

with a mechanism, if necessary, to attract contra-side interest in any stock.

The Commission finds it appropriate for the BSE to provide for procedures for the handling of MOC orders in market conditions when the NYSE's Rule 80A is in effect. The Commission believes that the rule change clearly informs market participants of the manner in which MOC order can be placed when the NYSE's Rule 80A is in effect. The Commission continues to believe that the provisions of NYSE Rule 80A provide a useful means of addressing market volatility.<sup>14</sup>

The Commission is approving the amendments to the BSE's auxiliary closing procedures for expiration days and non-expiration days as part of the existing pilot program that expires on October 31, 1995.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. This will permit the proposed amendments to be effective simultaneously with the NYSE's amendments to the procedures for handling MOC orders.<sup>15</sup> In addition, the procedures the BSE proposes to use are identical to NYSE procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.<sup>16</sup>

It is therefore ordered, pursuant to Section 19(b)(2)<sup>17</sup> that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 95-14190 Filed 6-8-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35801; File No. SR-NASD-95-12]

**Self-Regulatory Organizations; Notice of Filing Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Advertising and Sales Literature Filing and Review Requirements Under the Rules of Fair Practice and the Government Securities Rules**

June 2, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 10, 1995,<sup>1</sup> 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The NASD is herewith filing a proposed rule change to Article III, Section 35 of the Rules of Fair Practice and Section 8 of the Government Securities Rules. Proposed new language is italicized and proposed deletions are bracketed.

ARTICLE III

Rules of Fair Practice

\* \* \* \* \*

Communications With the Public

Sec. 35.

(a) Definitions

(1) Advertisement—For purposes of this section and any interpretation thereof, "advertisement" means material published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, telephone directories (other than listings), *electronic* or other public media.

(2) Sales literature—For purposes of this section and any interpretation thereof, "sales literature" means any written or *electronic* communication distributed or made generally available to customers or the public, which communication does not meet the

foregoing definition of "advertisement." Sales literature includes, but is not limited to, circulars, research reports, market letters, performance reports or summaries, form letters, *telemarketing scripts*, seminar texts, and reprints or excerpts of any other advertisement, sales literature or published article.

(b) Approval and Recordkeeping

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or *filing with the NASD*, by a registered principal [(or his designee)] of the member.

\* \* \* \* \*

(c) Filing Requirements and Review Procedures

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of Subsection (c)(2) of this section, and public direct participation programs (as defined in Article III, Section 34 of the Rules of Fair Practice) shall be filed with the Association's Advertising Regulation Department within 10 days of first use or publication by any member. *The member must provide with each filing the actual or anticipated date of first use.* Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any members filing any investment company advertisement or sales literature pursuant to this Subsection that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.

(2) Advertisements concerning collateralized mortgage obligations registered under the Securities Act of 1933, and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate rankings or comparisons of the investment company with other investment companies where the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate, shall be filed with the Association's Advertising Regulation Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if

<sup>14</sup> See Securities Exchange Act Release No. 29854 (October 24, 1991), 56 FR 55963.

<sup>15</sup> See Release No. 35589, supra note 11.

<sup>16</sup> No comments were received in connection with the most recent proposed rule change which modified the NYSE procedures. See Release No. 35589, supra note 11.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> The proposed rule change was initially submitted on April 10, 1995, but was amended on May 10, 1995, in order to make technical changes and clarify rule language.

changed [or expressly disapproved] by the Association, shall be withheld from publication or circulation until any changes specified by the Association has been made or, [in the event of disapproval] *if expressly disapproved*, until the advertisement has been refiled for, and has received, Association approval. *The member must provide with each filing the actual or anticipated date of first use.* Any member filing any investment company advertisement or sales literature pursuant to this Subsection shall include a copy of the data, ranking or comparison on which the ranking or comparison is based.

(3) (A) Each member of the Association which has not previously filed advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this section) shall file its initial advertisement with the Association's Advertising Department at least ten days prior to use and shall continue to file its advertisements at least ten days prior to use for a period of one year. *The member must provide with each filing the actual or anticipated date of first use.*

(B) Each member which, on the effective date of this section, had been filing advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this section) for a period of less than one year shall continue to file its advertisements, at least ten days prior to use, until the completion of one year from the date the first advertisement was filed with the Association or such exchange.]

\* \* \* \* \*

(4) Notwithstanding the foregoing provisions, any District Business Conduct Committee of the Association, upon review of a member's advertising and/or sales literature, and after determining that the member has departed and there is a reasonable likelihood that the member will again depart from the standards of this section, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Association's Advertising Department and/or the District Committee, at least ten days prior to use. *The member must provide with each filing the actual or anticipated date of first use.*

The Committee shall notify the member in writing of the types of

material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearings shall be held in reasonable conformity with the hearing and appeal procedures of the Code of Procedure.

