

October 31, 2005

Ms. Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street N.W.
Washington, D.C. 2006-1500

Re: NASD Notice to Members 05-61, Possible Realignment of the Trading
Activity Fee

Dear Ms. Sweeney:

Wachovia Securities, LLC (“Wachovia Securities”)¹ appreciates the opportunity to comment on the above-referenced proposed realignment of the Trading Activity Fee (TAF). A realignment of the trading activity fee will constitute an overall unfairness to countless firms while proving to be of questionable feasibility. This comment letter discusses in more detail the concerns raised by this Notice to Members.

I. The Current TAF is Fairly Imposed

NTM 05-61 seeks input concerning the potential realignment of the TAF. The initial premise underlying a potential realignment of the TAF stems from a flawed theory of fairness. Essentially, some have posited an argument that seems to say that since NASD fees are specifically designed to fund NASD’s “member regulatory efforts,” the fees should be assessed always against any transactions that involve a public customer. The other alleged “unfairness” of the fee occurs because transactions on an exchange in a floor capacity are exempt from the fee, but no such exemption applies to NASDAQ market makers for

¹ Wachovia Securities is a full service brokerage firm serving its 5.7 million client accounts in 49 states. It assists active retail clients in purchasing a wide array of investment products and therefore, along with its affiliates, processes tens of thousands of transactions every day. Wachovia Securities currently is not registered NASDAQ market maker.

transactions in the NASDAQ marketplace. Thus, NASD proposes to consider modifying the TAF so that it would:

... [S]pread the fee over a wider group of NASD members, re-distributing the fee in part from firms or business lines in firms that execute large numbers of transactions to firms or business lines within firms that deal directly with customers or trade proprietarily.

The analysis is flawed in that there is no funding structure that covers perfectly all parts of an organization such as NASD. Nothing in the NASD mandate as a self-regulatory organization requires that fees must always be assessed where public customers are involved. As it looks to gather revenue for its operations, it is appropriate that NASD gathers fees from a number of sources. In obtaining these fees, however, a strict adherence to an ephemeral concept of “to-the-penny” fairness is neither wise nor essential. An analogy can be drawn from the broader world where governments resist those who drive a two-seater vehicle over a toll bridge arguing that five persons in a seven person minivan are not paying their share of the toll. Similarly, one would not realign taxes to have those on the north side of town have their taxes reduced because they never use the roads on the south side. No compelling reason exists to alter the coverage of the current TAF.

II. The Realignment Would Not Be Economically Feasible

Wherever one comes out concerning the fairness of the TAF as currently applied, balanced against the tremendous cost and complexity of substantially altering systems to capture the TAF, one must conclude that NASD should not realign the fee. For some firms, the number of transactions that would now be subject to the TAF could run into the tens of thousands of transactions *daily*. Other broker dealers may act as a clearing firm for numerous introducing firms. In each instance, the costs of reprogramming and testing systems to accurately and timely capture the TAF costs will likely be substantial. Major systems changes such as would be demanded by the realignment can take six to twelve months to implement properly and fully. Additional issues concern how firms absorb the fee increase or capture the added costs related to creating effective processes for passing the expenses directly on to customers. Given the NASD mandate to make any changes in fees revenue neutral, there will be an expansion of the fee to countless firms who do not now pay it while reducing considerably the fee itself. If a fee reduction is what NASD desires, it is certain that there are other solutions that present a far better cost-benefit calculation than that regime currently under discussion.

III. Conclusion

Wachovia Securities fully supports the concept of funding NASD member regulatory activities through revenue components such as TAF. In achieving the funding, however, NASD must be mindful of focusing so much on the revenue that it loses sight of the huge costs it could impose on its membership in order to capture TAF in a realigned program.

Where the costs of a proposed realignment far outweigh the overall benefits, it is absolutely critical that NASD explore other options to obtain any reduction in the TAF.

We again appreciate the opportunity to provide these comments, and we would be pleased to answer any questions or provide more information to NASD or its staff as they work through these important issues.

Very truly yours,

Ronald C. Long

Ronald C. Long,
Director of Regulatory Affairs
Wachovia Securities, LLC