

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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-2002-102 and should be submitted by September 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-46351; File No. SR-NASD-2002-110)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish a New Registration Category for Proctors of In-Firm Delivery of the Regulatory Element of the Continuing Education Requirements

August 14, 2002.

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 August 8, 2002, 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 Items have been prepared by the NASD. 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

The NASD proposes to establish NASD Rule 1043, a new registration category for proctors of in-firm delivery of the Regulatory Element of the NASD's continuing education requirements. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

1040. Registration of Assistant Representatives [-Order Processing] *and Proctors*

1041. Registration Requirements for *Assistant Representatives*

(a) through (c) No change.

1042. Restrictions for *Assistant Representatives*

(a) through (c) No change.

1043. *Proctors of In-Firm Delivery of Regulatory Element*

(a) *Any person associated with a member seeking to be designated as a Proctor under Rule 1120(a)(6)(E) for the purposes of in-firm delivery of the Regulatory Element shall be required to be registered pursuant to Rule 1120(a)(6)(E)(iii), but shall not be required to pass a Qualification Examination.*

(b) *Any person associated with a member may be designated as a Proctor upon approval of an Application for Registration pursuant to Article V, Section 2 of NASD's By-Laws. Any person whose sole registration is as a Proctor pursuant to this Rule 1043 shall not be qualified to function in any other area requiring registration with NASD.*

(c) *Nothing in this Rule 1043 shall prohibit a person who is registered with NASD in any other capacity from also serving as a Proctor without being designated as such under these provisions.*

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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

The purpose of the proposed rule change is to establish a new registration category for proctors of in-firm delivery of the Regulatory Element of the NASD's continuing education requirements. The Regulatory Element requires all registered persons to participate in a prescribed computer-based training session within 120 days of their second registration anniversary date and every three years thereafter. The Regulatory Element focuses on compliance, regulatory and ethical standards.

NASD Rule 1120(a)(6) permits each member to administer the continuing education Regulatory Element program to their registered persons through a program delivered on the member's premises, provided that the member adheres to certain technology, administrative and regulatory standards. Among the requirements for in-firm delivery of the Regulatory Element is that the program sessions be proctored by an individual registered with a self-regulatory organization ("SRO") and supervised by a designated principal.

NASD Rule 1120(a)(6) was intended to ease the burden on members to meet their continuing education requirements. However, the NASD has observed that many members have chosen not to avail themselves of the in-firm delivery options. Members have informed the NASD that the registration requirement for proctors is one reason more members have not used in-firm delivery. Members either do not have registered persons available to act as proctors or do not want to commit resources needed to prepare a proctor for an exam-based registration. The Securities Industry/Regulatory Council on Continuing Education recommended that the SROs develop a means to allow proctors to be registered without taking a qualification examination.³ The NASD supported that recommendation and believes this proposed rule change is an effective solution that makes in-firm delivery a more attractive and efficient option for members while maintaining the integrity of the program.

Importantly, while the proposed rule change would permit proctors to be registered without an exam, it would still require the proctors to submit an

³ The Council includes 14 members representing a cross-section of securities firms and six SROs, including the NASD. The Council facilitates industry/regulatory coordination of the administration and future development of the Continuing Education Program.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

application for registration in accordance with NASD By-Laws. As such, proctors would be required to file a Form U-4, which provides detailed employment and disciplinary history so that the NASD can monitor the fitness of individuals to serve in that capacity. Any person whose sole registration is as a proctor under the proposed rule change would not be permitted to engage in any other activities requiring registration with the NASD. The proposal would not prohibit a person who is registered with the NASD in any other capacity from also serving as a proctor, as is permitted under existing rules.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁴ which requires among other things, that the NASD's rules be 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 NASD believes that the proposed rule change will result in more efficient delivery of the NASD's continuing education requirements, while maintaining the integrity of the continuing education program.

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

The NASD 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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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. 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-2002-110 and should be submitted by September 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46356; File No. SR-NASD-2002-83]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish Fees Assessed on Non-Members for the Use of Computer-to-Computer Interface Transmission Control Protocol/Internet Protocol Lines That Use Message Queue Series Software

August 15, 2002.

On June 14, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities

Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to establish fees for non-members for the use of Computer-to-Computer Interface Transmission Control Protocol/Internet Protocol lines that use Message Queue Series ("MQ Series") software. The proposed rule change was published for notice and comment in the **Federal Register** on July 2, 2002.³ The Commission received no comments on the proposed rule change.

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 association⁴ and, in particular, the requirements of section 15A(b)(5),⁵ which requires the rules of a national securities association to provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility which the association operates or controls. The Commission believes Nasdaq's decision to charge firms that opt to use MQ Series a higher fee for lines that use the software than for comparable lines that do not, and to leave the existing fees unchanged for firms that do not use MQ Series, is reasonable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act⁶, that the proposed rule change (SR-NASD-2002-83) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 46112 (June 25, 2002), 67 FR 44488.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o-3(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

⁴ 15 U.S.C. 78o-3(b)(6).

⁵ 17 CFR 200.30-3(a)(12).