\* \* \* \* \*

(d) Standards Applicable to Communications With the Public

\* \* \* \* \*

(2) Specific Standards

In addition to the foregoing general standards, the following specific standards apply:

\* \* \* \* \*

(B) Recommendations: In making a recommendation, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose [the price at the time the recommendation is made, as well as] any of the following situations which are applicable:

(i) That the member usually makes a market in the securities being recommended, or in the underlying security if the recommended security is an option, and/or that the member or associated persons will sell to or buy from customers on a principal basis;

(ii) That the member and/or its officers or partners own options, rights or warrants to purchase any of the securities of the issuer whose securities are recommended, unless the extent of such ownership is nominal;

(iii) That the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last 3 years.

The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation. *Recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.*

A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation was to be

acted upon, and indicate the general market conditions during the period covered.

Also permitted is material which does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in the previous paragraph. Neither the list of recommendations, nor material offering such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.

\* \* \* \* \*

GOVERNMENT SECURITIES RULES

\* \* \* \* \*

Communications With the Public

Sec. 8

(a) Definitions

(1) Advertisement—For purposes of this section and any interpretation thereof, "advertisement" means material published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, telephone directories (other than routine listings), *electronic* or other public media.

(2) Sales Literature—For purposes of this section and any interpretation thereof, "sales literature" means any written or *electronic* communication distributed or made generally available to customers or the public that does not meet the foregoing definition of "advertisement." Sales literature includes, but is not limited to, circulars, research reports, market letters, performance reports or summaries, form letters, standard forms of option worksheets, *telemarketing scripts*, seminar texts, and reprints or excerpts of any other advertisement, sales literature, or published article.

(b) Approval and Recordkeeping

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or *filing with the NASD*, by a registered principal [(or designee)] of the member.

\* \* \* \* \*

## (c) Filing Requirements and Review Procedures

(1) Members shall file advertisements for review with the Association's Advertising Regulation Department as follows:

(A) Advertisements concerning government securities (as defined in Section 3(a)(42) of the Securities Exchange Act of 1934) other than collateralized mortgage obligations shall be filed by members with the Association's Advertising Department within 10 days of first use or publication; and

(B) Advertisements concerning collateralized mortgage obligations shall be filed with the Association's Advertising Regulation Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed [or expressly disapproved] by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, [in the event of disapproval] *if expressly disapproved*, until the advertisement has been refiled for, and has received, Association approval. *The member must provide with each filing concerning government securities, including collateralized mortgage obligations, the actual or anticipated date of first use.*

(2) Each member of the Association that has not previously filed advertisements with the Association shall file its initial advertisement concerning government securities with the Association's Advertising Department at least 10 days prior to use and shall continue to file its advertisements concerning government securities at least 10 days prior to use for a period of one year. *The member must provide with each filing the actual or anticipated date of first use.*

(3) Notwithstanding the foregoing provisions, any District Business Conduct Committee of the Association, upon review of a member's government securities advertising and/or sales literature, and after determining that the member will again depart from the standards of this section, may require that such member file all government securities advertising and/or sales literature, or the portion of such member's material that is related to any specific types or classes of securities or services, with the Association's Advertising Department and/or the District Committee, at least 10 days prior to use. *The member must provide with each filing the actual or anticipated date of first use.*

The Committee shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearings shall be held in reasonable conformity with the hearing and appeal procedures of the Code of Procedure.

\* \* \* \* \*

## (d) Standards Applicable to Communications With the Public

\* \* \* \* \*

## (2) Specific Standards

In addition to the foregoing general standards, the following specific standards apply:

\* \* \* \* \*

(B) Recommendations: In making a recommendation, whether or not labeled as such, a member must have a reasonable basis for the recommendation made and must disclose [the price at the time the recommendation is made, as well as] any of the following situations which are applicable:

\* \* \* \* \*

## 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 test of these statements may be examined at the places specified in Item IV below. The 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

Article III, Section 35 of the Rules of Fair Practice and Section 8 of the Government Securities Rules ("Rules") govern members' communications with the public regarding general securities and government securities, respectively. The Rules contain definitions, internal approval and recordkeeping requirements, filing requirements and standards applicable to the content of such communications. The NASD is

proposing to modify certain sections of the Rules in order to revise the definitions of, and the internal approval and timeliness of filing requirements for, advertising and sales literature and the scope of rules relating to "Recommendations." The revisions will codify existing rule interpretations, rectify inconsistencies, and clarify issues which have been the source of member misunderstanding. It is not anticipated that these proposals will create additional regulatory burdens on the membership.

