

more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person, any person directly or indirectly controlling, controlled by, or under common control with the other person, and any investment adviser to the investment company. Applicants state that because the Funds share a common investment adviser, each of the Funds may be deemed to be under common control and affiliated persons of one another. In addition, applicants state that because a Participating Fund may acquire 5% or more of a Central Fund's outstanding voting securities, the Participating Fund and the Central Fund may be deemed to be affiliated persons of each other. As a result, section 17(a) would prohibit the sale of the shares of a central Fund to a participating Fund and the redemption of shares by the Central Fund.

5. Section 17(b) of the Act provides that the Commission may exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the Proposed Transactions satisfy the standards of sections 17(b) and 6(c). Applicants submit that the Proposed Transactions satisfy the standards of sections 17(b) and 6(c). Applicants note that the Proposed Transactions are reasonable and fair and would not involve overreaching because shares of the Central Funds will be purchased and redeemed at net asset value. Applicants state that the participating Funds will retain their ability to invest Uninvested Cash directly in money market instruments in accordance with their investment objectives and policies. Applicants also state that each Central Fund may discontinue selling its shares to the Participating Funds if the central Fund's Board determines that the sale would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered

investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that the Funds, by participating in the Proposed Transactions, and the Adviser, by managing the Proposed Transactions, could be deemed to be participants in a joint arrangement within the meaning of section 17(d) and rule 17d-1.

8. In considering whether to permit a joint transaction under rule 17d-1, the commission considers whether the investment company's participation is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants state that, for the reasons discussed above, the proposed Transactions meet the standards for an order under rule 17d-1.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The shares of the Central Funds sold to and redeemed from the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted pursuant to rule 12b-1 under the Act, or service fee as defined in rule 2830(b)(9) of the NASD Rules of Conduct.

2. Before the next meeting of the Board of a Participating Fund is held for the purpose of voting on an investment advisory contract under section 15 of the Act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory agreement attributable to, managing the Uninvested Cash of the Participating Fund that can be expected to be invested in the Central Funds. Before approving any investment advisory contract under section 15, the Board of the Participating Fund, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for any change in the services provided to the Participating Fund by the Adviser as a result of Uninvested Cash being invested in the Central Funds. The minute books of the Participating Fund will record fully the Board's consideration in approving the advisory contract, including the consideration relating to fees referred to above.

3. Each of the Participating Funds will invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the Participating Fund's aggregate investment in the Central Funds does not exceed 25% of the Participating Fund's total assets. For purposes of this limitation, each Participating Fund will be treated as a separate investment company.

4. Investment in shares of the Central Funds will be in accordance with each Participating Fund's respective investment restrictions and policies as set forth in its prospectus and statement of additional information.

5. No Central Fund shall acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

6. Each Participating Fund and Central Fund that may rely on the requested order will be advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-22214 Filed 8-29-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46417; File No. SR-NASD-2002-99]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Gross Income Assessments and Personnel Assessments

August 23, 2002.

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 24, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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 the NASD. On August 21, 2002, the NASD amended the proposal.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.³

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Schedule A of the NASD By-Laws to adjust its Member Regulation (including Enforcement) pricing structures to: (1) Implement a three-tiered flat rate for the Gross Income Assessment ("GIA") that would be applied to gross FOCUS revenue and would eliminate current deductions and exclusions; and (2) use the Personnel Assessment as a more prominent assessable base to fund Member Regulation activities.

Under the current structure, three types of fees and assessments are used to fund the NASD's member regulatory activities: Regulatory Fee,⁴ Personnel Assessment, and GIA.⁵ 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 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 GIA and eliminate current deductions and exclusions.⁶ This proposed rule change is a part of a package of two separate yet related rule filings⁷ filed with the Commission as a result of a review of the overall NASD pricing structure⁸ and is intended to address the last two amendments to the NASD pricing restructuring by increasing the rates

assessed to member firms under the Personnel Assessment and implementing a simplified three-tiered flat rate for the GIA and eliminating current deductions and exclusions.

These fees assessed upon and paid by member firms are used by the NASD to fund the 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. These amendments to this pricing structure are intended to serve the following purposes: (1) Simplify the NASD's fee structure; (2) ensure fairness in the 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 the NASD's reliance on funds generated from the Regulatory Fee on transactions executed through Nasdaq.

The text of the proposed rule change is below. Proposed new language is in italics; 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.

Section [2] 1—Member Regulation Fees

(a) through (b) No Change.

[Section 1—Assessments]

(c) Each member shall pay an annual *Gross Income Assessment* [composed of:] *equal to the greater of \$1,200.00 or the total of:*

[(a) An amount equal to the greater of \$1,200.00 or the total of:]

(1) [(i)] 0.125% of annual gross revenue [from state and municipal securities transactions] *less than or equal to \$100,000,000.00;*
(2) [(ii)] 0.125% [0.029% of annual gross revenue [from other over-the-counter securities transactions,] *greater than \$100,000,000.00 up to \$1,000,000,000.00; and*

(3) [(iii)] 0.125% [0.014% of annual gross revenue [from U.S. Government securities transactions, and] *greater than \$1,000,000,000.00.*

[(iv) with respect to members whose books, records and financial operations are examined by the NASD, 0.125% of annual gross revenue from securities transactions executed on an exchange.]

