July 23, 2002

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: **File No. SR-NASD-2002-98 – Revisions to By-Laws Regarding the Regulatory Fee and the SEC Section 31 Transaction Fee**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-l/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Kathleen A. O'Mara, Office of General Counsel, NASD Regulatory Policy and Oversight Division, at (202) 728-8056; e-mail kathleen.omara@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney
Senior Vice President
and Corporate Secretary

Enclosures

File No. SR-NASD-2002-98
Consists of 33 Pages

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), the National Association of Securities Dealers, Inc. ("NASD") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to Schedule A to NASD By-Laws to amend its member regulatory pricing structure. Under the current structure, three types of fees and assessments are used to fund NASD's member regulatory activities: Regulatory Fee,[1] Personnel Assessment, and Gross Income Assessment.[2] The proposed restructuring is comprised of four important amendments: 1) eliminate the Regulatory Fee; 2) institute a new transaction-based Trading Activity Fee similar to the SEC's Section 31 Fee; 3) increase the rates assessed to member firms under the Personnel Assessment; and 4) implement a simplified three-tiered flat rate for the Gross Income Assessment and eliminate current deductions and exclusions.[3] This rule filing is a part of a package of two separate yet related rule filings[4] being submitted to the SEC as a result of a review of the overall NASD pricing structure[5] and is intended to address the first two amendments to NASD pricing restructuring by eliminating the Regulatory Fee and instituting a new transaction-based Trading Activity Fee.

These fees assessed upon and paid by member firms are used by NASD to fund NASD's member regulatory activities, including the supervision and regulation of members through

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1 The Regulatory Fee is described in Section 8(a) of Schedule A to NASD By-Laws.

2 The Personnel Assessment and Gross Income Assessment are described in Section 1 of Schedule A to NASD By-Laws.

3 The changes resulting from the proposed restructuring would be revenue neutral.

4 See also SR-NASD-2002-99.

5 NASD, in its pricing restructuring review, proposed changes to the Regulatory Fee in Special Notice to Members 02-09 and requested comments. NASD received a number of comments. In response to those comments,

examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretative, and enforcement activities. The amendments to this pricing structure are intended to serve the following purposes: 1) simplify NASD's fee structure; 2) ensure fairness in NASD's fee structure by assessing higher fees to those member firms that require more NASD regulatory services; 3) assess a transaction-based fee in a manner that, unlike the Regulatory Fee, does not influence where members choose to execute trades; 4) reduce the cyclical nature of the current NASD fee structure; and 5) eliminate NASD's reliance on funds generated from the Regulatory Fee on transactions executed through Nasdaq.

The current structure of assessing Regulatory Fees for Nasdaq transactions is inappropriate for three reasons. First, Nasdaq is separating from NASD and registering as a national securities exchange. Second, the current fee structure is out of step with recent changes in the markets, such as the drastic growth in trading volumes, reductions in average trade size, decimalization, and trading no longer remaining exclusive to the listing exchange. Finally, the Regulatory Fee is only assessed against Nasdaq-listed and other transactions that are reported through the Automated Confirmation Transaction (ACT) system,[6] although these fees are used to support member regulatory activities across all markets. In addition, NASD is proposing revisions to NASD By-Laws that are technical in nature to reflect NASD's change in corporate name. For example, references to "the Association" have been replaced with "NASD" throughout the By-Laws.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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the proposal set forth in Special Notice to Members 02-09 is not being pursued. This rule filing replaces the changes previously proposed.

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Schedule A to [the] NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of [the] NASD shall be determined on the following basis.

* * * * *

Section [8] 2 – Member Regulation [Transaction] Fees

[(a) NASD fee on cleared transactions. 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 over-the-counter transaction with another member of the Association reportable through ACT in which the member acts either as an agent or a principal for the purchase and/or sale of equity securities.]

[(b) SEC transaction fee. Each member shall be assessed a SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.]