The NASD is proposing to modify the definitions of "Advertisement" and "Sales Literature" in Article III, Subsections 35(a) (1) and (2) of the Rules of Fair Practice and Subsections 8(a) (1) and (2) of the Government Securities Rules to include electronic messages. The NASD has consistently applied its standards for communications with the public to electronic messages sent via computer. The inclusion of the term "electronic" in the definition of "Advertisement" is intended to apply to communications available to all network subscribers including items displayed over network bulletin boards. The inclusion of the term "electronic" in the definition of "Sales Literature" is intended to apply to messages sent directly to individuals or targeted groups. The NASD believes that the proposed rule change will reduce member confusion by clarifying that the requirements set forth in these sections are applicable to such electronic communications.

The NASD is proposing to further modify the definition of "Sales Literature" in Article III, Subsection 35(a)(2) of the Rules of Fair Practice and Subsection 8(a)(2) of the Government Securities Rules to include telemarketing scripts. Members often file for review with the Advertising Regulation Department telemarketing scripts intended to be read to prospects and existing customers or delivered electronically through a telemarketing service. These scripts differ from other forms of telephone prospecting and customer contact in that they are followed without variation by the caller or callers. The NASD considers these scripts as comparable to a form letter delivered orally. The inclusion of telemarketing scripts in the definition will reduce confusion among members and promote more consistent application of the rules.

The NASD is proposing to modify Article III, Subsection 35(b)(1) of the Rules of Fair Practice and Subsection 8(b)(1) of the Government Securities Rules to require that each item of advertising and sales literature be

approved internally prior to use only by a registered principal. Currently, the Rules allow a registered principal to perform the review or to delegate this responsibility to a designee. The rules contain no guidelines regarding the level of experience, expertise, or qualification that the designee must have in order to assume this compliance responsibility. However, Part II of Schedule C to the By-Laws sets forth the categories and requirements of registered principals and subsection (2)(g)(ii)c.3 thereunder states definitively that a Limited Principal-General Securities Sales Supervisor shall not be qualified to perform final approval of advertising. Since the internal approval rule currently does not address the qualifications necessary for the designee, individuals less qualified than principals are being designated by registered principals to provide internal approval. The proposed amendment eliminates the potential for inconsistent internal standards applied by different members regarding the review of communications with the public.

The NASD is also proposing to modify Article III, Subsection 35(b)(1) of the Rules of Fair Practice and Subsection 8(b)(1) of the Government Securities Rules to require that advertising and sales literature be approved internally by members prior to being filed with the NASD Advertising Regulation Department. The current rules for review of advertisements and sales literature require that the material be approved internally by the member prior to first use, but do not require that material be approved internally by the member before being filed with the NASD. Members have verified to the NASD that their internal review sometimes occurs after the NASD response is received. This practice places the NASD in the role of providing the initial compliance review, a role that should, in the NASD's view, be maintained within the member firms' compliance departments. The proposed amendment will ensure that members are accountable for submitting material which is in reasonable conformity to the applicable rules. It is anticipated that this amendment will reduce the amount of re-filing requested by the Advertising Regulation Department due to extensive deficiencies in the original filings.

The NASD is proposing to modify Article III, Subsections 35(c)(1), (2), (3)(A) and (4) to the Rules of Fair Practice and Subsections 8(c)(1)(A) and (B), (c)(2) and (c)(3) of the Government Securities Rules to require that, for filing requirements that have timeliness requirements, the member provide the

actual or expected date of first use or publication of the item filed. Currently the rules provide that material be filed within ten days of first use or ten days prior to use, depending on the status of the firm and the subject matter of the communication. For example, the rules require that firms which have never filed material with the Advertising Regulation Department shall file their advertisement at least ten days prior to first use and continue to file their advertisements ten days prior to use for a period of one year from the date of first filing. For advertisements and sales literature for registered investment companies, direct participation programs and government securities, the rules currently require that they be filed on an ongoing basis within ten days of first use. Advertisements for collateralized mortgage obligations must always be filed at least ten days prior to use.

Under these guidelines, members file communications for review in various stages of a document's production. These stages range from first drafts to finished products. It is often impossible to determine the date of first use unless the information is provided voluntarily by the member or requested by the NASD reviewer. Because the NASD Advertising Regulation Department reviews approximately 3500 to 4000 items per month, it is impractical to routinely contact members and request they provide the date of use for each piece filed. Consequently, the NASD is unable to determine systematically if the member firms are meeting their filing obligations. The proposed amendment will enable the NASD to enforce the existing rules more effectively and consistently.

