

specialist or other members to interfere with a cross while providing price improvement of only \$.01 to a portion of the cross. This may result in a perception that specialists or Registered Traders will break up a proposed clean cross transaction by trading for their own accounts at a minimally improved price ahead of a public customer on the other side of the cross. This perception could encourage a loss of crossing activity to other markets.

Amex clean cross procedures will continue to preserve auction market principles by providing the possibility of price improvement (because members must follow Amex Rule 151 crossing procedures), and by requiring that members trade with other market interest having time priority at that price before trading with any part of the cross transaction. In addition, the Exchange believes the proposal will enhance competition among markets in the execution of agency crosses.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)⁵ of the Act in general and furthers the objectives of Section 6(b)(5)⁶ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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 Exchange 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.

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 Amex. All submissions should refer to file number SR-Amex-2002-89 and should be submitted by January 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47106; File No. SR-NASD-2002-99]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc., and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to Gross Income Assessments and Personnel Assessments

December 30, 2002.

I. Introduction

On July 24, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to modify 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 existing deductions and exclusions; (2) use the Personnel Assessment as a more prominent assessable base to fund Member Regulation activities. On August 21, 2002, the NASD amended the proposal.³ The proposed rule change, as modified by Amendment No. 1, was published for notice and comment in the **Federal Register** on August 30, 2002.⁴

The Commission received 13 comment letters on the proposed rule change.⁵ On November 29, 2002, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 ("Division") Commission, 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 rest of the filing.

⁴ See Securities Exchange Act Release No. 46417 (August 23, 2002), 67 FR 55893.

⁵ August 19, 2002 letter from Mary Yeager, Assistant Secretary, New York Stock Exchange, Inc. ("NYSE") to Jonathan G. Katz, Secretary, Commission ("NYSE Letter"); September 17, 2002 letter from Lanny A. Schwartz, Philadelphia Stock Exchange, Inc. ("Phlx") to Jonathan G. Katz, Secretary, Commission ("Phlx Letter"); September 18, 2002 letter from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange ("CBOE") to Jonathan G. Katz, Secretary, Commission ("CBOE Letter"); September 19, 2002 letter from Thomas W. Sexton, Vice President and General Counsel, National Futures Association

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⁵ 15 U.S.C. 78(f)(b).

⁶ 15 U.S.C. 78(f)(b)(5).

⁷ 17 CFR 200.30-3(a)(12).