

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45778; File No. SR-NASD-2002-47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Revisions to the Limited Principal—Introducing Broker/Dealer Financial and Operations (Series 28) Examination Program

April 18, 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 April 10, 2002, the National Association of Securities Dealers, Inc. (“NASD”), through its wholly owned subsidiary, NASD Regulation, Inc. (“NASD Regulation”), filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated this proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization under section 19(b)(3)(A)(i) of the Act,³ and Rule 19b-4(f)(1)⁴ thereunder, which renders the proposal effective upon filing with the Commission.⁵ 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

NASD Regulation is proposing revisions to the Limited Principal—Introducing Broker/Dealer Financial and Operations (Series 28) examination program. The proposed revisions update the Series 28 examination study outline,⁶ selection specifications,⁷ and

question bank⁸ to reflect changes to the laws, rules, and regulations covered by the examination and to reflect more accurately the duties and responsibilities of a Series 28 principal. Additionally, the proposed revisions change the format of the Series 28 examination. The proposed revisions do not result in any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD Regulation or the NASD.

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 Regulation 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. NASD Regulation 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 section 15A(g)(3) of the Act,⁹ which requires the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, the NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD Regulation periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The Series 28 examination is an NASD examination that qualifies an individual to function as a limited principal responsible for matters involving an introducing member’s financial and operational management. A Series 28 principal may serve as an introducing member’s chief financial officer.

⁸ Based upon instruction from the Commission staff, NASD Regulation is not filing the question bank for Commission review. See Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000.

⁹ 15 U.S.C. 78o-3(g)(3).

A committee of industry representatives, together with NASD Regulation staff, recently undertook a review of the Series 28 examination program. As a result of this review, NASD Regulation is proposing revisions to the Series 28 examination study outline to reflect changes in relevant laws, rules, and regulations covered by the examination, including rules concerning anti-money laundering and Regulation S-P,¹⁰ and to reflect more accurately the duties and responsibilities of a Series 28 principal.

Additionally, NASD Regulation is proposing to reformat the examination. Currently, the Series 28 examination is a two-part test graded on a 100 point system. The first part includes 75 multiple-choice questions (each worth one point) and the second part, which is worth 25 points, requires individuals to perform computations based on financial information in a member’s trial balance. Individuals taking the examination may be given partial credit for answers to computational questions in the second part. NASD Regulation is proposing to change the format of the Series 28 examination to make it a one-part examination with a total of 85 multiple-choice questions (each worth one point), and will not give partial credit for any answers.

To adequately test the material covered in the revised examination, NASD Regulation is proposing to reorganize the substantive sections of the outline and to allocate questions to each section as follows: Keeping and Preservation of Records and Broker/Dealer Financial Reporting Requirements, 15 questions; Net Capital Requirements, 36 questions; Customer Protection, 10 questions; and Other Relevant Regulations and Interpretations, 24 questions.

NASD Regulation is proposing similar changes to the corresponding sections of the Series 28 examination selection specifications and question bank. NASD Regulation is proposing to change the testing time for the Series 28 examination to 2 hours from 3 hours. The passing score for the examination will continue to be 70%.

2. Statutory Basis

NASD Regulation believes that the proposed revisions are consistent with the provisions of sections 15A(b)(6)¹¹ and 15A(g)(3) of the Act,¹² which authorize the NASD to prescribe standards of training, experience, and

¹⁰ 17 CFR 248.1-18; 17 CFR 248.30; and 17 CFR 248, Appendix A.

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² 15 U.S.C. 78o-3(g)(3).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

⁵ See Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000.

⁶ The text of the Series 28 study outline is available at NASD Regulation and at the Commission.

⁷ NASD Regulation has requested confidential treatment for the Series 28 examination, and thus the specifications are omitted from this filing. The specifications have been filed separately with the Commission pursuant to Rule 24b-2 under the Act. 17 CFR 240.24b-2.

competence for persons associated with NASD members.

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

NASD Regulation 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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act¹³ and Rule 19b-4(f)(1)¹⁴ thereunder, in that the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD Regulation proposes to implement the revised Series 28 examination program on August 1, 2002.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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 proposal 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-2002-47 and should be submitted by May 16, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45779; File No. SR-NASD-2001-97]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Elimination of Interval Delays in Nasdaq's SuperMontage System

April 18, 2002.

On January 2, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "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 amend NASD Rule 4710(b)(1)(D) to remove delays between executions across price levels in Nasdaq's future Order Display and Collector Facility ("NNMS" or "SuperMontage"). On March 7, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.³ The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on March 19, 2002.⁴ The Commission received no comments regarding the proposal, as amended.

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

association⁵ and, in particular, the requirements of section 15A of the Act⁶ and the rules and regulations thereunder. Specifically, the Commission finds that the proposal to eliminate the delays between executions at different price levels in SuperMontage is consistent with section 15A(b)(6) of the Act⁷ because it may minimize the risk of orders queuing within SuperMontage, thereby helping to ensure the efficient and orderly operation of SuperMontage. In addition, the Commission believes that the prompt execution of orders in SuperMontage should facilitate the price discovery process, to the benefit of all market participants. Nasdaq represents that it will implement this rule change within 30 days after successful completion of SuperMontage user acceptance testing. The Commission expects Nasdaq to carefully monitor the effect on the Nasdaq market and on market participants of eliminating the interval delays between executions in SuperMontage, as it currently does for SuperSOES.⁸

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASD-2001-97), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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⁵ In approving this amended proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ See Securities Exchange Act Release No. 44504 (July 2, 2001), 66 FR 36022 (July 10, 2001) (order approving the elimination of interval delays in SuperSOES); see also Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (order approving SuperMontage and requiring Nasdaq to monitor market performance in SuperMontage as it related to interval delays).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹³ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 6, 2002 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 45554 (March 13, 2002), 67 FR 12631.

¹³ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁴ 17 CFR 240.19b-4(f)(1).