Each member is to report annual gross revenue as defined in Section [7] 2 of

this Schedule, for the preceding calendar year.

(d) *Each member shall pay an annual Personnel Assessment equal to:*

(1) *\$75.00 per principal and each representative up to five principals and representatives as defined below;*

(2) *\$70.00 per principal and each representative for six principals and representatives up to twenty-five principals and representatives as defined below; or*

(3) *\$65.00 per principal and each representative for twenty-six or more principals and representatives as defined below.*

[(b) An amount equal to \$10.00 for each principal and each] *A principal or representative is defined as a principal or representative in the member's organization who is registered with [Association] NASD as of December 31st of the [current] prior fiscal year [of the Association, or in the case of a new applicant for membership, for each principal and representative who is registered when the applicant's membership first becomes effective].*

[(c) Members shall receive a credit against the annual assessment on gross income stated in paragraph (a) above as follows:

(1) Portion of assessment > \$5,000—21%

(2) Portion of assessment > \$25,000—3% additional

(3) Portion of assessment > \$50,000—5% additional

(4) Portion of assessment > \$100,000—3% additional]

Section [7] 2—Gross Revenue for Assessment Purposes

[(a)] Gross revenue is defined for assessment purposes as total income as reported on FOCUS form Part II or IIA. [with the following exclusions:]

[(1) Other income unrelated to the securities business;]

[(2) Commodities income;]

[(3) Advisory fees, investment management fees and finders' fees not directly involving the offering of securities; proxy fees; vault service fees; safekeeping fees; transfer fees; and fees for financial advisory services for municipalities;]

[(4) Commissions derived from transactions executed on a registered national securities exchange or a foreign securities exchange (Note 1);]

[(5) Profits or losses derived from transactions of which both the purchase and sale are executed on a registered national securities exchange, including arbitrage (Note 1); and]

[(6) Profits and losses derived from transactions in certifications of deposit

³ See August 21, 2002 letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, and attachments ("Amendment No. 1"). In Amendment No. 1, the NASD provided new proposed rule language that completely replaces and supersedes the original proposed rule language, and made minor technical amendments to the proposed rule change.

⁴ The Regulatory Fee is described in Section 8(a) of Schedule A to the NASD By-Laws.

⁵ The Personnel Assessment and GIA are described in Section 1 of Schedule A to the NASD By-Laws.

⁶ The changes resulting from the proposed restructuring would be revenue neutral.

⁷ The other proposed rule change, which was effective on filing with the Commission, eliminated the Regulatory Fee and implemented a Trading Activity Fee, and adjusted the placement of the SEC Section 31 Transaction Fee in Schedule A. See Securities Exchange Act Release No. 46416 (August 23, 2002) (SR-NASD-2002-98).

⁸ The NASD, in its pricing restructuring review, proposed changes to the Regulatory Fee in *Special Notice to Members 02-09* and requested comments. The 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 proposed rule change replaces the changes previously proposed.

and commercial paper, which is defined to include drafts, bills of exchange, and bankers acceptances.]

[(b) In addition, members may deduct:]

[(1) Any commissions, concessions or other allowances paid to another member in connection with the execution or clearance of transactions included in reported revenue. For example, a member acting as a clearing agent for another member shall deduct net amounts allowed to the non-clearing member; and]

[(2) 25% of gross wrap fees charged to and received from customers and paid or allocated to investment managers or advisors.]

[(3) Interest and dividend expense but not in excess of related interest and dividend revenue or, alternatively, the member may deduct 40% of interest earned by the member on customer securities accounts; provided, however in addition, the member may deduct the first \$50,000 of net interest and dividend revenue.]

[Note 1: Income not subject to exclusion for members for whom the NASD is the designated examining authority.]

* * * * *

Section [8] 7—Fees for Filing Documents Pursuant to the Corporate Financing Rule

No Change to rule language.

Section [9] 8—Service Charge for Processing Extension of Time Requests

No Change to rule language.

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

No Change to rule language.

Section [11] 10—Request for Data and Publications

No Change to rule language.

Section [12] 11—Reserved

No Change to rule language.

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

No Change to rule language.

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

No Change to rule language.

* * * * *

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 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. The Association 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 GIA currently are used to fund the 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. The proposed changes are revenue neutral and strive to better align the NASD's member regulatory fees with its functions, efforts and costs.

The amendments to this pricing structure are intended to serve the following purposes: (1) Simplify the NASD's fee structure; (2) ensure fairness in the 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 existing 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 the NASD's reliance on funds generated from the Regulatory fee on transactions executed through Nasdaq.

