Rule 2130(c) to change ''Uniform Application for Securities Industry Registration of Transfer'' to ''Uniform Application for Securities Industry Registration or Transfer.'' [5]

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act [6] which requires, among other things, that NASD's rules 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 correcting the typographical error in NASD Rule 2130(c) to change ''Uniform Application for Securities Industry Registration of Transfer'' to the correct title ''Uniform Application for Securities Industry Registration or Transfer'' is consistent with the protection of investors and the public interest.

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

NASD does not believe that the proposed rule change would result in 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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 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 Act [7] and Rule 19b–4(f)(6) thereunder.[8] 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.

NASD has requested that the Commission waive the usual five-business-day notice period and the usual 30-day pre-operative period. The Commission notes that the proposal merely corrects a typographical error in NASD Rule 2130(c) and raises no new regulatory issues. As a result, the Commission believes that it is consistent with the protection of investors and the public interest to waive the five-business-day notice period and accelerate the operative date so that the typographical error can be corrected without delay. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[9]

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: *rulecomments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–200. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–200 and should be submitted by February 10, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1083 Filed 1–16–04; 8:45 am]

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[5] *See* Securities Exchange Act Release No. 48933 (December 16, 2003), 68 FR 74667 (December 24, 2003) (SR–NASD–2002–168).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] For purposes only of accelerating the operative date of the proposed rule change the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49054; File No. SR–NFA–2003–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Futures Association Regarding Proficiency Requirements for Security Futures Products

January 12, 2004.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on December 15, 2003, the National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes described in items I, II, and III below, which items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

NFA, on December 12, 2003, submitted the proposed rule change to the Commodity Futures Trading Commission (''CFTC'') for approval and invoked the ''ten-day'' provision of section 21(j) of the Commodity Exchange Act (''CEA'') [3]. On December 18, 2003, the CFTC determined not to review the proposed rule change and permitted NFA to make the proposed rule change effective on December 24, 2003.[4]

I. Self-Regulatory Organization's Description of the Proposed Rule Change

NFA's proficiency requirements for persons engaged in security futures activities allow current registrants to qualify to engage in these activities by taking an appropriate training program rather than a test. NFA anticipated updating the Series 3 examination [5] and

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 21(j).

[4] *See* Letter from Lawrence B. Patent, Deputy Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, CFTC to Thomas W. Sexton, III, Esq., General Counsel, NFA, dated December 18, 2003.

[5] The Series 3 is a comprehensive examination that qualifies registered associated persons to

Series 30 examination[6] to include security futures questions, after which future registrants would qualify by testing. At the present time, however, testing is an inefficient option due to the low trading volume in these products and the relatively small number of individuals who are interested in qualifying to engage in security futures activities. Therefore, NFA proposes to postpone updating the tests until trading activity picks up.

Section 15A(k) of the Exchange Act[7] makes NFA a national securities association for the limited purpose of regulating the activities of NFA members (''Members'') who are registered as brokers or dealers in security futures products under section 15(b)(11) of the Exchange Act.[8] The proficiency requirements for security futures products apply to these Members and their registered employees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

An NFA Interpretive Notice titled ''NFA Compliance Rules 2–7 and 2–24 and Registration Rule 401: Proficiency Requirements for Security Futures Products'' provides that new registrants can satisfy their proficiency requirements for security futures by taking an appropriate training program if they take the Series 3 examination and apply for registration before the Series 3 examination is updated to include security futures questions. The Interpretive Notice also provides that new branch office managers and current supervisory personnel can satisfy the proficiency requirements for designated security futures principals through training before the Series 30 examination is updated. Current registrants and branch office managers can also satisfy their proficiency requirements by training.

Although the Interpretive Notice does not include a deadline for updating the Series 3 and Series 30 examinations, NFA anticipated updating these examinations by January 2004.[9] In fact, NFA has already prepared the necessary questions and could easily add them to the question banks for the Series 3 and Series 30 examinations. Given the low trading volume in these products and the relatively small number of individuals who are interested in qualifying to engage in security futures activities, however, testing is an inefficient option at this time. Furthermore, the existing training program is an effective way to ensure that individuals who solicit accounts and orders from and manage accounts for customers trading in these markets have the necessary knowledge. Therefore, NFA proposes postponing the updated Series 3 and Series 30 examinations until activity increases to a point where a test becomes more practical.

Security futures account for a very small amount of U.S. futures volume. Extrapolating from current volume figures, we estimate that annual trading volume on U.S. futures exchanges will be approximately 1.3 billion contracts for calendar year 2003, while security futures volume will be approximately 2.5 million contracts.[10]

The number of individuals qualifying to engage in security futures activities is also a small percentage of those eligible to qualify. From January through November 2003, 1054 futures-only registrants have completed the web-based proficiency training offered by NFA and NASD. In the last four months, the number of individuals who completed the proficiency training has dropped significantly, averaging just under 50 futures-only registrants per month.[11] Since the proficiency training is used by existing registrants as well as new registrants, the number of new registrants taking the training should be considerably lower.

Looking at the same period, 2459 individuals took the Series 3 examination from January through November. Unlike the training figures, however, the number of people taking the exam has remained relatively steady, with a monthly average of 241 for the last four months.[12] These figures demonstrate that most individuals who take the Series 3 exam are not interested in security futures at this time.