(a) Recovery of cost of services. NASD shall, in accordance with this section, collect Member Regulation fees that are designed to recover the costs to NASD of the supervision and regulation of members, including performing examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretive, and enforcement activities. NASD shall periodically review these revenues in conjunction with these costs to determine the applicable rate. NASD shall publish notices of the fees and adjustments to the assessment rates applicable under this section.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

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[6] This package of filings proposes rule changes to NASD's Member Regulation fees. It is not related to the

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

(i) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness);

(ii) All other equity securities traded otherwise than on an exchange; and

(iii) All security futures wherever executed.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(i) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

(ii) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

(iii) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(iv) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(v) Transactions which are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3-1 and any approved plan filed thereunder.

NASD may exempt other securities and transactions as it deems appropriate.

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recent Nasdaq filing regarding Nasdaq's Regulatory Fee. See Nasdaq SR-NASD-2002-61.

(3) Fee Rates

(i) Each member shall pay to NASD a fee per share for each sale of a covered security.

(ii) Each member shall pay to NASD a fee per contract for each sale of an option.

(iii) Each member shall pay to NASD a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.

(4) Reporting of Transactions. Members shall report to NASD the aggregate share, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.

Section 3 – SEC Transaction Fee

Each member shall be assessed a SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.

* * * * *

Section [2] 4 – Fees

(a) Each member shall be assessed a fee of $75.00 for the registration of each branch office, as defined in the By-Laws. Each member shall be assessed an annual fee for each branch office in an amount equal to the lesser of (1) $75.00 per registered branch, or (2) the product of $75.00 and the number of registered representatives and registered principals associated with the member at the end of [the Association] NASD's fiscal year.

(b) [The] NASD shall assess each member a fee of:

(1) $85.00 for each initial Form U-4 filed by the member with [the] NASD for the registration of a representative or principal, except that the following discounts shall apply to the filing of Forms U-4 to transfer the registration of representatives or principals in connection with acquisition of all or a part of a member's business by another member:

Number of Registered Personnel Transferred	Discount
1,000--1,999	10%
2,000--2,999	20%
3,000--3,999	30%
4,000--4,999	40%
5,000 and over	50%

(2) $40.00 for each initial Form U-5 filed by the member with [the] NASD for the termination of a registered representative or registered principal, plus a late filing fee of $80.00 if the member fails to file the initial Form U-5 within 30 days after the date of termination;

(3) $20.00 for each amended Form U-4 or Form U-5 filed by the member with [the] NASD;

(4) No change.

(5) $10.00 for each fingerprint card submitted by the member to [the] NASD, plus any other charge that may be imposed by the United States Department of Justice for processing such fingerprint card; and

(6) No Change.

(c) through (k) No Change.

(l)(1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph, a fee of $100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business days. Requests for such extension of time must be submitted to [the Association] NASD at least three business days prior to the due date; and

(2) through (3) No Change.

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Section [3] 5 – Elimination of Duplicate Assessments and Fees

No Change to rule language.

Section [4] 6 – Assessments and Fees for New Members, Resigning Members and Successor Organizations

(a) The assessment of a firm, which is not a member throughout [the Association] NASD's full calendar year from January 1 to December 31, shall be based upon the number of quarter years of membership. The proration for a new member shall include the quarter year in which the member is admitted to membership. The proration for a member which resigns shall include the quarter year in which the member's letter of resignation is received in [the Association] NASD's Executive Office.

(b) A member which is a successor organization to a previous member or members shall assume the unpaid balance of the assessments of its predecessor or predecessors and its next assessment shall be determined, if applicable, upon the assessment data of its predecessors. Such successor member shall not be required to re-register branch offices and personnel of predecessor members or pay registration fees therefor. Whether a member is the successor organization to a

previous member or members shall be determined by [the Association] NASD upon a consideration of the terms and conditions of the particular merger, consolidation, reorganization, or succession. A member which has simply acquired the personnel and offices of another member under circumstances which do not constitute the member a successor oranization shall not be required to assume the unpaid assessments of the other member. Such non-successor member shall be required to re-register the branch offices and personnel acquired from the other member and pay applicable registration fees.

