CQS securities rather than assuming the obligations appurtenant to quoting, trading, and transaction reporting of Nasdaq listed securities. The fees applicable to trading of CQS securities, set forth in NASD Rule 7010, will continue to apply to dually listed issues.

## 2. Statutory Basis

Nasdaq believes that the proposed interpretation is consistent with the provisions of section 15A(b)(6) of the Act<sup>9</sup> in that treating dually listed securities as CQS securities is specifically designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. Nasdaq also believes the interpretation is also consistent with the provisions of section 15A(b)(6) of the Act<sup>10</sup> in that it is designed to produce fair and informative quotations and to promote orderly procedures for collecting, distributing, and publishing quotations.

Finally, Nasdaq believes the proposed interpretation also supports the goals of section 11A, particularly the protection

of investors, the maintenance of fair and orderly markets and fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, Nasdaq believes the proposed interpretation is designed to facilitate competition for listing and multiple listings.

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

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

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

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,<sup>11</sup> and Rule 19b-4(f)(1)<sup>12</sup> thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the 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.

## **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. All comment letters should refer to File No. SR-NASD-2004-029. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

comments more efficiently, comments should be sent in hardcopy 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 number SR-NASD-2004-029 and should be submitted by March 15, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49246; File No. SR-NASD-2003-183]

### **Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to Rule 1120 Regarding Regulatory Element Contact Person**

February 13, 2004.

#### **I. Introduction**

On December 9, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend NASD Rule 1120 to require that each member designate and identify to NASD the individual(s) who will receive Web Central Registration Depository ("CRD") continuing education ("CE") Regulatory Element e-mails. The proposed rule change further required that each member quarterly review and update the CE contact person(s) information. The proposed

<sup>8</sup> 17 CFR 240.10a-1.

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> 15 U.S.C. 78o-3(b)(11).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>12</sup> 17 CFR 240.19b-4(f)(1).

<sup>13</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.

rule change was published for comment in the **Federal Register** on December 31, 2003.<sup>3</sup> The Commission received one comment letter on the proposed rule change.<sup>4</sup> The NASD submitted a letter in response to the Wellfleet Letter on February 12, 2004.<sup>5</sup> This order approves the proposed rule change, as originally proposed.

## II. Description of the Proposed Rule Change

NASD Rule 1120 sets forth the CE requirements for registered persons. One of the two CE components is the Regulatory Element, a computer-based education program administered by the NASD to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry. Each registered person is required to complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date. A registered person who becomes inactive for failing to complete the required Regulatory Element program ("CE inactive") is prohibited from performing, or being compensated for, any activities requiring registration, including supervision. Members are required under NASD Rule 1120 to restrict CE inactive persons from performing the prohibited activities.

To help firms keep track of their registered persons' Regulatory Element status, NASD provides members with e-mail notifications through Web CRD when a person is both 90 days and 30 days away from the end of his or her period to complete the Regulatory Element program before becoming inactive. CRD also notifies members when a registered person at the firm becomes CE inactive. Currently, receipt of the e-mail notifications is optional, and some firms have elected not to receive the notifications. The proposed rule change would require each member to designate a contact person or persons to receive such CRD Regulatory Element e-mail notifications. The member would be required to provide to the NASD the name and e-mail address of the designated contact person(s) and to promptly notify the NASD of any

changes to the information. The NASD intends to collect the contact information through the NASD Contact System<sup>6</sup> on the NASD Web site.

To ensure the accuracy of the CE contact information, the proposed rule change also would require that each member review and, if necessary, update its CE contact person information within 17 business days after the end of each calendar quarter.<sup>7</sup> The NASD is examining different methods of reminding members of the obligation to quarterly review and update contact person information, including the possibility of a web page linked to the act of filing the FOCUS report that would prompt members to update the contact person and/or through e-mail reminders to the designated CE contact person.<sup>8</sup>

## III. Comment Summary

The Commission received one comment letter on the proposed rule change.<sup>9</sup> The commenter stated that either the NASD or the SEC should provide an NASD member firm with a notification 30 days before any rule requiring action by the firm. The commenter further noted that the current e-mail system can facilitate such notifications and that NASD member firms are currently provided with e-mail notifications, in certain instances.<sup>10</sup> Additionally, the commenter believed that notification reminders would simplify compliance with the rule.<sup>11</sup>

In its response letter, the NASD agreed that members would benefit from

<sup>6</sup> Effective as of December 8, 2003, the NASD Contact System replaced the Member Firm Contact Questionnaire, the previous system used for members to update and maintain certain required contact information.

<sup>7</sup> This proposed schedule is consistent with a member's quarterly FOCUS reporting schedule, as well as with the proposed rule change regarding members' business continuity plans. See Securities Exchange Act Release No. 46444 (August 30, 2002), 67 FR 57257 (September 9, 2002) (File No. SR-NASD-2002-108); Securities Exchange Act Release No. 47441 (March 4, 2003), 68 FR 11432 (March 10, 2003) (Notice of Filing of Amendment Nos. 1, 2, and 3 of File No. SR-NASD-2002-108); Securities Exchange Act Release No. 48503 (September 17, 2003), 68 FR 55686 (September 26, 2003) (Notice of Filing of Amendment Nos. 4 and 5 of File No. SR-NASD-2002-108). The Commission notes that this filing is pending at the Commission, and would require members to review and update emergency contact information within 17 business days after the end of each calendar quarter. Similarly, the proposed schedule is consistent with a proposed rule change filed with the Commission regarding the review and update of a member's Executive Representative designation and contact information. See SR-NASD-2003-184.

<sup>8</sup> Similarly, NASD would prompt members to review and update, where necessary, their emergency contact and Executive Representative information. See *supra* note 7.

<sup>9</sup> See *supra* note 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

receiving reminders of the requirement to quarterly update the CE contact person(s) information, and that such reminders would serve to simplify and assist members' compliance with the rule change. In this regard, the NASD stated, in the purpose section of the proposed rule change, that the NASD is examining different methods of notifying members of their quarterly review and update requirement. The NASD methods under consideration include reminders that are tied to the act of filing quarterly FOCUS reports in the form of a link to the NASD Contact System where the CE contact person information will be collected, pop-up screen reminder messages, and periodic reminders through NASD's e-mail broadcasts distributed to members' Executive Representatives.

## IV. Discussion

After careful consideration of the proposal, the Wellfleet Letter, and the NASD's response to the comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,<sup>12</sup> and, in particular, with the requirements of section 15A of the Act.<sup>13</sup> Specifically, the Commission finds that the proposal is consistent with section 15A(b)(6)<sup>14</sup> of the Act in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes the NASD has adequately addressed the comment letter, and that the proposed rule change should help NASD firms avoid an NASD Rule 1120(a) violation by providing sufficient notice to enable firms to ensure that their registered persons complete the required Regulatory Element training or are prevented from conducting business if they become CE inactive. Further, the Commission believes that the proposed rule change may assist the NASD in its efforts to further automate various aspects of its examination program with a goal of removing a substantial portion of CE compliance inspections from on-site firm examinations.

<sup>12</sup> 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).

<sup>13</sup> 15 U.S.C. 78o-3.

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

<sup>3</sup> See Securities Exchange Act Release No. 48986 (December 23, 2003), 68 FR 75682.

<sup>4</sup> See letter from Michael S. Zarin, Wellfleet Investments LLC, to Jonathan G. Katz, Secretary, Commission, dated January 8, 2004 ("Wellfleet Letter").

<sup>5</sup> See letter from Grace Yeh, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated February 11, 2004.

## 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.