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July 22, 2004

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: Amendment No. 1 to File No. SR-NASD-2004-098 – Proposed Amendments to Eliminate Exemptions from the Continuing Education Regulatory Element Requirements

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find Amendment No. 1 to SR-NASD-2004-098 (the “rule filing”). For your convenience, attached is a new Exhibit 1 that includes the text of the proposed rule change, redlined to reflect the proposed amendments from existing NASD rule text. This Exhibit 1 replaces, in its entirety, the one filed as part of the original rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release. Proposed new language is underlined; proposed deletions are in brackets.

1. NASD is making the following non-substantive editorial changes to Rule 1120 to enhance the readability of the statutory language:

a. On page 3 of the rule filing, the hyphen following the title “Persons Exempted from the Rule” of current Rule 1120(a)(1)(B) should be replaced by an em-dash.

b. On page 3 of the rule filing, the word “ten” in the first sentence of current Rule 1120(a)(1)(B) should be replaced by the number “10”.

The same changes should be made to the rule text in Exhibit 1 to the rule filing.

2. On page 7 of the rule filing, in Item 3., titled “Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change,” (a), titled “Purpose,” NASD is updating the description of the Securities Industry/Regulatory Council on Continuing Education in footnote 6 as follows:

⁶ As of the date of this rule filing, [The] the Council consists of [20] 17 individuals, six

representing self-regulatory organizations (“SROs”) (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 [14] 11 representing the industry. The Council was organized in 1995 to facilitate cooperative industry/regulatory coordination of the CE Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping to develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, developing and updating information about the program for industry-wide dissemination, and maintaining the program on a revenue-neutral basis while assuring adequate financial reserves.

The same changes should be made to the corresponding footnote in Exhibit 1 to the rule filing.

3. On page 8 of the rule filing, NASD is including a discussion of the effective date of the proposed rule change by inserting the following paragraph after the fifth paragraph in Item 3., titled “Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change,” (a), titled “Purpose”:

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be (1) not more than 30 days following publication of the Notice to Members announcing Commission approval, (2) not more than 30 days following the implementation of necessary changes to Web CRD[®], or (3) April 4, 2005, whichever date is the latest to occur.

In addition, the following paragraph should be included after the fifth paragraph in Exhibit 1 to the rule filing in Item II., titled “SELF-REGULATORY ORGANIZATION’S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANE,” (A), titled “Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change,” (a), titled “Purpose”:

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be (1) not more than 30 days following publication of the Notice to Members announcing Commission approval, (2) not more than 30 days following the implementation of necessary changes to Web Central Registration Depository (“Web CRD[®]”), or (3) April 4, 2005, whichever date is the latest to occur.

Katherine A. England
July 22, 2004
Page 3 of 3

If you have any questions, please contact me at (202) 728-6939; e-mail: grace.yeh@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Grace Yeh
Assistant General Counsel

cc: Hong-Ahn Tran
Elizabeth MacDonald

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2004-098)
July 22, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Proposed Amendments to Eliminate Exemptions from the Continuing Education Regulatory Element Requirements

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 , the National Association of Securities Dealers, Inc. (“NASD”), filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On , NASD filed Amendment No. 1 to the proposed rule change.³ 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 is proposing to amend Rule 1120 to eliminate all exemptions from the requirement to complete the Regulatory Element of the Continuing Education (“CE”) Program. 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.

1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with NASD. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(a) Regulatory Element

(1) Requirements

No member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person unless such person has complied with the requirements of paragraph (a) hereof.

[(A)] Each registered person shall complete the Regulatory Element on the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by NASD [the Association]. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the "base date," shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element shall be determined by NASD [the Association] and shall be appropriate to either the registered representative or principal status of person subject to the Rule.

[(B) Persons Exempted from the Rule [-] == Persons who have been continuously registered for more than 10 years on July 1, 1998, shall be exempt from participation in the Regulatory Element programs for registered

³ This filing represents Amendment No. 1 to SR-NASD-2004-098 and replaces and supercedes the original rule filing.

representatives, provided such persons have not been subject within the last [ten] 10 years to any disciplinary action as enumerated in paragraph (a)(3). A person who has been continuously registered as a principal for more than ten years on July 1, 1998, shall be exempt from participation in the Regulatory Element programs for registered principals, provided such person has not been subject within the last ten years to any disciplinary action as enumerated in paragraph (a)(3). In the event that a registered representative or principal who was exempt from participation in Regulatory Element programs subsequently becomes the subject of a disciplinary action as enumerated in paragraph (a)(3), such person shall be required to satisfy the requirements of the Regulatory Element as if the date of such disciplinary action is such person's initial registration date with the Association.]

