



The Security Traders Association of New York, Inc.

Members of the Security Traders Association

39 Broadway, Suite 1840 New York, NY 10006 • (212) 344-0410 • Fax (212) 943-8478

e-mail - stany@stany.org website - www.stany.org

OFFICERS

MICHAEL SANTUCCI
Vandham Securities
President

STEPHEN KAY
Knight Capital Group
First Vice President

ROBERT ARANCIO
Lehman Brothers
Second Vice President

CHARLES M. PADALA
SunTrust Robinson-Humphrey
Secretary

ALEXIS STERN CRESPIN
UBS Capital Markets
Treasurer

WILLIAM A. VANCE
Prudential Equity Group
Past President

KIMBERLY UNGER, ESQ.
Executive Director

DIRECTORS

THOMAS A. CESARE
HSBC

GERARD F. DE CARO

GARY DISTELL, ESQ.
Bear, Stearns & Co., Inc.

GREGG A. DUDZINSKI
Hudson Securities, Inc.

DEBORAH M. KASE
BNY Brokerage

CHADD C. KIRK
Oppenheimer Asset
Management, Inc.

VAL J. KOSMIDER
Val J. Kosmider, Inc.

STEPHEN J. NELSON, ESQ.
The Nelson Law Firm, LLC.

C. THOMAS RICHARDSON
Citigroup

DANIEL W. TANDY
Prime Executions, Inc.

BRUCE C. TURNER
CIBC World Market

CONSULTANTS

BRETT REDFEARN
Bear, Stearns & Co., Inc.

October 31, 2005

Barbara Z. Sweeney
Office of the Corporate Secretary
NASD
1735 K Street, N.W.
Washington, DC 20006-1500

RE: Notice to Members 05-61 Trading Activity Fee

Dear Ms. Sweeney:

The Trading Issues Committee of The Security Traders Association of New York, Inc. (STANY)¹ appreciates the opportunity to comment on NASD Notice to Members 05-61, in which the NASD solicits comment on the possible realignment of the Trading Activity Fee (TAF).

The NASD proposes to modify the TAF, which along with other revenue sources, funds NASD's member regulatory activities, to ensure that NASD's member regulatory fees are distributed appropriately among the member firms that drive member regulatory costs. The NASD proposed restructuring the TAF to assess any customer transaction in a covered security, regardless of whether an NASD member firm is on the buy or sell side of the transaction, and all proprietary transactions not effected in a firm's capacity as a market maker. Furthermore, the NASD has reiterated its commitment to ensure that the TAF be revenue neutral to the NASD.

Background

On October 18, 2002, the NASD filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4, a proposed rule change to eliminate the NASD's Regulatory Fee and institute a new, transaction-based TAF. The NASD amended the proposed rule change on November 5, 2002, and November 8, 2002 and the proposed rule change, as modified by Amendment Nos. 1 and 2, was published for notice and comment in the Federal Register on November 19, 2002.² On May 30, 2003, the SEC approved the proposed change.³

As a result of the elimination of the NASD's Regulation Fee and the establishment of the TAF, the NASD's regulatory activities are now funded by the TAF and two other fees; the Personnel Assessment ("PA"); and, the Gross Income Assessment ("GIA"). The NASD stated that these fees would interact and be adjusted accordingly to ensure that the new fee structure would operate and be revenue neutral to the NASD and better align the NASD's

¹ The Security Traders Association of New York, Inc. (STANY), established in 1937, represents the shared interests of over 1,700 trading professionals from over 300 firms in New York, New Jersey and Southern Connecticut. STANY is the largest Affiliate of The Security Traders Association (STA). STANY's membership includes individuals employed by order execution facilities, national securities exchanges, national securities associations, ECNs, buy and sell-side trading firms, and national and international banks.

² Securities Exchange Act Release No.34- 46817 (November 19, 2002).

³ Securities Exchange Act Release No. 34-47946 (May 30, 2003). Starting on October 1, 2002, the NASD had collected the TAF on a pilot basis.

regulatory fees with its functions, efforts, and costs.⁴ The NASD also stated that the TAF is to be used only to fund its member regulatory activities in areas such as sales practices, routine examinations, financial and operational reviews, new member applications and enforcement.

On October 23, 2002 STANY submitted a letter to the NASD⁵ questioning the proposed establishment of the TAF and noting that the implementation of the TAF had resulted in a substantially disproportionate increase in trading costs for wholesale firms and those firms engaged in supplying liquidity in the over-the-counter securities markets. On February 18, 2004, STANY filed a letter with the Commission⁶ wherein we continued to, express concern that the TAF does not provide for the equitable allocation of reasonable dues, fees, and other charges among the members of the NASD. We also questioned whether the TAF better aligns NASD's regulatory fees with its members' regulation functions, efforts, and costs, consistent with its stated goal.

STANY supports the NASD's Proposed Realignment of the TAF

STANY is in favor of the proposed realignment of the TAF. As the NASD correctly states, the current structure of the TAF results in assessments that are concentrated on a small number of member firms that may not be significant drivers of member regulatory expenses. Likewise, under the current method of assessment, competitive disparities result from exempting transactions that occur on an exchange in a floor capacity while taxing market maker transactions in the NASDAQ marketplace.

The proposed TAF would spread the fees over a wider group of NASD members and would more accurately align fees with member regulatory costs. The realignment would place NASDAQ market makers on a more equal footing with market makers and specialists on other exchanges who are exempt from these types of fees. Realignment of the TAF as proposed by the NASD would remove the competitive disadvantages under which NASDAQ market makers have been burdened since the implementation of the TAF in 2002 and create a more level playing field with market makers and specialists on other exchanges. Regulation would continue to be funded from multiple fee sources, included those paid to the NASD by market makers, however the realignment of the TAF will result in funding that more fairly aligns regulatory fees with its functions, efforts and costs.

Programming Efforts

The NASD has requested comment on the potential for significant programming efforts should the TAF fees be realigned as proposed. STANY does not have any significant concerns with respect to the programming. From the prospective of the NASDAQ market maker, we do not believe that reprogramming should, in fact be necessary. Technological changes, if any, will be minimal.

Conclusion

STANY applauds the NASD for proposing the modification and for its stated commitment to ensure that any realignment is revenue neutral. We believe that the realignment is appropriate, fair and consistent with the stated intentions of the TAF and we look forward to implementation of the realignment.

We appreciate the opportunity to comment and are available to answer any questions regarding our position.

Respectfully submitted,

Michael Santucci
President

Kimberly Unger, Esq.
Executive Director

Stephen J. Nelson, Esq.
Director, Co-Chairman
STANY Trading Issues Committee

⁴ Securities Exchange Act Release No. 34-48061 (June 19, 2003).

⁵ STANY Letter to Robert Glauber, Chairman and CEO National Association of Securities Dealers, Inc. and Mary L. Schapiro Vice Chairman and President Regulatory Policy & Oversight National Association of Securities Dealers, Inc.

⁶ Letter filed in response to Securities Exchange Release Act No. 34-49114 (January 2, 2004)