Section [5] 7 – Gross Revenue for Assessment Purposes

No Change to rule language.

Section [6] 8 --Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) There shall be a fee imposed for the filing of initial documents relating to any offering filed with [the] NASD pursuant to the Corporate Financing Rule equal to $500 plus .01% of the proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not exceed $30,500. The amount of filing fee may be rounded to the nearest dollar.

(b) There shall be an additional fee imposed for the filing of any amendment or other change to the documents initially filed with [the] NASD pursuant to the Corporate Financing Rule equal to .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related Rule 462(b) registration statement, or reflected on any Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not exceed $30,500.

Section [7] 9 --Service Charge for Processing Extension of Time Requests

(a) No Change.

(b) The service charge for processing each initial extension of time request and for all subsequent extension of time requests (1) involving the same transaction under Regulation T and/or (2) involving an extension of time previously granted pursuant to Rule 15c3-3(n) shall be $2.00; provided, however, that the service charge shall be $1.00 for extension of time requests filed electronically by members using [the Association] NASD's Automated Regulatory Reporting System.

* * * * *

Section [9] 10 – Subscription Charges for Firm Access Query System (FAQS)

No Change to rule language.

Section [10] 11 – Request for Data and Publications

No Change to rule language.

Section [11] 12 – Reserved

No Change to rule language.

Section [12] 13 – Application and Annual Fees for Member Firms with Statutorily Disqualified Individuals

(a) Any member firm seeking to employ or continuing to employ as an associated person any individual who is subject to a disqualification from association with a member as set forth in Article II, Section 4 of [the Association] NASD's By-Laws shall, upon the filing of an application pursuant to Article II, Section 3, paragraph (d) of [the Association] NASD's By-Laws, pay to [the Association] NASD a fee of $1,500.00. Any member firm whose application filed pursuant to Article II, Section 3, paragraph (d) of [the Association] NASD's By-Laws results in a full hearing

for eligibility in [the Association] NASD pursuant to the Rule 9640 Series, shall pay to [the Association] NASD an additional fee of $2,500.00.

(b) Any member firm continuing to employ as an associated person any individual subject to disqualification from association with a member as set forth in Article II, Section 4 of [the Association] NASD's By-Laws shall pay annually to [the Association] NASD a fee of $1,500.00 when such person or individual is classified as a Tier 1 statutorily disqualified individual, and a fee of $1,000.00 when such person or individual is classified as a Tier 2 statutorily disqualified individual.

Section [13] 14 – Review Charge for Advertisement, Sales Literature, and Other Such Material Filed or Submitted

There shall be a review charge for each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to [the Association] NASD, except for items that are filed or submitted in response to a written request from [the Association] NASD's Advertising Regulation Department issued pursuant to the spot check procedures set forth in [the Association] NASD's Rules as follows: (1) for printed material reviewed, $75.00, plus $10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, $75.00, plus $10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Advertising Regulation Department there shall be a review charge of $500.00 per item plus $25 for each page reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Advertising Regulation Department, unless a

shorter or longer period is agreed to by the Advertising Regulation Department. The Advertising Regulation Department may, in its sole discretion, refuse requests for expedited review.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by NASD's Board of Governors at its meeting on May 23, 2002, which authorized the filing of the rule change with the SEC. This proposal was also reviewed with the Small Firm Advisory Board on May 8, 2002. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of NASD By-Laws permits NASD's Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval. NASD will announce the proposed rule change in a Notice to Members to be published prior to filing with the Commission. The rule change will become operational on September 1, 2002.

(b) Questions regarding this rule filing may be directed to Kathleen A. O'Mara, Assistant General Counsel, NASD, Office of General Counsel, at (202) 728-8056.

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

(a) Purpose

The Regulatory Fee, Personnel Assessment and Gross Income Assessment are currently used to fund NASD's member regulatory activities, including the supervision and regulation of members through examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretive, and enforcement activities. This fee structure has become

outdated, given the separation of NASD from Nasdaq, market developments, and market conditions. The proposed changes are revenue neutral and strive to better align NASD's Member Regulation fees with its functions, efforts, and costs.

