

December 29, 2003

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-2003-201 – Amendments to Schedule A of the NASD By-Laws to Adjust the Trading Activity Fee Rate and Add TRACE-Eligible and Municipal Securities as Covered Securities

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2" 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, Regulatory Policy and Oversight, NASD, 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,

Marc Menchel
Executive Vice President

Enclosures

File No. SR-NASD-2003-201
Consists of 18 Pages
December 29, 2003

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 amend Schedule A of the NASD By-Laws to adjust the Trading Activity Fee (“TAF”) rate for covered equity securities; to reduce the maximum per trade charge on covered equity securities; and to assess the TAF on corporate debt securities that, under the Trade Reporting and Compliance Engine (“TRACE”) rules, are defined as “TRACE-eligible securities” and municipal securities subject to the Municipal Securities Rulemaking Board (“MSRB”) reporting requirements. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Schedule A to NASD By-Laws

* * * * *

Section 1-- Member Regulatory Fees

(a) No Change.

(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:

(A) All exchange registered securities wherever executed ([other than bonds, debentures, and other evidence of indebtedness]except debt securities that are not TRACE-eligible securities);

(B) All other equity securities traded otherwise than on an exchange; [and]

(C) All security futures wherever executed[.];

(D) All TRACE-eligible securities wherever executed; and

(E) All municipal securities subject to MSRB reporting requirements.

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

(A) through (I) No Change.

(J) Transactions in security futures held in futures accounts; [and]

(K) Transactions in exchange listed options effected by a member when NASD is not the designated options examining authority for that member[.]; and

Paragraph (b)(2)(K) becomes effective on January 1, 2004 in accordance with amendment 4 to SR-NASD-2002-148.

(L) Proprietary transactions in TRACE-eligible securities by a firm that is a member of both NASD and a national securities exchange and that are effected in the firm's capacity as an exchange specialist or exchange market maker.

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

(3) Fee Rates*

(A) through (C) No Change.

(D) Each member shall pay to NASD a fee per bond for each sale of a covered TRACE-eligible security and/or municipal security.

* Trading Activity Fee rates are as follows: Each member shall pay to NASD [~~\$0.0001~~]\$0.000075 per share for each sale of a covered equity security, with a maximum charge of [~~\$10~~]\$3.75 per trade; \$0.002 per contract for each sale of an option; [and] \$0.04 per contract for each round turn transaction of a security future; and \$0.00075 per bond for each sale of a covered TRACE-eligible and/or municipal security, with a maximum charge of \$0.75 per trade. In addition, if the execution price for a covered security is less than the Trading Activity Fee rate (~~[\$0.0001]~~\$0.000075 for covered equity securities, \$0.002 for covered option contracts, or \$0.04 for a security future) on a per share, per contract, or round turn transaction basis, then no fee will be assessed.

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

(c) through (d) No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Conflict Committee of the Board of Governors of NASD at its meeting on November 13, 2003. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval.

NASD will announce the effective dates of the proposed rule change in a Notice to Members to be published following Commission approval. The effective date of the TAF rate reduction will be the first day of the month following 30 days after Commission approval. The effective date of the assessment of fees on TRACE-eligible securities and municipal securities will be the first day of the month following six months after Commission approval. NASD is proposing an effective date six months after SEC approval to allow member firms time to make programming changes to reflect the addition of two new categories of covered securities.

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

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

(a) Purpose

Background

On July 24, 2002, NASD filed with the SEC proposed changes to the Gross Income Assessment (“GIA”), Personnel Assessment (“PA”),¹ and Regulatory Fee.² Those fees are used to fund NASD’s member regulatory activities, including the regulation of members through examinations, processing of membership applications, financial monitoring, policymaking, rulemaking, and enforcement activities. The changes: (1) eliminated the Regulatory Fee; (2) instituted a new transaction-based TAF applied across all markets, similar to the SEC’s Section 31 Fee; (3) increased the rates assessed to member firms under the PA; and (4) implemented a simplified three-tiered flat rate for the GIA whereby deductions and exclusions would be eliminated.

The new member regulatory structure, as approved by the SEC,³ is revenue neutral to NASD and designed to better align NASD’s regulatory fees with its functions, efforts, and costs. To ensure a member regulatory structure that is revenue neutral to NASD, NASD committed to analyze rates, volumes, and regulatory responsibilities periodically to

¹ Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002) (approving as immediately effective SR-NASD-2002-98, a TAF pilot program). NASD subsequently filed SR-NASD-2002-148 to give the proposal in SR-NASD-2002-98 a full notice and comment period and to adopt a permanent TAF program. See Securities Exchange Act Rel. No. 46817 (Nov. 12, 2002), 67 FR 69785 (Nov. 19, 2002).

² Securities Exchange Act Rel. No. 46417 (Aug. 23, 2002), 67 FR 55893 (Aug. 30, 2002) (SR-NASD-2002-99).

