

Special NASD Notice to Members 02-09—Request for Comment

**ACTION REQUESTED BY
FEBRUARY 28, 2002**

Regulatory Fee

**NASD Seeks Member
Comment On Proposed
Changes To NASD's
Regulatory Fee:
Comment Period
Expires February 28,
2002**

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Legal and Compliance
- Senior Management

KEY TOPICS

- NASD By-Laws
- Regulatory Fees

Executive Summary

The National Association of Securities Dealers, Inc. (NASD®) is issuing this *Notice to Members* to solicit comments from members on proposed changes to NASD's regulatory fee. This transaction-based fee, authorized by Section 8 of Schedule A of NASD By-Laws (Section 8), is a significant source of revenue for NASD to fund its regulatory programs. The structure of the fee has not changed since 1983. To account for changes in the markets (including Nasdaq® exchange registration), maintain the scope of the fee, and keep the revenue stream stable, NASD is proposing to amend the definition of the scope of transactions subject to the fee and to enhance its process for receiving the data required to assess the fee accurately. View Attachment A for proposed new text of Section 8(a) of Schedule A to NASD By-Laws.

Questions concerning this *Notice* should be directed to: Department of Finance, at (240) 386-5397 or the Office of General Counsel, at (202) 728-8071.

Action Requested

NASD requests all interested parties to comment on the proposed amendments. Comments must be received by **February 28, 2002**. Members can submit their comments using the following methods:

- mailing in written comments; or
- e-mailing written comments to pubcom@nasd.com.

Written comments should be mailed to:

*Barbara Z. Sweeney
Office of the Corporate Secretary
National Association of
Securities Dealers, Inc.
1735 K Street, NW
Washington, DC 20006-1500*

IMPORTANT NOTE: The only comments that will be considered are those submitted in writing or by e-mail. Before becoming effective, any rule change must be approved by the Securities and Exchange Commission.

Discussion

NASD currently assesses its members a regulatory fee on all transactions reportable through the Automated Confirmation Transaction service (ACT). NASD has not modified this fee structure since 1983. Given the dynamic changes taking place in our industry, the existing pricing structure is becoming outdated. Moreover, NASD needs to modernize the structure of the regulatory fee to take into account Nasdaq's separation from NASD and registration as a national securities exchange.

NASD is proposing amendments to Section 8. The proposed amendments would amend the definition of the scope of transactions subject to the fee, but seek to keep the actual scope of the fee unchanged. The amendments would permit NASD to continue to assess fees on members, either directly for self-clearing members or through clearing firms, for transactions in: (1) any security traded on Nasdaq or a facility of Nasdaq, (2) any Nasdaq-listed security, regardless of where the transaction takes place, and

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(3) any other equity security occurring otherwise than on an exchange. With these changes, the same transactions currently assessed will continue to be assessed in the future.

Specifically, NASD will continue to receive transaction fees on all transactions in Nasdaq securities and on what are currently Nasdaq InterMarket transactions (*i.e.*, over-the-counter trading of NYSE- and Amex-listed securities) after Nasdaq becomes an exchange. NASD also will receive fees on transactions reported to NASD

through the new NASD Alternative Display Facility, as well as any other equity securities transaction that occurs otherwise than on an exchange and is reported to NASD.

Traditionally, the regulatory fee has been assessed on members, either directly for self-clearing members or through clearing firms. The methodology for assessing the fee would remain unchanged. The clearing firm on the “sell” side and the clearing firm on the “buy” side of a transaction will be assessed a regulatory fee

for each transaction report (last sale only, last sale/clearing, or clearing only). If a clearing firm represents both the “sell” and “buy” side, the clearing firm will be assessed a fee for each side of the transaction. For a transaction effected with a non-member customer (*i.e.*, internalized trade), the clearing firm will be assessed one fee for each transaction report. All other transaction reports will be assessed two fees, one for the “sell” side and one for the “buy” side. **For example:**

Transaction Type	Fee Assessment
Transaction between two members that are self-clearing	Self-clearing member on the “sell” side and self-clearing member on the “buy” side of the transaction
Transaction between two introducing members using a single clearing firm	Same clearing firm on the “sell” side and “buy” side of the transaction
Internalized trade by a member that is self-clearing	Self-clearing firm either on the “sell” or “buy” side of the transaction
Internalized trade by introducing member	Clearing firm either on the “sell” or “buy” side of the transaction
Transaction between two introducing members, each using a different clearing firm	Clearing firm on the “sell” side and clearing firm on the “buy” side of the transaction

The ACT system is the current mechanism for assessing the regulatory fee, and NASD will continue to rely on ACT data for transactions that members report through ACT. Because ACT is a proprietary system owned by Nasdaq and some fee-eligible transactions in the future will be reported using facilities other than ACT, NASD must explore other methods of obtaining the data necessary to assess the fee fairly and accurately. This proposal would require members, solely for purposes of assessing the regulatory fee, to report transaction information to NASD

directly or to contract with a reporting agent to report transactions on their behalf.

Although reporting obligations are ultimately the responsibility of the member, fees will continue to be charged directly to the clearing firm responsible for clearing the transaction. In addition, specifics regarding detailed reporting requirements for an alternative NASD reporting system will be communicated at a later date. In this regard, NASD seeks comments on whether there are any ways to minimize the burden on firms that self-report some percentage of their trading activity.

The changes proposed above are intended to stabilize and maintain the existing revenue stream in a neutral manner with minimal impact on our members. As stated above, NASD anticipates that the scope of members’ regulatory fees, in conformity with this proposal, will remain consistent with those paid today. NASD will continue to review its overall fee structure to ensure that its assessment methods are modernized and keep pace with industry developments and practices.

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ATTACHMENT A

Proposed New Text of Section 8(a) of Schedule A to NASD By-Laws

(a) NASD transaction fee. Each member shall be assessed a transaction charge of \$.0625 per 1,000 shares, with a minimum charge per side of \$.025 and a maximum charge per side of \$.46875 for each transaction in:

- i. any security traded on Nasdaq or traded on a facility of Nasdaq;
- ii. Nasdaq securities, regardless of where the transaction takes place; and
- iii. any other equity security occurring otherwise than on an exchange.

Each member is required in conformity with this paragraph and NASD Rules to report all transactions subject to this transaction fee. A member may enter into an agreement with a third party pursuant to which the third party agrees to fulfill the reporting obligations under this paragraph. Notwithstanding the existence of such an agreement, each member remains responsible for complying with the requirements of this paragraph.