The amendments to this pricing structure are intended to serve the following purposes: 1) simplify NASD's fee structure; 2) ensure fairness in NASD's fee structure by assessing higher fees to those member firms that drive regulatory costs; 3) assess a transaction-based fee in a manner that, unlike the Regulatory Fee, does not influence where members choose to execute trades; 4) reduce the cyclical nature of the current NASD fee structure; and 5) eliminate NASD's reliance on funds generated from the Regulatory Fee on transactions executed through Nasdaq.

NASD's membership population varies greatly with regard to factors that drive the cost of required regulation. Historically, member regulatory fees were derived primarily from industry revenues and Nasdaq transactions, while NASD derived minimal fees from the registration of member firm personnel. One key priority during the review process is to link the costs of regulating NASD member firms to the fees generated by the member firms. The costs to regulate member firms include funding for examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretative, and enforcement activities.[7] The proposed amendments to the fee structure should result in a direct link of the cost of regulating a member firm to the fees assessed to and paid by that member firm. Therefore, as before, the three critical factors used to measure regulatory cost for NASD member firms are overall size of the member firm, level of trading activity and number of registered representatives. However, the weight from each as well as the benchmark used to measure industry revenues and transactions has been

[7] NASD's member regulatory revenues have funded its costs on average within 5% over the past five years. In years where shortfalls occurred, prices were not increased. In years where overages occurred, rebates were given to members.

shifted under the proposed amendments to better link the fees assessed under these factors with NASD's costs. This proposal will maintain the current amount of fees received by NASD overall but promotes a more equitable method for assessing fees, thereby creating a level playing field.

Trading Activity Fee

NASD currently assesses a Regulatory Fee upon its members, through approximately 250 clearing and self-clearing firms, on all transactions reported through Nasdaq's Automated Confirmation Transaction (ACT) system. This fee is only assessed against Nasdaq and other over-the-counter transactions, although the revenues are used to support member regulatory activities across all markets. The Regulatory Fee as assessed also has become a factor in determining upon which market members choose to execute trades. NASD, by its fee assessment, should not promote or disadvantage one trading venue over alternative trading venues. Therefore, the proposed rule change would eliminate the existing Nasdaq market-based Regulatory Fee and would institute a transaction-based Trading Activity Fee similar to the SEC's Section 31 Fee. The proposed fee would be assessed on the sell-side of all member transactions in all covered securities regardless of where the trade is executed.

We anticipate that revenue from the collection of the Trading Activity fee will be reduced by approximately 50%. To offset the reduction in the Trading Activity Fee, we have filed a separate rule filing (SR-NASD-2002-99) which increases the rates for the Personnel Assessment. This increase will result in making the Personnel Assessment a more appropriate base to measure the cost of regulating member firms and fund member regulatory activities.

Phase-In

NASD's overall proposal will be revenue neutral to NASD. However, due to the link of revenues to regulatory services provided, there will be impacts, both negative and positive, on

individual member firms. To minimize the impact on member firms, the restructuring of fees will be phased in over a three-year period. Specifically, for the Trading Activity Fee, since the revenue generated from this fee would be reduced by approximately 50%, the fee reduction will be phased in at a rate of 33% in Year 1, 67% in Year 2 and 100% in Year 3.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act, which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which NASD operates or controls. The Trading Activity fee is objectively allocated to NASD members. Moreover, the level of the fee is reasonable because it directly relates to the recovery of the costs of supervising and regulating members.

4. 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.

5. 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 on the current proposal.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3)

The proposed rule change regarding fees and assessments is effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b-4 thereunder,[9] because the proposal is establishing or changing a due, fee, or other charge. The proposed revisions to the Trading Activity Fee will become operational on September 1, 2002.

The proposed rule change regarding the corporate name change to NASD is effective immediately pursuant to Section 19(b)(3)(A)(iii),[10] as it is concerned solely with the administration of the self-regulatory organization.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

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8 15 USC 78s(b)(3)(A)(ii).