³ Securities Exchange Act Rel. No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (approving SR-NASD-2002-148) and Securities Exchange Act Rel. No. 47106 (Dec. 30, 2002), 68 FR 819 (Jan. 7, 2003) (approving SR-NASD-2002-99).

sustain adequate funding levels for its member regulatory programs.⁴ Further, as part of a three-year phase-in plan included in the originally proposed pricing structure, NASD stated its intent to reduce the revenue from the collection of the TAF by approximately 50% over the three-year period, offset by an increase in the Personnel Assessment. Finally, in response to comments from a number of members and other self-regulatory organizations about the scope of the TAF, NASD committed to analyzing whether debt transactions should be included.

Proposed Changes

Consistent with its commitment to analyze revenues and expenses and to reduce the share of the member regulatory program funded by TAF in 2004, NASD is proposing a reduction of the TAF rate on covered equity securities from the current rate of \$0.10 per 1,000 shares to \$0.075 per 1,000 shares.⁵ In addition, in response to concerns expressed by a number of market participants,⁶ NASD is proposing that the maximum charge per trade under the TAF be reduced from the current cap of \$10.00 per trade (based on 100,000 shares) to \$3.75 per trade (based on 50,000 shares).

Further, to fulfill its commitment to the SEC, made in connection with the original TAF rule filing, NASD is proposing to assess the TAF on TRACE-eligible securities and municipal securities. NASD has reviewed reported volumes for TRACE-eligible securities and municipal securities in conjunction with NASD's current regulatory costs associated

⁴ Specifically, NASD stated in the text of the TAF rule that it will "periodically review these revenues in conjunction with these costs to determine the applicable rate." NASD By-Laws, Schedule A, Section 1(a).

⁵ NASD also will seek to reduce the TAF rate in 2005, if appropriate, after analyzing all relevant factors.

with the oversight of these securities. Based upon this review, NASD has determined that it is appropriate to assess TRACE-eligible securities and municipal securities at a rate of \$0.00075 per bond, with a maximum assessment of \$0.75 per trade (based on 1,000 bonds). NASD believes that this rate is reasonable and allows for the equitable allocation of the TAF on member firms, reflecting NASD's regulatory efforts in the fixed income market.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of 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 that NASD operates or controls. In this rule filing, NASD is reducing the TAF rate and the maximum TAF assessment per transaction on covered equity securities. In addition, NASD is assessing the TAF on TRACE-eligible securities and municipal securities subject to MSRB reporting requirements. These changes are consistent with NASD's statutory obligation under Section 15A(b)(5) of the Act to ensure that its fees are reasonable and equitably allocated.

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.

⁶ See, e.g., Letter to Robert R. Glauber and Mary L. Schapiro, NASD, from John P. Hughes and John C. Giese, Security Traders Association, dated Oct. 21, 2003.

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.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

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

Not applicable.

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, INC.

BY: _____
Marc Menchel
Executive Vice President

Date: December 29, 2003

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2003-201)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. to Amend the Trading Activity Fee Rate and Add TRACE-Eligible and Municipal Securities as Covered Securities

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 , the National Association of Securities Dealers, Inc. (“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. 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 of the NASD By-Laws to adjust the Trading Activity Fee (“TAF”) rate for covered equity securities; to reduce the maximum per trade charge on covered equity securities; and to assess the TAF on corporate debt securities that, under the Trade Reporting and Compliance Engine (“TRACE”) rules, are defined as “TRACE-eligible securities” and municipal securities subject to the Municipal Securities Rulemaking Board (“MSRB”) reporting requirements. Below is the text of the

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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Schedule A to NASD By-Laws

* * * * *

Section 1-- Member Regulatory Fees

(a) No Change.

(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:

(A) All exchange registered securities wherever executed ([other than bonds, debentures, and other evidence of indebtedness]except debt securities that are not TRACE-eligible securities);

(B) All other equity securities traded otherwise than on an exchange; [and]

(D) All security futures wherever executed[.];

(D) All TRACE-eligible securities wherever executed; and

(E) All municipal securities subject to MSRB reporting requirements.

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

(A) through (I) No Change.

(J) Transactions in security futures held in futures accounts; [and]

(K) Transactions in exchange listed options effected by a member when NASD is not the designated options examining authority for that member[.]; and

Paragraph (b)(2)(K) becomes effective on January 1, 2004 in accordance with amendment 4 to SR-NASD-2002-148.

(L) Proprietary transactions in TRACE-eligible securities by a firm that is a member of both NASD and a national securities exchange and that are effected in the firm's capacity as an exchange specialist or exchange market maker.

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

(3) Fee Rates*

(A) through (C) No Change.

(D) Each member shall pay to NASD a fee per bond for each sale of a covered TRACE-eligible security and/or municipal security.

* Trading Activity Fee rates are as follows: Each member shall pay to NASD [~~\$0.0001~~]\$0.000075 per share for each sale of a covered equity security, with a maximum charge of [~~\$10~~]\$3.75 per trade; \$0.002 per contract for each sale of an option; [and] \$0.04 per contract for each round turn transaction of a security future; and \$0.00075 per bond for each sale of a covered TRACE-eligible and/or municipal security, with a maximum charge of \$0.75 per trade. In addition, if the execution price for a covered security is less than the Trading Activity Fee rate

([~~\$0.0001~~]\$0.000075 for covered equity securities, \$0.002 for covered option contracts, or \$0.04 for a security future) on a per share, per contract, or round turn transaction basis, then no fee will be assessed.

