

infirmity will not individually of themselves constitute sufficient grounds to waive an examination, experience in an ancillary field may be sufficient grounds to waive an examination.

Rule 1100 (Foreign Associates)

Rule 1100(b) requires that members employing foreign associates file an "Application for Classification as a Foreign Associate." NASD no longer uses this application. Thus, NASD is proposing to replace the terms "Application for Classification as a Foreign Associate" with the terms "Uniform Application for Securities Industry Registration or Transfer," which is the current application.

Rule 1111 (Registration of Government Securities Principals)

Rule 1111 relates to the registration requirements for government securities principals. Because this rule relates to principal registration requirements, NASD is proposing to move this rule to the rule 1020 Series and renumber it as rule 1022(h). The heading for rule 1022(h) will be "Limited Principal—Government Securities." Rule 1022(h) will not include a subsection on examination because there is no required examination for this registration category. Non-substantive changes also were made to this provision to clarify its application.

Rule 1113 (Persons Exempt From Registration)

Both rules 1060(a)(1) and 1113 state that associated persons whose functions are solely and exclusively clerical or ministerial are exempt from registration. NASD is proposing to delete rule 1113 because it duplicates rule 1060(a)(1).

Finally, NASD is adopting a new corporate structure and is seeking the merger of NASD Regulation and NASD Dispute Resolution into NASD, with the merger becoming effective upon the Commission's authorization of the operation of Nasdaq other than as a facility of NASD. To underscore this new corporate structure and renewed regulatory focus, NASD generally does not refer to itself using its full corporate name, "the Association" or "the NASD." Instead NASD uses "NASD" unless otherwise appropriate for corporate or regulatory reasons. Accordingly, NASD has replaced several references to "the Association" and "the NASD" in the text of the proposed rule change with "NASD."

2. Statutory Basis

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 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 also is consistent with the provisions of sections 15A(b)(3)⁵ and 15A(g)(3) of the Act,⁶ which, among other things, authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members. NASD believes that the proposed rule change clarifies NASD registration obligations and provides consistency throughout these rules and will assist members and their associated persons in complying with these rules.

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

The proposed rule change has been filed by NASD as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act⁷ and rule 19b-4(f)(6) thereunder.⁸ Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of this filing; and NASD provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date,⁹ the proposed rule change

has become effective pursuant to section 19(b)(3)(A) of the Act¹⁰ and rule 19b-4(f)(6) thereunder.¹¹

NASD has requested that the Commission waive the 30-day pre-operative waiting period, which would make the proposed rule operative immediately. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case because the proposed rule change is highly technical in nature. For these reasons, the Commission waives the 30-day pre-operative period and designates that the proposal become operative immediately.¹²

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.

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

withdrew SR-NASD-2002-185 and refiled the proposed rule change as a "non-controversial" filing pursuant to section 19(b)(3)(A) of the Act and rule 19b-4(f)(6) thereunder because the proposed rule change is highly technical in nature. Rule 19b-4(f)(6)(iii) under the Act requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days before doing so (or such shorter time as designated by the Commission). The Commission finds that NASD satisfied the five-day pre-filing requirement by filing SR-NASD-2002-185.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁴ 15 U.S.C. 78o-3(b)(6).

⁵ 15 U.S.C. 78o-3(b)(3).

⁶ 15 U.S.C. 78o-3(g)(3).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ NASD initially filed the proposed rule change on December 30, 2002 for full notice and comment in accordance with section 19(b)(2) of the Act. See SR-NASD-2002-185. NASD subsequently