9 17 CFR 240.19b-4(f)(2).

10 15 USC 78s(b)(3)(A)(iii).

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD

BY:_____
Barbara Z. Sweeney, Senior Vice President and
Corporate Secretary

Date: July 23, 2002

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2002-98)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASD Relating to the Regulatory Fee and SEC's Section 31 Transaction Fee

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 July 23, 2002, NASD filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as "establishing or changing a due, fee, or other charge" under paragraph (f)(2) of Rule 19b-4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. NASD has also designated the proposed rule change regarding the corporate name change as administrative under Section 19(b)(3)(A)(iii),[4] which also renders the proposal effective upon receipt of this filing by the Commission.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD is proposing to amend Schedule A to NASD By-Laws to amend its member regulatory pricing structure. Under the current structure, three types of fees and assessments are

1 15 USC. 78s(b)(1).
2 17 CFR 240.19b-4.
3 17 CFR § 240.19b-4(f)(2).
4 15 USC 78s(b)(3)(A)(iii).

used to fund NASD's member regulatory activities: Regulatory Fee,[5] Personnel Assessment, and Gross Income Assessment.[6] The proposed restructuring is comprised of four important amendments: 1) eliminate the Regulatory Fee; 2) institute a new transaction-based Trading Activity Fee similar to the SEC's Section 31 Fee; 3) increase the rates assessed to member firms under the Personnel Assessment; and 4) implement a simplified three-tiered flat rate for the Gross Income Assessment and eliminate current deductions and exclusions.[7] This rule filing is a part of a package of two separate yet related rule filings[8] being submitted to the SEC as a result of a review of the overall NASD pricing structure[9] and is intended to address the first two amendments to NASD pricing restructuring by eliminating the Regulatory Fee and instituting a new transaction-based Trading Activity Fee.

These fees assessed upon and paid by member firms are used by NASD to fund NASD's member regulatory activities, including the supervision and regulation of members through examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretative, and enforcement activities. These amendments to this pricing structure are intended to serve the following purposes: 1) simplify NASD's fee structure; 2) ensure fairness in NASD's fee structure by assessing higher fees to those member firms that require more NASD regulatory services; 3) assess a transaction-based fee in a manner that, unlike the Regulatory Fee, does not influence where members choose to execute trades; 4) reduce the cyclical nature of the

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5 The Regulatory Fee is described in Section 8(a) of Schedule A to NASD By-Laws.

6 The Personnel Assessment and Gross Income Assessment are described in Section 1 of Schedule A to NASD By-Laws.

7 The changes resulting from the proposed restructuring would be revenue neutral.

8 See also SR-NASD-2002-99.

9 NASD, in its pricing restructuring review, proposed changes to the Regulatory Fee in Special Notice to Members 02-09 and requested comments. NASD received a number of comments. In response to those comments, the proposal set forth in Special Notice to Members 02-09 is not being pursued. This rule filing replaces the changes previously proposed.

current NASD fee structure; and 5) eliminate NASD's reliance on funds generated from the Regulatory Fee on transactions executed through Nasdaq.

The current structure of assessing Regulatory Fees for Nasdaq transactions is inappropriate for three reasons. First, Nasdaq is separating from NASD and registering as a national securities exchange. Second, the current fee structure is out of step with recent changes in the markets, such as the drastic growth in trading volumes, reductions in average trade size, decimalization, and trading no longer remaining exclusive to the listing exchange. Finally, the Regulatory Fee is only assessed against Nasdaq-listed and other transactions that are reported through the Automated Confirmation Transaction (ACT) system,[10] although these fees are used to support member regulatory activities across all markets. In addition, NASD is proposing revisions to NASD By-Laws that are technical in nature to reflect NASD's change in corporate name. For example, references to "the Association" have been replaced with "NASD" throughout the By-Laws.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Schedule A to [the] NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of [the] NASD shall be determined on the following basis.

* * * * *

[10] This package of filings proposes rule changes to NASD's Member Regulation fees. It is not related to the recent Nasdaq filing regarding Nasdaq Regulatory Fee. See Nasdaq SR-NASD-2002-61.