The NASD is proposing to delete Article III, Subsection 35(c)(3)(B) to the Rules of Fair Practice. This provision was always intended to be temporary in that it applied the pre-filing requirements of Subsection 35(c)(3)(A) for a period of one year to those firms that had been filing advertisements for less than one year when the pre-filing provisions became effective. The provision ensured that such firms continued to pre-file advertisements for a period of at least one year from the date their first advertisements were filed. As such, the provision became inapplicable exactly one year from its effective date.

The NASD is proposing to modify Article III, Subsection 35(d)(2)(B) to the Rules of Fair Practice and Subsection 8(d)(2)(B) to the Government Securities Rules to clarify that the requirement to disclose the price of the security applies only to recommendations for corporate

equities. The literal language of the current rule arguably would require price disclosure with respect to all securities products in all communications deemed to be recommendations. However, the NASD has a longstanding practice of not requiring price disclosure on communications for securities products other than corporate equities. The proposed amendment specifies that the price requirement applies only to communications on behalf of corporate equities and deletes the price requirement entirely from the Government Securities Rules. In proposing this modification, the NASD has considered that both the Rules of Fair Practice and the Government Securities Rules prohibit members from omitting material information in communications with the public. Therefore, if inclusion of the price of the security is necessary to make the material not misleading, then the member is required to include the price as applicable.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>2</sup> which require that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of customers and the public interest in that the proposed rule change codifies existing rule interpretations, rectifies inconsistencies and clarifies issues which have been the source of member misunderstanding regarding the filing, review and approval of advertising and sales literature, and improves the efficiency of the advertising filing, review and approval process without creating additional regulatory burdens on the membership.

*(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.

**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**

<sup>2</sup> 15 U.S.C. § 78o-3(b)(6).

**Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds no longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approved such proposed rule change, or

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

#### 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 the NASD. All submissions should refer to file number SR-NASD-95-12 and should be submitted by June 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 95-14191 Filed 6-8-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35795; File No. SR-NASD-95-23]

#### Self-Regulatory Organizations; Notice of Filing and Partial Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Gross Assessments and Continuing Education Fees

June 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 23, 1995, 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. The NASD has designated the part of this proposal for continuing education fees as on establishing or changing a fee under § 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The NASD is, however, requesting that the fee be implemented on July 1, 1995.<sup>1</sup> 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

The NASD is proposing a rule change to amend Sections 1 and 2 to Schedule A of the By-Laws to clarify gross income filing requirements and to assess a fee for continuing education requirements. Proposed new language is italicized; proposed deletions are in brackets.

##### Schedule A

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

##### Assessments

###### Sec. 1.

Each member shall pay an annual assessment composed of:

(a) An amount equal to the greater of \$850.00 or the total of:

(i) 0.125% of the annual gross *revenue* [income] from state and municipal securities transactions,

(ii) 0.125% of annual gross *revenue* [income] from other over-the-counter securities transactions,

(iii) 0.125% of the annual gross *revenue* [income] from U.S. Government securities transactions, and

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

<sup>1</sup> The proposal was originally filed with the Commission on May 15, 1995. The NASD subsequently submitted Amendment No. 1 to the filing which amends the proposed rule to publish under Section 19(b)(2) of the Act that portion of the proposed rule change that amends Section 1 to Schedule A to the NASD By-Laws and to publish under Section 19(b)(3)(A)(ii) of the Act that portion of the proposed rule change that amends Section 2 to Schedule A of the NASD By-Laws. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated May 22, 1995.

Each member is to report annual gross *revenue* [income] as defined in Section 5 of this Schedule, for [either] the preceding calendar year. [or the member's fiscal year ending in the preceding calendar year. The 12-month reporting period must be in accordance with the member's previously written election. New members will be given an opportunity to make this election after they become members. Members wishing to change their reporting year must advise the Association, in writing, of the change in dates and provide a reason for the change (i.e., merger or other organizational change and/or change in tax or fiscal year). If the change is from a fiscal year to the calendar year or to a new fiscal year ending at a later date, the member is to provide two reports of gross income covering the 12 consecutive months of both the new and old years. In such case, the assessment in the year of change will be the greater amount determined from the two reports. If the change is from a calendar year or a fiscal year to a new fiscal year ending at an earlier date, the member is to report gross income for the 12 consecutive months to the end of its new fiscal year.]

\* \* \* \* \*

##### Fees

###### Sec. 2.

\* \* \* \* \*

(k) *There shall be a session fee of \$75.00 assessed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to the provisions of Part XII of Schedule "C" of the By-Laws.*

\* \* \* \* \*

#### 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 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*

Recently, the NASD amended Section 5 of Schedule A to the By-Laws to

<sup>3</sup> 17 CFR 200.30-3(a)(12).