

While the NASD does not plan to implement the new or revised qualification examinations today, it intends to monitor activity in security futures very closely. The NASD also intends to continue coordinating with NFA. The NASD intends to make periodic assessments of the activity in security futures to determine the appropriate time to implement the examinations. The NASD does not believe that there is any single factor that should be determinative of whether security futures examinations should be implemented. Rather, the NASD intends to review the following:

- Volume in security futures contracts
- Analysis of who is trading security futures
- Number of registered representatives completing continuing education
- Number of accounts authorized to trade security futures
- Nature of security futures customers
- Evidence, if any, of customer complaints
- Evidence, if any, of regulatory concerns arising from the NASD's surveillance and examination programs.

Once the NASD determines that new/revised qualifications are appropriate, or the SEC requests that the NASD implement the examinations, the NASD represents that it will be able to have them effective in less than four months. The NASD states that, as its efforts to date indicate, it remains fully committed to providing the necessary resources to ensure that representatives engaging in a security futures business are properly trained and qualified. The NASD intends to closely monitor activity in security futures to determine when, and if, it becomes an appropriate date to implement revised qualification examinations.

NASD believes that for the reasons stated above it is appropriate to defer implementation of revised and new qualification examinations concerning security futures.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁹ 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.

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 foregoing rule change has been filed by the NASD as "non-controversial" pursuant to section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹ Because the foregoing 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 thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act¹² and Rule 19b-4 thereunder.¹³

The Commission hereby waives the thirty-day operative waiting period. The Commission believes that it is consistent with the protection of investors and the public interest to waive the thirty-day operative waiting period because the proposed rule change explains the NASD's reasons for delaying the implementation of the new qualification exams for security futures.¹⁴ The Commission notes that the NASD members that trade security futures are required to provide firm-element training for individuals engaged in security futures business.

NASD has requested that the Commission waive the five-day pre-filing requirement in Rule 19b-4(f)(6)(iii).¹⁵ The Commission hereby waives that requirement.

At any time within sixty days of the filing of such 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. 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-2003-186. 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, 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 also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2003-186 and should be submitted by January 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-31650 Filed 12-23-03; 8:45 am]

BILLING CODE 8010-01-M

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4.

¹⁴ For purposes of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 17 CFR 200.30-3(a)(12).

⁹ 15 U.S.C. 78o-3(b)(6).