Section [8] 2 – Member Regulation [Transaction] Fees

[(a) NASD fee on cleared transactions. 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 over-the-counter transaction with another member of the Association reportable through ACT in which the member acts either as an agent or a principal for the purchase and/or sale of equity securities.]

[(b) SEC transaction fee. Each member shall be assessed a SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.]

(a) Recovery of cost of services. NASD shall, in accordance with this section, collect Member Regulation fees that are designed to recover the costs to NASD of the supervision and regulation of members, including performing examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretive, and enforcement activities. NASD shall periodically review these revenues in conjunction with these costs to determine the applicable rate. NASD shall publish notices of the fees and adjustments to the assessment rates applicable under this section.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

(i) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness);

(ii) All other equity securities traded otherwise than on an exchange; and

(iii) All security futures wherever executed.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(i) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

(ii) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

(iii) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(iv) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(v) Transactions which are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3-1 and any approved plan filed thereunder.

NASD may exempt other securities and transactions as it deems appropriate.

(3) Fee Rates

(i) Each member shall pay to NASD a fee per share for each sale of a covered security.

(ii) Each member shall pay to NASD a fee per contract for each sale of an option.

(iii) Each member shall pay to NASD a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.

(4) Reporting of Transactions. Members shall report to NASD the aggregate share, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.

Section 3 – SEC Transaction Fee

Each member shall be assessed a SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.

Section [2] 4 – Fees

(a) Each member shall be assessed a fee of $75.00 for the registration of each branch office, as defined in the By-Laws. Each member shall be assessed an annual fee for each branch office in an amount equal to the lesser of (1) $75.00 per registered branch, or (2) the product of $75.00 and the number of registered representatives and registered principals associated with the member at the end of [the Association] NASD's fiscal year.

(b) [The] NASD shall assess each member a fee of:

(1) $85.00 for each initial Form U-4 filed by the member with [the] NASD for the registration of a representative or principal, except that the following discounts shall apply to the filing of Forms U-4 to transfer the registration of representatives or principals in connection with acquisition of all or a part of a member's business by another member:

Number of Registered Personnel Transferred	Discount
1,000--1,999	10%
2,000--2,999	20%
3,000--3,999	30%
4,000--4,999	40%
5,000 and over	50%

(2) $40.00 for each initial Form U-5 filed by the member with [the] NASD for the termination of a registered representative or registered principal, plus a late filing fee of $80.00 if the member fails to file the initial Form U-5 within 30 days after the date of termination;

(3) $20.00 for each amended Form U-4 or Form U-5 filed by the member with [the] NASD;

(4) No Change.

(5) $10.00 for each fingerprint card submitted by the member to [the] NASD, plus any other charge that may be imposed by the United States Department of Justice for processing such fingerprint card; and

(6) No Change.

(c) through (k) No Change.

(l)(1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph, a fee of $100 for each day that such report is not timely filed. The fee will be assessed for a period not to

exceed 10 business days. Requests for such extension of time must be submitted to [the Association] NASD at least three business days prior to the due date; and

(2) through (3) No Change.

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Section [3] 5 – Elimination of Duplicate Assessments and Fees

No Change to rule language.

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Section [4] 6 – Assessments and Fees for New Members, Resigning Members and Successor Organizations

(a) The assessment of a firm, which is not a member throughout [the Association] NASD's full calendar year from January 1 to December 31, shall be based upon the number of quarter years of membership. The proration for a new member shall include the quarter year in which the member is admitted to membership. The proration for a member which resigns shall include the quarter year in which the member's letter of resignation is received in [the Association] NASD's Executive Office.

