

("NASD") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal to amend Schedule C of the NASD By-Laws to include government securities principals and representatives in the continuing education requirement for registered persons.

The proposed rule change was published for comment in the **Federal Register** on June 9, 1995.³ One comment letter was received on the proposed rule change,⁴ to which the NASD responded.⁵ This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

The purpose of the NASD's proposal is to make an amendment to the definition of "registered person" contained in Section (1)(e) of Part XII of Schedule C of the NASD By-Laws, *Continuing Education Requirements*.⁶ The effect of the proposed change will be to require government securities principals and representatives who are designated in Part XI of Schedule C of the NASD By-Laws to participate in the continuing education program.⁷ Such persons, however, were inadvertently excluded from the definition of "registered person" contained in Section (1)(e) of Part XII of Schedule C of the NASD By-Laws and approved by the Commission on February 8, 1995.⁸

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 35820 (June 7, 1995), 60 FR 30624.

⁴ Letter from William S. Crews, Senior Vice President/Securities Compliance Manager, Wachovia Investments, Inc., to Secretary, Commission, dated June 20, 1995 ("Comment Letter").

⁵ Letter from Craig L. Landauer, Associate General Counsel, NASD, to Francois Mazur, Attorney, Division of Market Regulation, Commission, dated June 28, 1995 ("NASD Response").

⁶ On February 8, 1995, the Commission approved proposals by the self-regulatory organizations establishing a two-part continuing education program that requires uniform periodic training for registered persons in regulatory matters ("Regulatory Element") and job and product-related subjects ("Firm Element"). Securities Exchange Act Release No. 35341 (February 8, 1995), 60 FR 8426.

⁷ Part XI of Schedule C of the NASD By-Laws currently requires all persons associated with a member not previously registered as a principal who are to function as government securities principals to be registered as government securities principals; and all persons associated with a member who are to function as government securities representatives who have not previously been registered to register as government securities representatives. NASD By-Laws, Schedule C, Part XI, §§ 1 & 2.

⁸ Securities Exchange Act Release No. 35341, *supra* note 6.

III. Comment Letter

The Comment Letter on the proposed rule change raises two concerns. First, the commenter states that given that government securities principals and representatives are not required currently to undergo professional qualification by examination or experience, such individuals should not be required to participate in the continuing education program. Second, the commenter believes that the aggregate training results reported to firms will be skewed by the performance of such individuals because they will not have prepared for a professional qualification examination, and thus may lack industry knowledge.

The NASD Response addresses both of the commenter's concerns. The NASD notes that the Government Securities Act Amendments of 1993 ("GSA Amendments") removed from Section 15A of the Act the restrictions on the NASD's authority to regulate its members' transactions in government securities.⁹ Consequently, requiring government securities principals and representatives to participate in the continuing education program is a first step in such persons being subject to regulation comparable to that applicable to other securities industry professionals. Moreover, the NASD states that it is desirable for all registered persons to be subject to the continuing education requirements now, rather than waiting for approval of other rules affecting government securities registered persons. In response to the commenter's second concern, the NASD states that the aggregate training results that it will provide to its members will be broken-down by registration categories.¹⁰

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of Section 15A and the rules and regulations thereunder. The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act because the proposed change to Schedule C of the By-Laws will improve the standards of

⁹ Compare Sections 15A (f) & (g) of the Act, 15 U.S.C. 780-3 (f) & (g), with text prior to enactment of the GSA Amendments.

¹⁰ The categories that will be provided will be Series 6, Series 7, all principal registration categories, and "other." Government securities principals and representatives would fall within the "other" category.

training, experience, and competence for persons associated with NASD members.

As noted in the NASD Response, the GSA Amendments removed from Section 15A of the Act the limitations on the ability of the NASD to regulate its members' transactions in government securities. The Commission believes that requiring government securities principals and representatives to participate in the continuing education program is appropriate in view of the role these persons play in the market for government securities. The continuing education program has been designed to impart knowledge regarding existing standards and should ensure that government securities principals and representatives become aware of new regulatory developments and concerns.

The Commission also believes that the commenter's concerns have been adequately addressed. While the Commission recognizes that government securities principals and representatives have not yet been required to undergo qualification examinations, the Commission believes that any concerns that thereby may arise are outweighed by the benefits to be derived from the participation of such persons in the continuing education program. It should be emphasized that the Regulatory Element, which addresses a variety of compliance, ethics, and sales practice issues, is not a test. Rather, the Regulatory Element requires that a person complete a prescribed training program, which is administered using computer-based interactive training techniques that provide immediate feedback as a person works through a set of scenarios and problems.

The aggregated information obtained from the Regulatory Element is one of several factors that a firm should consider in evaluating its training needs when complying with the Firm Element. Moreover, as stated in the NASD Response, firms will be provided with a registration category break-down of the aggregated information.

Pursuant to Section 19(b)(5) of the Act,¹¹ the Commission has consulted with and considered the views of the Department of the Treasury ("Treasury").¹² The Treasury supports the NASD's proposal that the continuing education program apply to government

¹¹ 15 U.S.C. 78s(b)(5).

¹² Section 19(b)(5) of the Act states generally that the Commission shall consult with and consider the views of the Secretary of the Treasury prior to approving a proposed rule filed by a registered securities association that primarily concerns conduct related to transactions in government securities.