

“the MSRB’s broad interpretation of the meaning of solicitation means that broker-dealers would be prohibited from hiring outside persons to perform necessary services given that they would have to, as a practical matter, attend * * * meetings with issuers and will ultimately make the broker-dealer more appealing to the issuer by doing a good job.” PNC stated that including conversations through or with secondary participants of an issue would not serve to enhance the goal of the rule. Seasingood stated that all contact by or through third parties should be considered a solicitation.

MSRB Response. The proposed rule change makes clear that, so long as non-affiliated persons providing legal, accounting, engineering or other professional services¹³ are not being paid directly or indirectly for their solicitation activities,¹⁴ they would not become subject to Rule G-38. The MSRB believes that this language adequately addresses the concerns raised by the commentators.

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. 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-MSRB-2005-11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-MSRB-2005-11. 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 such filing also will be available for inspection and copying at the MSRB’s offices. 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-MSRB-2005-11 and should be submitted on or before January 10, 2006.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52947; File No. SR-NASD-2005-132]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Session Fee Increase for the Regulatory Element of the Continuing Education Requirements of NASD Rule 1120

December 13, 2005.

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 November 22, 2005, 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. NASD has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the NASD under Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 Section 4 of Schedule A to the NASD By-Laws to increase the session fee for the Regulatory Element of the continuing education requirements of NASD Rule 1120. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

SCHEDULE A TO NASD BY-LAWS

* * * * *

Section 4—Fees

(a) through (e) No change.

(f) There shall be a session fee of [\$60.00] *\$75.00* assessed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Rule 1120.

* * * * *

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).

¹³ The proposed rule change does not enumerate all professional services that may be provided in connection with municipal securities business but makes clear that such services are not strictly limited to legal, accounting and engineering services (e.g., another dealer serving as a syndicate member).

¹⁴ The proposed rule change reminds dealers that the term “payment” under MSRB rules is broadly defined and can include, depending on the facts and circumstances, *quid pro quo* arrangements whereby a non-affiliated person solicits municipal securities business for the dealer in exchange for being hired by the dealer to provide other unrelated services.

¹⁵ 17 CFR 200.30-3(a)(12).

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

1. Purpose

The Regulatory Element, 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, is a component of the Securities Industry Continuing Education Program ("Program") under NASD Rule 1120. The Securities Industry/Regulatory Council on Continuing Education ("Council")⁵ was organized in 1995 to facilitate cooperative industry/regulatory coordination of the administration and future development of the Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element component of the Program, and developing and updating information about the Program for industry-wide dissemination.

It is the Council's responsibility to maintain the Program on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures.⁶ In December 2003, the Council voted to reduce the Regulatory Element session fee from \$65 to \$60 effective January 1, 2004, in order

to reduce the reserves to a level necessary to support current and expected programs and expenses. The Council decided to review the reserve level and evaluate the Regulatory Element session fee on an annual basis. The 2004 financial review and evaluation produced no change in the Regulatory Element session fee. In September 2005, the Council's annual financial review and evaluation revealed that unless the Regulatory Element session fee were adjusted, the Council's reserves were likely to be insufficient in 2006. The reasons for the declining surplus are: (1) Lower than projected session volume resulting in a significant decrease in actual revenue over projected revenue; (2) higher delivery-related expenses beginning in 2006; and (3) costs associated with the rebuilding of PROCTOR®.⁷ At its September 2005 meeting, the Council voted unanimously to increase the Regulatory Element session fee from \$60 to \$75, effective January 1, 2006, in order to meet costs and maintain an adequate reserve in 2006.

The proposed implementation date is January 1, 2006.

1. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁸ in general, and furthers the objectives of Sections 15A(b)(5) and 15A(b)(6) of the Act in particular.⁹ Section 15A(b)(5) of the Act requires, among other things, that NASD 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. Further, Section 15A(b)(6) of the Act provides that NASD 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 enabling the Program to be maintained on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures.

⁷ PROCTOR® is a technology system that supports computer-based testing and training. The Regulatory Element program uses PROCTOR® to package content, deliver, score and report results, and maintain and generate statistical data related to the Program.

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(5) and (b)(6).

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

NASD does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

NASD has neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2) thereunder,¹¹ because it establishes or changes a due, fee, or other charge imposed by the NASD. Accordingly, the proposal will take effect upon filing with the Commission. 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.¹²

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. 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-2005-132 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-132. This file number should be included on the subject line if e-mail is used. To help the

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19.b-4(f)(2).

