Dear Sir or Madam:

I'd like to comment on the proposed changes to the trading activity fee. I make these comments in the hopes that fees will be assessed on the membership in relation to the amount of regulatory effort that must be expended. I believe I have a unique perspective because I was an NASD examiner for 6 years and I have worked at various types of securities firms for the last 12 years.

It seems that examiners spend the most time at a firm looking at financials and net capital computations, reviewing customer activity, and reviewing proprietary trading and market making activity.

The amount of time devoted to financials and net capital is dependent upon the size of the firm and its clearing method. Self clearing firms require substantially more effort than fully disclosed firms, but I suspect most self clearing firms are designated to the NYSE for examination. The effort required to review customer activity is dependent upon the number of customers and the type of activity that is done. Extra effort is required for accounts trading in options and accounts trading in lower priced securities. For simplicity, it would be fair to assess activity fees based on customer-side transactions - whether done on an agency basis or riskless principal basis.

Proprietary trading and market making activity require substantially more regulatory effort than review of customer activity and should be assessed at a higher rate than that of customer activity. With respect to market making activity in NASDAQ and OTC securities, regulatory effort is expended at both the district level and at the national level through the market regulation department. It is appropriate that market makers should therefore bear a higher portion of the regulatory fees and trades done in a market making capacity should not be exempted from the fee. As I recall, at a district level, the examiner effort is tracked in man-days for each examination that is conducted. It would be a simple exercise to gather data to determine where the regulatory effort is expended. From personal experience, I am certain it will be found that a large amount of regulatory effort is expended reviewing activity of market makers.

In summary, I believe the NASD should do an objective assessment of where the regulatory effort is expended and assess the fees accordingly. I expect that market making and proprietary trades should be assessed at a higher rate than customer trades and riskless principal trades (which more closely resemble agency trades than proprietary trades from an examination standpoint). The end result of this type of structure may keep or shift the fee burden towards market makers and other firms who trade on a proprietary basis, but that would be equitable since those types of firms require more regulatory effort - both from a man-day examination perspective and from a departmental perspective. The most time intensive examinations were those of market makers and penny stock firms - which required extensive time in the field as well as the need to draw on various other resources within the NASD.

Thank you for the opportunity to address this issue. If you would like to discuss anything, I can be reached at the number noted below.

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