(b) A member which is a successor organization to a previous member or members shall assume the unpaid balance of the assessments of its predecessor or predecessors and its next assessment shall be determined, if applicable, upon the assessment data of its predecessors. Such successor member shall not be required to re-register branch offices and personnel of predecessor members or pay registration fees therefor. Whether a member is the successor organization to a previous member or members shall be determined by [the Association] NASD upon a consideration of the terms and conditions of the particular merger, consolidation, reorganization, or succession. A member which has simply acquired the personnel and offices of another member

under circumstances which do not constitute the member a successor organization shall not be required to assume the unpaid assessments of the other member. Such non-successor member shall be required to re-register the branch offices and personnel acquired from the other member and pay applicable registration fees.

Section [5] 7 – Gross Revenue for Assessment Purposes

No Change to rule language.

Section [6] 8 --Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) There shall be a fee imposed for the filing of initial documents relating to any offering filed with [the] NASD pursuant to the Corporate Financing Rule equal to $500 plus .01% of the proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not exceed $30,500. The amount of filing fee may be rounded to the nearest dollar.

(b) There shall be an additional fee imposed for the filing of any amendment or other change to the documents initially filed with [the] NASD pursuant to the Corporate Financing Rule equal to .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related Rule 462(b) registration statement, or reflected on any Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not exceed $30,500.

Section [7] 9 --Service Charge for Processing Extension of Time Requests

(a) No Change.

(b) The service charge for processing each initial extension of time request and for all subsequent extension of time requests (1) involving the same transaction under Regulation T and/or (2) involving an extension of time previously granted pursuant to Rule 15c3-3(n) shall be $2.00; provided, however, that the service charge shall be $1.00 for extension of time requests filed electronically by members using [the Association] NASD's Automated Regulatory Reporting System.

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Section [9] 10 – Subscription Charges for Firm Access Query System (FAQS)

No Change to rule language.

Section [10] 11 – Request for Data and Publications

No Change to rule language.

Section [11] 12 – Reserved

No Change to rule language.

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Section [12] 13 – Application and Annual Fees for Member Firms with Statutorily Disqualified Individuals

(a) Any member firm seeking to employ or continuing to employ as an associated person any individual who is subject to a disqualification from association with a member as set forth in Article II, Section 4 of [the Association] NASD's By-Laws shall, upon the filing of an application pursuant to Article II, Section 3, paragraph (d) of [the Association] NASD's By-Laws, pay to [the Association] NASD a fee of $1,500.00. Any member firm whose application filed pursuant to Article II, Section 3, paragraph (d) of [the Association] NASD's By-Laws results in a full hearing

for eligibility in [the Association] NASD pursuant to the Rule 9640 Series, shall pay to [the Association] NASD an additional fee of $2,500.00.

(b) Any member firm continuing to employ as an associated person any individual subject to disqualification from association with a member as set forth in Article II, Section 4 of [the Association] NASD's By-Laws shall pay annually to [the Association] NASD a fee of $1,500.00 when such person or individual is classified as a Tier 1 statutorily disqualified individual, and a fee of $1,000.00 when such person or individual is classified as a Tier 2 statutorily disqualified individual.

Section [13] 14 – Review Charge for Advertisement, Sales Literature, and Other Such Material filed or Submitted

There shall be a review charge for each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to [the Association] NASD, except for items that are filed or submitted in response to a written request from [the Association] NASD's Advertising Regulation Department issued pursuant to the spot check procedures set forth in [the Association] NASD's Rules as follows: (1) for printed material reviewed, $75.00, plus $10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, $75.00, plus $10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Advertising Regulation Department there shall be a review charge of $500.00 per item plus $25 for each page reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Advertising Regulation Department, unless a

shorter or longer period is agreed to by the Advertising Regulation Department. The Advertising Regulation Department may, in its sole discretion, refuse requests for expedited review.

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II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

(1) Purpose

The Regulatory Fee, Personnel Assessment and Gross Income Assessment are currently used to fund NASD's member regulatory activities, including the supervision and regulation of members through examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretive, and enforcement activities. This fee structure has become outdated, given the separation of NASD from Nasdaq, market developments, and market conditions. The proposed changes are revenue neutral and strive to better align NASD's Member Regulation fees with its functions, efforts, and costs.