The regulatory scheme for security futures is different from and more complex than the regulatory scheme for other futures contracts. As a result, when NFA adds security futures products questions to the Series 3 examination, the exam will be significantly longer and will require applicants to learn additional material. NFA does not believe it is cost-effective to impose a burden on all new entrants to learn this information when the vast majority of them do not appear to be interested in selling or trading these products. Similar considerations apply to updating the Series 30 examination.

We have been coordinating with NASD and are aware that it has requested similar relief. NFA and NASD have the same regulatory aims and, in fact, the regulatory scheme for security futures products anticipates that the two entities will have comparable regulatory requirements. Postponing the testing requirement for both NFA and NASD promotes regulatory comparability and reduces the potential for regulatory arbitrage.

For the reasons discussed above, NFA proposes to postpone the use of the revised exams indefinitely. In the meantime, we will continue to coordinate with NASD and will monitor the level of activity and the amount of interest in security futures products. In particular, we will review the following security futures information on an ongoing basis:

- Volume,
- Who is trading these products,
- Number of associated persons completing the training program,
- Number of accounts approved for trading,
- Nature of those customers,
- Customer complaints, and
- Audit findings that indicate potential regulatory concerns.

engage in all types of non-supervisory activities requiring registration. NFA has other examinations that qualify individuals to engage in more limited activities, but these examinations are all subsets of the Series 3 examination.

[6] The Series 30 examination is NFA's supervisory examination.

[7] 15 U.S.C. 78*o*–3(k).

[8] 15 U.S.C. 78*o*(b)(11).

[9] The Interpretive Notice originally included a deadline of six months after the first security futures contract began trading, but the notice was previously amended, effective May 5, 2003, to eliminate that deadline. *See* Securities Exchange Act Release No. 47825 (May 9, 2003); 68 FR 27128 (May 19, 2003) (SR–NFA–2003–03).

[10] Total volume is based on information reported by the individual futures exchanges and compiled by the Futures Industry Association, and the security futures volume is based on information reported by the Options Clearing Corporation.

[11] NFA's audits of notice-registered broker-dealers show that they are all using the Web-based training program to qualify their employees.

[12] Dual registrants take the training through NASD, and these registrants are not reflected in the futures-only figures discussed in the text. Even when combining futures and securities registrants, however, fewer than 100 individuals have completed the proficiency training in each of the last four months.

As noted above, we have already prepared test questions and can add them to the Series 3 and Series 30 question banks with a minimum of effort. We will be able to update the Series 3 and Series 30 examinations quickly if our review indicates that it is either necessary or cost-effective or if either the SEC or the CFTC so requests. We will, of course, need enough lead-time for test preparation services to update their course materials so that new applicants can study the appropriate material before taking the examination, but the entire process should not take more than four months.

2. Statutory Basis

The rule change is authorized by, and consistent with, section 15A(k) of the Act.[13]

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

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act.

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

NFA did not publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule change.

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

The proposed rule change became effective on December 24, 2003.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Exchange Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission 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–NFA–2003–04. 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 these filings also will be available for inspection and copying at the principal office of NFA. All submissions should refer to File No. SR–NFA–2003–04 and should be submitted by February 10, 2004.

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

Margaret H. McFarland,

Deputy Secretary.

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[13] 15 U.S.C. 78*o*–3(k).

[14] 15 U.S.C. 78s(b)(1).

[15] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49057; File No. SR–Phlx–2003–83]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Equity Floor Brokerage Assessment Fees

January 12, 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 December 29, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') 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 Phlx. On January 9, 2004, the Phlx submitted an amendment to the proposed rule change. 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

The Phlx proposes to amend its schedule of dues, fees, and charges by: (1) Permanently adopting a monthly fee of $250 for each member who derives his/her primary income from floor brokerage business conducted on the *equity floor* of the Exchange; (2) eliminating the *equity floor* brokerage assessment fee of 5 percent of net floor brokerage income, which had been waived through December 31, 2003; and (3) clarifying that the $250 monthly charge is assessed on members who derive their primary income from brokerage business conducted on the equity floor of the Exchange, as opposed to the options or foreign currency floors of the Exchange.[3]

The Exchange previously suspended its equity floor brokerage assessment fee of 5 percent of net floor brokerage income through December 31, 2003 and adopted a monthly fee of $250 for each member who derives his/her primary income from equity floor brokerage business.[4] The Exchange intends to adopt permanently the $250 monthly fee beginning on January 2004 and to eliminate the equity floor brokerage fee of 5 percent beginning on January 1, 2004.

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this proposed rule change, floor brokerage business conducted on the Exchange includes orders that are received on the equity floor of the Phlx, even if those orders are executed on an exchange other than the Phlx. For purposes of the $250 monthly fee, ''primary income'' means that the member derives at least 80 percent of gross income generated from Phlx floor-based activities from his/her brokerage business conducted on the equity floor of the Exchange.

[4] *See* Securities Exchange Act Release No. 46875 (November 21, 2002), 67 FR 72014 (December 3, 2002) (SR–Phlx–2002–70). While the reference to the floor brokerage was updated on the Exchange's summary of equity charges, the additional reference on the QQQ schedule was not similarly updated. Therefore, the QQQ equity fee schedule will also be updated with the proposed changes described herein.