

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50575; File No. SR-NASD-2004-145]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to Section 4 of Schedule A to the NASD By-Laws (Fees for Qualification Examinations)

October 20, 2004.

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 September 30, 2004, 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, and II below, which Items

have been prepared by NASD. NASD has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the rule effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD proposes to amend Section 4 of Schedule A to the NASD By-Laws, to establish examination fees that shall be assessed upon persons taking various qualification examinations as of January 1, 2005. The proposed rule change also lists the examination fees that NASD will publish in Schedule A regardless of whether the current examination fee will increase. Below is the text of the proposed rule change. Proposed new

language is in *italics*. Deletions are in [brackets].

SCHEDULE A TO NASD BY-LAWS

* * * * *

Section 4—Fees

(a) and (b) No change

(c) [There shall be an examination fee of \$60.00 assessed as to each individual who is required to take an examination for registration as a registered representative pursuant to the provisions of the Rule 1030 Series, except that the examination fee for general securities representatives shall be \$110.00.] *The following fees shall be assessed to each individual who registers to take an examination as described below as of January 1, 2005.* [This] *These fees [is] are* in addition to the registration fee described in [Item] paragraph (b). [Persons for whom an examination is waived pursuant to Rule 1070 shall pay a fee as set forth in paragraph (l) of this Section.]

Series 4	Registered Options Principal	\$80
Series 6	Investment Company Products/Variable Contracts Representative	\$70
Series 7	General Securities Representative	\$225
Series 9	General Securities Sales Supervisor—Options Module	\$60
Series 10	General Securities Sales Supervisor—General Module	\$95
Series 11	Assistant Representative—Order Processing	\$60
Series 17	Limited Registered Representative	\$65
Series 22	Direct Participation Programs Representative	\$70
Series 23	General Securities Principal Sales Supervisor Module	\$75
Series 24	General Securities Principal	\$85
Series 26	Investment Company Products/Variable Contracts Principal	\$75
Series 27	Financial and Operations Principal	\$85
Series 28	Introducing Broker/Dealer Financial and Operations Principal	\$75
Series 37	Canada Module of S7 (Options Required)	\$150
Series 38	Canada Module of S7 (No Options Required)	\$150
Series 39	Direct Participation Programs Principal	\$75
Series 42	Registered Options Representative	\$60
Series 55	Limited Representative—Equity Trader	\$80
Series 62	Corporate Securities Limited Representative	\$70
Series 72	Government Securities Representative	\$80
Series 82	Limited Representative—Private Securities Offering	\$75
Series 86	Research Analyst—Analysis	\$150
Series 87	Research Analyst—Regulatory	\$105

(1) Persons for whom any qualification examination is waived pursuant to Rule 1070 shall be assessed as an application fee the examination fee for each qualification examination so waived.

(2) There shall be a service charge equal to the examination fee assessed to each individual who, having made an appointment for a specific time and place for computer-based administration of an examination, fails to timely appear for such examination or timely cancel such appointment.

(3) There shall be a service charge fee of \$15.00 in addition to those fees specified above for any examination taken in a foreign test center located outside the territorial limits of the United States.

[(d) There shall be a New York Stock Exchange examination development fee of \$90.00 assessed as to each individual who takes a Series 7 examination for registration as a general securities representative. This fee is in addition to the registration and examination fees

described in paragraphs (b) and (c) respectively.]

[(e) There shall be an examination fee of \$105.00 assessed as to each individual who takes a Series 86 examination for registration as a research analyst pursuant to Rule 1050. There shall be an examination fee of \$55.00 assessed as to each individual who takes a Series 87 examination for registration as a research analyst pursuant to Rule 1050. This fee is in addition to the registration fee described in paragraph (b). Persons for whom an

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ On October 13, 2004, the NASD filed Amendment No. 1 to the proposal. See letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director,

Division of Market Regulation, Commission, dated October 13, 2004 ("Amendment No. 1"). Amendment No. 1 clarifies and makes minor edits to the purpose section and the proposed rule text.

examination is waived pursuant to Rule 1070 shall pay a fee as set forth in paragraph (l) of this Section.]