¹² 15 U.S.C. 78s(b)(3)(C).

⁵ The Council currently consists of 20 individuals, 14 of whom are securities industry professionals associated with NASD member firms, and six of whom represent self-regulatory organizations (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.).

⁶ The Regulatory Element session fee was initially set at \$75 when NASD established the continuing education requirements in 1995. The fee was reduced in 1999 to \$65 and again in 2004 to \$60. The proposed fee increase returns the Regulatory Element session fee to its original level.

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 the 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-2005-132 and should be submitted on or before January 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52954; File No. SR-NYSE-2005-87]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Pilot to Put Into Operation Phase 1 of the NYSE HYBRID MARKET SM

December 14, 2005.

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 December 9, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 the Exchange. On December 13, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposed rule change, as amended, on an accelerated basis.

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

The Exchange is proposing a pilot to put into operation Phase 1 of the NYSE HYBRID MARKET SM ("Hybrid Market") initiative, as proposed in SR-NYSE-2004-05 and amendments thereto ("Hybrid Market filings") with respect to a group of securities trading on the Exchange ("Pilot").⁴ In addition, the Pilot will implement certain system changes discussed in SR-NYSE-2005-57.⁵ This filing sets forth amended rules (previously described in the Hybrid Market filings) which would be operational during the Phase 1 pilot as well as certain new proposals, discussed herein. The text of the proposed rule change is available on NYSE's Web site (<http://www.nyse.co>), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 Exchange 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 III below. The Exchange 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 Exchange proposes a Pilot to put into operation Phase 1 of the Hybrid Market initiative with respect to a group of securities, known as Phase 1⁶ Pilot securities ("Pilot securities"). The Pilot would commence following Commission approval of the Pilot, during the week of December 12, 2005 and would terminate the earlier of: (1) 90 calendar days from the date of Commission approval, if granted, or (2) Commission approval of the Exchange's Hybrid Market proposal, if granted.

Approximately 200 securities out of the 3,600 securities listed on the Exchange (approximately 5%) have been identified as Pilot securities and are listed on Exhibit 3 of the filing.⁷ In addition, the list of Pilot securities will be posted on the Exchange's Web site.

The Pilot will allow the Exchange to conduct real-time system and user testing of certain features of the Hybrid Market filings in order to be in a position to comply with the implementation of Regulation NMS.⁸

The Exchange believes the Pilot will prove beneficial from both a technology and a training perspective. It will give the Exchange the opportunity to identify and address any system problems and to identify and incorporate beneficial system changes that become apparent as a result of usage in real time and under real market conditions. The ability to have such real time user interface will be invaluable, as it is impossible to accurately anticipate behavioral changes in a development or mock-trading

³ See Partial Amendment dated December 13, 2005 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted Exhibit 3 to the proposed rule change, which identified the securities that would be included in the Pilot, and corrected a typographical error.

⁴ See Securities Exchange Act Release No. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004) (Amendment No. 1 to SR-NYSE-2004-05); Securities Exchange Act Release No. 50667 (November 15, 2004), 69 FR 67980 (November 22, 2004) (Amendment Nos. 2 and 3 to SR-NYSE-2004-05) (The Exchange withdrew Amendment No. 4 and replaced it with Amendment No. 5); Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005) (Amendment No. 5 to SR-NYSE-2004-05). See also Amendment No. 6 to SR-NYSE-2004-05 (September 16, 2005) and Amendment No. 7 to SR-NYSE-2004-05 (October 10, 2005).

⁵ See Securities Exchange Act Release No. 52362 (August 30, 2005), 70 FR 53701 (September 9, 2005) (SR-NYSE-2005-57). While submitted as effective upon filing, the Exchange intended to implement these changes upon approval of the Hybrid Market filings by the Commission, if such approval is granted.

⁶ See Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005) (Amendment No. 5 to SR-NYSE-2004-05).

⁷ The NYSE selected the Pilot securities based on the following criteria: (1) Trading location so as to include in the Pilot securities from each room and post on the floor; (2) crowd participation so as to include securities that generally have crowd participation; (3) trading characteristics so as to include securities whose trading characteristics are typically less volatile to minimize the likelihood of disruptions during the systems testing; and (4) specialist firm so as to include each of the equity specialist firms on the floor. The Pilot securities represent approximately 10% of the average daily NYSE trading volume. Telephone call between Nancy Reich Jenkins, NYSE and Kelly Riley, SEC on December 14, 2005.

⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.