The amendments to this pricing structure are intended to serve the following purposes: 1) simplify NASD's fee structure; 2) ensure fairness in NASD's fee structure by assessing higher fees to those member firms that drive regulatory costs; 3) assess a transaction-based fee in a manner

that, unlike the Regulatory Fee, does not influence where members choose to execute trades; 4) reduce the cyclical nature of the current NASD fee structure; and 5) eliminate NASD's reliance on funds generated from the Regulatory Fee on transactions executed through Nasdaq.

NASD's membership population varies greatly with regard to factors that drive the cost of required regulation. Historically, member regulatory fees were derived primarily from industry revenues and Nasdaq transactions, while NASD derived minimal fees from the registration of member firm personnel. One key priority during the review process is to link the costs of regulating NASD member firms to the fees generated by the member firms. The costs to regulate member firms include funding for examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretative, and enforcement activities.[11] The proposed amendments to the fee structure should result in a direct link of the cost of regulating a member firm to the fees assessed to and paid by that member firm. Therefore, as before, the three critical factors used to measure regulatory cost for NASD member firms are overall size of the member firm, level of trading activity and number of registered representatives. However, the weight from each as well as the benchmark used to measure industry revenues and transactions has been shifted under the proposed amendments to better link the fees assessed under these factors with NASD's costs. This proposal will maintain the current amount of fees received by NASD overall but promotes a more equitable method for assessing fees, thereby creating a level playing field.

Trading Activity Fee

NASD currently assesses a Regulatory Fee upon its members, through approximately 250 clearing and self-clearing firms, on all transactions reported through Nasdaq's Automated

Confirmation Transaction (ACT) system. This fee is only assessed against Nasdaq and other over-the-counter transactions, although the revenues are used to support member regulatory activities across all markets. The Regulatory Fee as assessed also has become a factor in determining upon which market members choose to execute trades. NASD, by its fee assessment, should not promote or disadvantage one trading venue over alternative trading venues. Therefore, the proposed rule change would eliminate the existing Nasdaq market-based Regulatory Fee and would institute a transaction-based Trading Activity Fee similar to the SEC's Section 31 Fee. The proposed fee would be assessed on the sell-side of all member transactions in all covered securities regardless of where the trade is executed.

We anticipate that revenue from the collection of the Trading Activity fee will be reduced by approximately 50%. To offset the reduction in the Trading Activity Fee, we have filed a separate rule filing (SR-NASD-2002-99) which increases the rates for the Personnel Assessment. This increase will result in making the Personnel Assessment a more appropriate base to measure the cost of regulating member firms and fund member regulatory activities.

Phase-In

NASD's overall proposal will be revenue neutral to NASD. However, due to the link of revenues to regulatory services provided, there will be impacts, both negative and positive, on individual member firms. To minimize the impact on member firms, the restructuring of fees will be phased in over a three-year period. Specifically, for the Trading Activity Fee, since the revenue generated from this fee would be reduced by approximately 50%, the fee reduction will be phased in at a rate of 33% in Year 1, 67% in Year 2 and 100% in Year 3.

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[11] NASD's member regulatory revenues have funded its costs on average within 5% over the past five years.

(2) Statutory Basis

NASD believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act, which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which NASD operates or controls. The Trading Activity fee is objectively allocated to NASD members. Moreover, the level of the fee is reasonable because it relates to the recovery of the costs of supervising and regulating members.

(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 on the current proposal.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

The proposed rule change [regarding fees and assessments] is effective pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and subparagraph (f)(2) of Rule 19b-4 thereunder,[13] because the proposal is establishing or changing a due, fee, or other charge. This rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(2) thereunder, and will not become operational until September 1, 2002.

In years where shortfalls occurred, prices were not increased. In years where overages occurred, rebates were given to Members.

[12] 15 USC 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b-4(f)(2).

The proposed rule change regarding the corporate name change to NASD is effective immediately pursuant to Section 19(b)(3)(A)(iii),[14] as it is concerned solely with the administration of the self-regulatory organization.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

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[14] 15 USC 78s(b)(3)(A)(iii).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz
Secretary