[(f) There shall be a New York Stock Exchange examination development fee of \$45.00 assessed as to each individual who takes a Series 86 or Series 87 examination for registration as a research analyst pursuant to Rule 1050. This fee is in addition to the registration and examination fees described in paragraphs (b) and (e) respectively.]

[(g) There shall be an examination fee of \$110.00 assessed as to each individual taking the General Securities-Sales Supervisor Examination. There shall be an examination fee of \$75.00 assessed as to each individual who is required to take any other examination for principals pursuant to the provisions of the Rule 1020 Series. Persons for whom an examination is waived pursuant to Rule 1070 shall pay a fee as set forth in paragraph (l) of this Section.]⁶

[(h) There shall be a service charge fee of \$15.00 in addition to those fees specified in (b), (c), (d), (e) and (f) above for any examination taken in a foreign test center located outside the territorial limits of the United States.]⁷

[(i) There shall be a service charge equal to the examination fee assessed as to each individual who, having made an appointment for a specific time and place for computer-based administration of an examination, fails to timely appear for such examination or timely cancel such appointment.]⁸

(j) and (k) are renumbered (d) and (e).⁹

[(l) Each individual who is granted a waiver(s) for any qualification examination specified in paragraphs (c), (e), or (g) of this section shall be assessed as an application fee the examination fee as set forth in paragraph (c), (e), (f), or (g) for each qualification examination so waived.]¹⁰

(m) through (o) are renumbered (f) through (h).¹¹

* * * * *

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 had 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

1. Purpose

NASD proposes to make certain changes in qualification examination fees. NASD also proposes to publish in Schedule A a list of all the qualification examinations that may be required and their corresponding fees, regardless of whether such fees are proposed to be changed or would remain the same under the proposed rule change.¹²

Any person associated with a member firm who is engaged in the securities business of the firm must register with NASD. As part of the registration process, securities professionals must pass a qualification examination to demonstrate competence in each area in which they intend to work. Some of these examinations are sponsored (*i.e.*, developed) by NASD, and others are sponsored by the North American Securities Administrators Association ("NASAA"), the New York Stock Exchange ("NYSE"), the Municipal Securities Rulemaking Board ("MSRB"), or other self-regulatory organizations ("SROs").¹³ NASD administers these qualification examinations via computer through the PROCTOR® system at test centers operated by vendors under contract with NASD. NASD charges an examination fee to candidates for NASD-sponsored examinations. For those examinations sponsored by an NASD client and administered/delivered by NASD, NASD charges a delivery fee that comprises either a part or all of the examination fee for these examinations.

NASD has not adjusted current examination fees for NASD-sponsored examinations or delivery fees for client-

sponsored examinations since 1989. At present, these fees do not reflect the costs incurred by NASD for administering and delivering these examinations. These costs consist of operational, technology and delivery costs. Operational costs consist of salaries and overhead for NASD staff involved in test delivery technical support, customer support and service, and examination administration. Delivery costs vary based on the length of the examination because NASD pays its delivery vendors an hourly rate for seat time at test delivery centers.¹⁴

Technology costs are the costs associated with the PROCTOR® system, including system maintenance and enhancements. The PROCTOR® system provides the following capabilities: importation and storage of items within examination banks; statistical analyses against the examination bank; tracking candidates' enrollment windows, appointments and result records; use of the delivery driver at the test delivery centers; and exporting raw data on item performance. Technology costs also include the significant expense being incurred over the next two years for the PROCTOR® system redesign/rebuild. The current PROCTOR® system needs to be updated to incorporate more modern technology. The new system will be more reliable and will include many new features such as additional item (question) formats (short answer, matching, drag/drop), on-line exhibits, and advanced biometrics for greater security.

NASD represents that this proposed rule change would eliminate existing provisions relating to specific examinations. Specifically, the proposed rule change would list in Schedule A all qualification examinations that may be required by NASD for its members, regardless of sponsor(s), and the corresponding fee that will be charged for each examination (whether the fee is proposed to be changed or remains the same). These fees represent the fees to be charged persons who register for one of these examinations beginning on January 1, 2005.¹⁵ NASD plans to conduct an annual review of its costs and adjust examination and delivery fees, if necessary, as of January 1 each year after making the appropriate rule filings.