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

(c) through (d) No Change.

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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

Background

On July 24, 2002, NASD filed with the SEC proposed changes to the Gross Income Assessment (“GIA”), Personnel Assessment (“PA”),³ and Regulatory Fee.⁴ Those

³ Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002) (approving as immediately effective SR-NASD-2002-98, a TAF pilot program). NASD subsequently filed SR-NASD-2002-148 to give the proposal in SR-NASD-2002-98 a full notice and comment period and to adopt a permanent TAF program. See Securities Exchange Act Rel. No. 46817 (Nov. 12, 2002), 67 FR 69785 (Nov. 19, 2002).

fees are used to fund NASD's member regulatory activities, including the regulation of members through examinations, processing of membership applications, financial monitoring, policymaking, rulemaking, and enforcement activities. The changes: (1) eliminated the Regulatory Fee; (2) instituted a new transaction-based TAF applied across all markets, similar to the SEC's Section 31 Fee; (3) increased the rates assessed to member firms under the PA; and (4) implemented a simplified three-tiered flat rate for the GIA whereby deductions and exclusions would be eliminated.

The new member regulatory structure, as approved by the SEC,⁵ is revenue neutral to NASD and designed to better align NASD's regulatory fees with its functions, efforts, and costs. To ensure a member regulatory structure that is revenue neutral to NASD, NASD committed to analyze rates, volumes, and regulatory responsibilities periodically to sustain adequate funding levels for its member regulatory programs.⁶ Further, as part of a three-year phase-in plan included in the originally proposed pricing structure, NASD stated its intent to reduce the revenue from the collection of the TAF by approximately 50% over the three-year period, offset by an increase in the Personnel Assessment. Finally, in response to comments from a number of members and other self-regulatory organizations about the scope of the TAF, NASD committed to analyzing whether debt transactions should be included.

⁴ Securities Exchange Act Rel. No. 46417 (Aug. 23, 2002), 67 FR 55893 (Aug. 30, 2002) (SR-NASD-2002-99).

⁵ Securities Exchange Act Rel. No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (approving SR-NASD-2002-148) and Securities Exchange Act Rel. No. 47106 (Dec. 30, 2002), 68 FR 819 (Jan. 7, 2003) (approving SR-NASD-2002-99).

⁶ Specifically, NASD stated in the text of the TAF rule that it will "periodically review these revenues in conjunction with these costs to determine the applicable rate." NASD By-Laws, Schedule A, Section 1(a).

Proposed Changes

Consistent with its commitment to analyze revenues and expenses and to reduce the share of the member regulatory program funded by TAF in 2004, NASD is proposing a reduction of the TAF rate on covered equity securities from the current rate of \$0.10 per 1,000 shares to \$0.075 per 1,000 shares.⁷ In addition, in response to concerns expressed by a number of market participants,⁸ NASD is proposing that the maximum charge per trade under the TAF be reduced from the current cap of \$10.00 per trade (based on 100,000 shares) to \$3.75 per trade (based on 50,000 shares).

Further, to fulfill its commitment to the SEC, made in connection with the original TAF rule filing, NASD is proposing to assess the TAF on TRACE-eligible securities and municipal securities. NASD has reviewed reported volumes for TRACE-eligible securities and municipal securities in conjunction with NASD's current regulatory costs associated with the oversight of these securities. Based upon this review, NASD has determined that it is appropriate to assess TRACE-eligible securities and municipal securities at a rate of \$0.00075 per bond, with a maximum assessment of \$0.75 per trade (based on 1,000 bonds). NASD believes that this rate is reasonable and allows for the equitable allocation of the TAF on member firms, reflecting NASD's regulatory efforts in the fixed income market.

⁷ NASD also will seek to reduce the TAF rate in 2005, if appropriate, after analyzing all relevant factors.

⁸ See, e.g., Letter to Robert R. Glauber and Mary L. Schapiro, NASD, from John P. Hughes and John C. Giese, Security Traders Association, dated Oct. 21, 2003.

(2) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of 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 that NASD operates or controls. In this rule filing, NASD is reducing the TAF rate and the maximum TAF assessment per transaction on covered equity securities. In addition, NASD is assessing the TAF on TRACE-eligible securities and municipal securities subject to MSRB reporting requirements. These changes are consistent with NASD's statutory obligation under Section 15A(b)(5) of the Act to ensure that its fees are reasonable and equitably allocated.

(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.

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 self-regulatory organization 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.

NASD is proposing that the TAF rate reduction become effective on the first day of the month following 30 days after Commission approval. The assessment of fees on TRACE-eligible securities and municipal securities will become effective on the first day of the month following six months after Commission approval. NASD is proposing an effective date that is six months after SEC approval to allow member firms time to make programming changes to reflect the addition of a new category of covered securities.

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, N.W., Washington, D.C. 20549. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2003-XX. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 also will 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].

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

Margaret H. McFarland
Deputy Secretary