The 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 the NASD derived minimal fees from the registration of member firm personnel. Analysis revealed that the number of registered persons serves as an effective proxy in determining the frequency of certain types of regulatory efforts, and therefore regulatory costs. 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 the NASD's costs.

Gross Income Assessment (GIA)

The current GIA is assessed on a member firm's gross FOCUS revenues less various exclusions and deductions. The allowable exclusions and deductions have grown to the point where they totaled over 60% of gross FOCUS revenues in 2001. Member firms are assessed 0.125% on the net assessable FOCUS revenue that converts into a .0355% effective rate on gross FOCUS revenues. Member firms having gross FOCUS revenues less than or equal to \$960,000 are assessed at a flat rate of \$1,200.

Under the current fee structure for the GIA, the amount of revenue received by the NASD is subject to unpredictable swings due to deductions and exclusions taken by member firms. The exclusions and deductions include interest expense, investment management fees, exchange revenue, and unrelated revenues. In 2001, gross FOCUS revenue increased by 30%, yet the total assessment only increased by 15% due to a disproportionate increase in exclusions and deductions, primarily in interest expense. The proposed amendments to the pricing structure are intended to improve the standardization, consistency and uniformity in which the GIA is assessed on and paid by member firms.

The proposed solution is similar to that employed by the New York Stock Exchange. The rate would be applied to the gross FOCUS revenue with deductions and exclusions eliminated. Given the diversity and size of NASD member firms, the NASD proposes the following three-tiered rate structure:

Revised Rate Structure:	
Gross FOCUS Revenue < or = to \$960 Thousand	
Assessed Flat Fee of	\$1,200
Gross FOCUS Revenue > \$960 Thousand	
Tiered Rate on Gross FOCUS Revenue:	
Over \$1 Billion	0.014%
> \$100 Million to \$1 Billion	0.029%
< or = to \$100 Million	0.125%
Effective Rates at FOCUS Revenue Category Levels:	
\$10 Billion	0.017%
\$1 Billion	0.039%
\$250 Million	0.067%
\$100 Million	0.125%

Small member firms with gross FOCUS revenues less than or equal to \$960,000 would continue to be assessed a flat fee of \$1,200. As outlined above, all other member firms will be assessed a tiered rate based on their gross FOCUS

revenues. The higher the gross FOCUS revenue, the lower the effective rate.

This type of rate structure will allow for greater equity among member firms because each member firm will be assessed on the same revenue base. Additionally, the new rate structure will simplify the process because member firms will report only gross FOCUS revenue as currently done on FOCUS Form Part II or IIA and will no longer need to report deductions and exclusions.

Personnel Assessment

The current Personnel Assessment is a minimal fee of \$10 per registered representative that generates only 4% of total member regulatory fees and inadequately supports the NASD's member regulatory costs. The number of registered representatives per firm is a fair and representative measure of the cost of member regulatory activities, yet has not been used as a greater basis for the assessment of fees. Additionally, based on the current fee structure, some firms with a disproportionately large number of registered representatives yet lower FOCUS revenues are avoiding the payment of the cost of regulating member firms through the payment of NASD fees.

As part of this proposal, the Personnel Assessment will become a more prominent assessable base for the funding of member regulatory activities. Given the vast size differential of our member firms, the NASD proposes the following three-tiered rate structure:

Revised Rate Structure:

Tiered-rate on registered reps:	
> 25 registered reps	\$65.00
6 to 25 registered reps	\$70.00
1 to 5 registered reps	\$75.00

Phase-In

The NASD's overall proposal will be revenue neutral to the NASD. However, due to the link of revenues to regulatory services provided, there will be effects, 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 GIA, any negative or positive variances experienced by firms will be phased in at a rate of 33% in Year 1, 67% in Year 2 and 100% in Year 3. Also, the Personnel Assessment, which will be increased to cover the reduction in the Trading Activity Fee, will be phased-in at a rate of 33% in Year 1, 67% in Year 2 and 100% in Year 3. Based upon a review of the majority of the NASD's small member firms, the net

increase of fees will average approximately \$100 in Year 1.

Additionally, the NASD will continue to reduce these fees through rebates to the member firms in connection with the proceeds raised from the sale of Nasdaq. The NASD will continue to use a portion of these rebates to eventually reduce the minimum GIA amount from \$1,200 to \$600. The remaining balance and any additional discretionary rebates will be used to further reduce any negative impact experienced by the member firms as a result of this proposal.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁹ which requires, among other things, that the 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 the NASD operates or controls. Moreover, the NASD believes the level of the fee is reasonable because it relates to the recovery of the costs of supervising and regulating members. The NASD believes that the majority of the small member firms would not be impacted by the change in the GIA's structure since over half of the NASD member firm population has gross FOCUS revenues of less than \$960,000.

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

The 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.¹⁰

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. 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 number SR-NASD-2002-99 and should be submitted by September 20, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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⁹ 15 U.S.C. 78o-3(b)(5).

¹⁰ The NASD will implement the new fees on January 1, 2003, provided the Commission approves this proposed rule change.

¹¹ 17 CFR 200.30-3(a)(12).