¹² NASD states that Section 4 of Schedule A currently identifies NYSE examination development fees of \$90.00 for the Series 7 examination and \$45.00 per examination for the Series 86 and 87 examinations. Under the proposed rule change, these development fees will continue to be part of the total examination fee charged to candidates, but they will no longer be separately identified in Schedule A. See Amendment No. 1, *supra* note 5.

¹³ For example, NASD administers and delivers the Series 6, 24, and 27 examinations, which are sponsored by NASD. NASD also administers and delivers client examinations, such as the Series 7, which is sponsored by NYSE, and the Series 9 and 10, which are sponsored jointly by several SROs (AMEX, CBOE, MSRB, NASD, NYSE, PCX, and PHLX).

¹⁴ NASD provides a network of more than 400 test centers located throughout the United States and overseas operated by two commercial vendors.

¹⁵ The published fee represents the fee that will be charged at the time the individual registers for the examination. The individual then has 120 days to take the examination.

⁶ See Amendment No. 1, *supra* note 5.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Fee Changes

NASD recently conducted an analysis of the costs of developing, administering, and delivering qualification examinations. The analysis

showed that NASD's costs are rising, particularly, with respect to technology and delivery costs. Thus, NASD proposes to raise examination fees for certain NASD-sponsored examinations. In addition, NASD has advised its client

examination sponsors of the impact of the higher costs on delivery fees for client-sponsored examinations. Accordingly, NASD is proposing to raise the examination fees for the following examinations.

Series 4	Registered Options Principal (Sponsored jointly by AMEX, CBOE, NASD, NYSE, PCX, and PHLX).	From \$75 to \$80.
Series 6	Investment Company Products/Variable Contracts Representative (NASD-sponsored)	From \$60 to \$70.
Series 7	General Securities Representative (NYSE-sponsored)	From \$200 to \$225.
Series 9	General Securities Sales Supervisor—Options Module (Sponsored jointly by AMEX, CBOE, MSRB, NASD, NYSE, PCX, and PHLX).	From \$50 to \$60.
Series 10	General Securities Sales Supervisor—General Module (Sponsored jointly by AMEX, CBOE, MSRB, NASD, NYSE, PCX, and PHLX) ¹⁶ .	From \$60 to \$95.
Series 22	Direct Participation Programs Representative (NASD-sponsored)	From \$60 to \$70.
Series 24	General Securities Principal (NASD-sponsored)	From \$75 to \$85.
Series 27	Financial and Operations Principal (NASD-sponsored)	From \$75 to \$85.
Series 55	Limited Representative—Equity Trader (NASD-sponsored)	From \$60 to \$80.
Series 62	Corporate Securities Limited Representative (NASD-sponsored)	From \$60 to \$70.
Series 72	Government Securities Representative (NASD-sponsored)	From \$60 to \$80.
Series 87	Research Analyst—Regulatory (sponsored jointly by NASD and NYSE)	From \$100 to \$105.

Publication of Fee Schedule in Schedule A to NASD By-Laws

Notwithstanding whether the current examination fee will increase, NASD

proposes to publish in Schedule A a schedule of all qualification examination fees that are delivered by NASD and that may be required by

NASD for its members. NASD proposes to publish the following schedule:

Series 4	Registered Options Principal	\$80
Series 6	Investment Company Products/Variable Contracts Representative	\$70
Series 7	General Securities Representative	\$225
Series 9	General Securities Sales Supervisor—Options Module	\$60
Series 10	General Securities Sales Supervisor—General Module	\$95
Series 11	Assistant Representative—Order Processing	\$60
Series 17	Limited Registered Representative	\$65
Series 22	Direct Participation Programs Representative	\$70
Series 23	General Securities Principal Sales Supervisor Module	\$75
Series 24	General Securities Principal	\$85
Series 26	Investment Company Products/Variable Contracts Principal	\$75
Series 27	Financial and Operations Principal	\$85
Series 28	Introducing Broker/Dealer Financial and Operations Principal	\$75
Series 37	Canada Module of S7 (Options Required)	\$150
Series 38	Canada Module of S7 (No Options Required)	\$150
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Series 42	Registered Options Representative	\$60
Series 55	Limited Representative—Equity Trader	\$80
Series 62	Corporate Securities Limited Representative	\$70
Series 72	Government Securities Representative	\$80
Series 82	Limited Representative—Private Securities Offering	\$75
Series 86	Research Analyst—Analysis	\$150
Series 87	Research Analyst—Regulatory	\$105