[(C) Persons who have been currently registered for 10 years or less as of July 1, 1998, shall participate in the Regulatory Element within 120 days after the occurrence of the second registration anniversary date, or every third year thereafter, whichever anniversary date first applies.]

(2) No change.

(3) Disciplinary Actions [Re-entry into Program]

Unless otherwise determined by NASD [the Association], a registered person will be required to retake [re-enter] the Regulatory Element and satisfy all of its requirements in the event such person:

(A) is subject to any statutory disqualification as defined in Section 3(a)(39) of the Act;

(B) is subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(C) is ordered as a sanction in a disciplinary action to retake [re-enter] the Regulatory Element [continuing education program] by any securities governmental agency or self-regulatory organization.

The retaking of the Regulatory Element [Re-entry] shall commence with [initial] participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (A) above, or the disciplinary action becoming final, in the case of (B) and (C) above. The date of the disciplinary action shall be treated as such person's new base [initial registration] date with NASD [the Association].

(4) through (7) No change.

(b) 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 received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV 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

(a) Purpose

NASD Rule 1120 (CE Requirements) specifies the CE requirements for registered persons subsequent to their initial qualification and registration with NASD. The requirements consist of a Regulatory Element and a Firm Element.⁴ The Regulatory Element is 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.⁵ Unless exempt, 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.⁶ There are three Regulatory Element programs: the S201 Supervisor Program for registered principals and supervisors, the S106 Series 6 Program for Series 6 representatives, and the S101 General Program for Series 7 and all other registrations.

Approximately 135,000 registered persons currently are exempt from the Regulatory Element. These include registered persons who, when the CE Program was adopted in 1995, had

⁴ The Firm Element of the CE Program applies to any person registered with an NASD member firm who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, any person registered as a research analyst pursuant to Rule 1050, and to the immediate supervisors of such persons (collectively called "covered registered persons"). The requirement stipulates that each member firm must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill and professionalism. Each firm has the requirement to annually conduct a training needs analysis, develop a written training plan, and implement the plan.

⁵ Rule 1120(a)(6) permits a member firm to deliver the Regulatory Element to registered persons on firm premises ("In-Firm Delivery") as an option to having persons take the training at a designated center provided that firms comply with specific requirements relating to supervision, delivery site(s), technology, administration, and proctoring. In addition, Rule 1043 requires that persons serving as Proctors for the purposes of In-Firm Delivery must be registered.

⁶ This is the current Regulatory Element schedule, as amended in 1998.

been registered for at least ten years and who did not have a significant disciplinary action⁷ in their CRD record for the previous ten years (“grandfathered” persons). These also include those persons who had “graduated” from the Regulatory Element by satisfying their tenth anniversary requirement before July 1998, when Rule 1120 was amended and the graduation provision eliminated, and who did not have a significant disciplinary action in their CRD record for the previous ten years.⁸

At its December 2003 meeting, the Securities Industry/Regulatory Council on Continuing Education (“Council”)⁹ discussed the current exemptions from the Regulatory Element and agreed unanimously to recommend that the SROs repeal the exemptions and require all registered persons to participate in the Regulatory Element. In reaching this conclusion, the Council was of the view that there is great value in exposing all industry participants to the benefits of the Regulatory Element, in part because of the significant regulatory issues that have emerged over the past few years. The Regulatory Element programs include teaching and training content that is continuously updated to address current regulatory concerns as well as

⁷ For purposes of Rule 1120, a significant disciplinary action generally means a statutory disqualification, a suspension or imposition of a fine of \$5,000 or more, or being subject to an order from a securities regulator to re-enter the Regulatory Element. See Rule 1120(a)(3).