NASD will announce the implementation of the proposed rule change in a *Notice to Members* to be published no later than 30 days from the date the proposed rule change is filed with the Commission. The new fees will become effective for “120-day examination windows” opened in the Central Registration Depository (CRD®) on or after January 1, 2005.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹⁷ in general and with Section 15A(b)(5) of the Act,¹⁸

in particular which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the rule change is consistent with Section 15A(b)(5) of the Act ¹⁹ in that the fee changes reflect NASD's increased costs in delivering the examinations and in maintaining and upgrading the examination delivery system.

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

NASD believes that the proposed rule change does not impose 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.

¹⁶ See Amendment No. 1, *supra* note 5.

¹⁷ 15 U.S.C. 78o-3.

¹⁸ 15 U.S.C. 78o-3(b)(5).

¹⁹ *Id.*

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

The proposed rule change has become effective upon filing with the Commission, pursuant to Section 19(b)(3)(A)(ii) of the Act²⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder,²¹ because it establishes or changes a due, fee, or other charge imposed by NASD. At any time within 60 days of the filing of the proposed rule change, as amended, 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, as amended, 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-NASD-2004-145 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-NASD-2004-145. 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 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 the filing also will be available for inspection and copying at the principal offices of NASD. 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-NASD-2004-145 and should be submitted on or before November 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50572; File No. SR-Phlx-2004-61]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Its Equity Options Payment for Order Flow Program

October 20, 2004.

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 September 22, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and at the same time is granting accelerated approval of the proposed rule change.

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

The Phlx proposes to modify the Exchange's equity options payment for order flow program for trades settling on or after September 1, 2004 through September 21, 2004. In addition, the

Exchange proposes to amend its equity options payment for order flow program as it relates to the reimbursement of equity options payment for order flow funds, which was in effect for trades settling on or after August 2, 2004 through August 31, 2004.

Equity Options Payment for Order Flow Program Commencing September 22, 2004

The Exchange recently amended its equity options payment for order flow program.³ Pursuant to that program, for trades settling on or after September 22, 2004, the Exchange will assess a payment for order flow fee as follows when Registered Options Traders ("ROTs") trade against a customer order: (1) \$1.00 per contract for options on the Nasdaq-100 Index Tracking StockSM traded under the symbol QQQ, currently the most actively traded equity option;⁴ and (2) \$0.40 per contract for the remaining top 150 equity options, other than the QQQ.⁵

³ See Securities Exchange Act Release No. 50471 (September 29, 2004), 69 FR 59636 (October 5, 2004) (SR-Phlx-2004-60) ("Release 34-50471").

⁴ QQQ is currently the most actively-traded equity option. The Nasdaq-100[®], Nasdaq-100 Index[®], Nasdaq[®], The Nasdaq Stock Market[®], Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM, and QQQSM are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index[®] ("Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

⁵ The top 150 options are calculated based on the most actively traded equity options in terms of the total number of contracts that are traded nationally, based on volume statistics provided by the Options Clearing Corporation ("OCC") and that are also traded on the Exchange. For example, if two of the most actively traded equity options, based on volume statistics provided by the OCC are not traded on the Exchange, then the next two most actively traded equity options that are traded on the Exchange will be selected. (For example, if the list of the top 150 options includes two options that are not traded on the Exchange, then the options ranked 151 and 152 will be included in the Exchange's top 150, assuming those options are traded on the Exchange). The measuring periods for the top 150 options are calculated every three months. For example, for trade months September, October and November, the measuring period to determine the top 150 options will be based on volume statistics from May, June and July. This cycle will continue every three months. Members will be notified of the top 150 options approximately two weeks before the beginning of a new three-month trading period. As discussed below, the payment for order flow fees are incurred only when the specialist elects to participate in the equity options payment for order flow program. The Exchange's fee schedule reflects the fee of \$1.00 for options on the QQQ and \$0.40 for the remaining top

Continued

²⁰ 15 U.S.C. 78s(b)(3)(a)(ii).

²¹ 17 CFR 240.19b-4(f)(2).

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.