⁸ When Rule 1120 was first adopted in 1995, the Regulatory Element schedule required registered persons to satisfy the Regulatory Element on the second, fifth, and tenth anniversary of their initial securities registration. After satisfying the tenth anniversary requirement, a person was “graduated” from the Regulatory Element. A graduated principal re-entered the Regulatory Element if he or she incurred a significant disciplinary action. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

⁹ As of the date of this rule filing, the Council consists of 17 individuals, six representing self-regulatory organizations (“SROs”) (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 representing the industry. The Council was organized in 1995 to facilitate cooperative industry/regulatory coordination of the CE Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping to develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, developing and updating information about the program for industry-wide dissemination, and maintaining the program on a revenue-neutral basis while assuring adequate financial reserves.

new products and trading strategies. Exempt persons currently do not have the benefit of this material.

In addition, the Council will introduce a new content module to the Regulatory Element programs that will specifically address ethics and will require participants to recognize ethical issues in given situations. Participants will be required to make decisions in the context of, for example, peer pressure, the temptation to rationalize, or a lack of clear-cut guidance from existing rules or regulations. The Council strongly believes that all registered persons, regardless of their years of experience in the industry, should have the benefit of this training.

Consistent with the Council's recommendation, the proposed rule change would eliminate the current Regulatory Element exemptions. The other SRO members of the Council also support eliminating the exemptions and are pursuing amendments to their respective rules. NASD staff will coordinate with the staffs of the other SROs to synchronize the rule changes.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be (1) not more than 30 days following publication of the Notice to Members announcing Commission approval, (2) not more than 30 days following the implementation of necessary changes to Web Central Registration Depository ("Web CRD[®]"), or (3) April 4, 2005, whichever date is the latest to occur.

Following the effective date of the proposed rule change, implementation will be based on the application of the existing requirements of the Regulatory Element (Rule 1120(a)(1)) to all registered persons. The way in which CRD applies these requirements is as follows. CRD establishes a "base date" for each registered person and calculates anniversaries from that date. Usually, the base date is the person's initial securities registration. However, the base date may

be revised to be the effective date of a significant disciplinary action in accordance with Rule 1120(a)(3) or the date on which a formerly registered person re-qualifies for association with an NASD member by qualification exam. Using the base date, CRD creates a Regulatory Element requirement on the second anniversary of the base date and then every three years thereafter. Beginning on or after the effective date of the proposed rule change, registered persons formerly exempt from the Regulatory Element requirement must satisfy such requirement on the occurrence of a Regulatory Element base date anniversary (i.e., the second anniversary of the base date and every three years thereafter) (see examples in the Table below).

NASD staff has reviewed a projection of how the anniversaries of the formerly exempt registered persons (about 135,000 persons) will occur using the base dates that CRD maintains for these persons. The projection shows that within three years from the proposed rule's effective date, all formerly exempt registered persons will have been brought into the Regulatory Element program. Furthermore, anniversaries will occur at a more-or-less steady rate so that there would be no extraordinary stress placed upon the capacity of the existing test/training facilities during the next three years or thereafter.

Table

Registered Person	Initial Registration Date	First Regulatory Element Requirement Of A Registered Person Formerly Exempt From The Regulatory Element (assuming an effective date of April 4, 2005)
A	4/4/1985 ¹⁰	4/4/2005
B	7/1/1983	7/1/2006
C	8/1/1984	8/1/2007
D	4/3/1985	4/3/2008

In addition, the proposed rule amendment would replace references in Rule 1120(a)(3) to “re-entry” into the Regulatory Element with a requirement to “retake” the Regulatory Element to clarify that the significant disciplinary action provisions apply to all registered persons and not only to currently exempt persons.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD’s rules must 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. NASD believes that the proposed rule change is designed to accomplish these ends by ensuring that all registered persons are kept up-to-date on industry rules, regulations, and practices.

¹⁰ A registered person with an initial registration date of April 4, 1985 will have a Regulatory Element anniversary date on April 4 of 1987, 1990, 1993, 1996, 1999, 2002 and 2005.

(B) Self-Regulatory Organization's Statement on Burden on Competition

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 self-regulatory organization 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 [as amended] is consistent with the act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-2004-098. This file number should be included on the subject line if e-mail is used. To help us 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 NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland
Deputy Secretary