

Trading Activity Fee

SEC Approves Amendments to the Trading Activity Fee and FINRA Announces Publication of Frequently Asked Questions

Effective Date: November 1, 2010

Executive Summary

Effective November 1, 2010, FINRA is removing the exemption from the Trading Activity Fee (TAF) for transactions in exchange-listed options effected by a member firm when FINRA is not the designated options examining authority for that firm.¹ Because FINRA now has sole regulatory responsibility for the public options activities of all of its member firms, the exemption is no longer necessary. FINRA is also issuing this *Notice* to announce publication on its website of Trading Activity Fee Frequently Asked Questions (FAQ), which provides guidance for firms on the assessment of the TAF. The TAF FAQ can be found at www.finra.org/taf/faq.

Questions concerning this *Notice* should be directed to:

- FINRA Finance, at (240) 386-5397; or
- The Office of General Counsel, at (202) 728-8071.

October 2010

Notice Type

- Guidance
- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Operations
- Options
- Senior Management
- Systems
- Trading

Key Topics

- Trading Activity Fee

Referenced Rules & Notices

- FINRA By-Laws, Schedule A, Section 1
- NTM 02-63
- NTM 02-75
- NTM 03-30
- NTM 05-03
- NTM 05-23
- NTM 06-37
- Regulatory Notice 08-37
- SEA Rule 17d-2

Background & Discussion

Amendments to the Trading Activity Fee

The TAF is one of the member regulatory fees FINRA uses to fund its member regulation activities, which include examinations, financial monitoring and FINRA's policymaking, rulemaking and enforcement activities. In 2003, FINRA created an exemption from the TAF for transactions in exchange-listed options effected by a member firm when FINRA is not the designated options examining authority (DOEA) for that firm.² The exemption reflected the fact that FINRA's regulatory responsibilities with respect to such activity were reassigned to another self-regulatory organization (SRO) through FINRA's participation in a plan under Rule 17d-2 of the Securities Exchange Act of 1934³ (17d-2 Agreement). Under the 17d-2 Agreement, regulatory responsibilities for certain FINRA firms that conducted a public options business were assumed by other SROs that would act as the firm's DOEA.⁴ Subsequent amendments to the 17d-2 Agreement have consolidated within FINRA sole regulatory responsibility for the public options activities of all of its firms.⁵ Consequently, FINRA now assumes all regulatory responsibility for FINRA firms under the 17d-2 Agreement, and effective November 1, 2010, FINRA is eliminating the exemption from the TAF for transactions in exchange-listed options when FINRA is not the DOEA for the firm.⁶

Trading Activity Fee FAQ

FINRA is publishing the TAF FAQ to provide additional guidance to firms regarding the TAF. Over the years, FINRA has published numerous *Notices* on the TAF, many of which include a list of questions and answers, in an effort to clarify calculation of the TAF and to help firms develop and monitor their processes around TAF payments.⁷ FINRA is publishing the TAF FAQ on its website to consolidate, and in some cases to update, the guidance previously published and to add additional questions and answers that firms have asked. The TAF FAQ addresses several topics, including general questions about how the TAF is assessed and calculated as well as specific questions on assessing the TAF on transactions in equity securities, debt securities, options and security futures. **The TAF FAQ supersedes any previous guidance published in the various *Notices*.**

The TAF FAQ can be found on FINRA's website at www.finra.org/taf/faq. Firms should review the FAQ and check the website periodically for updates to ensure that their processes and procedures for calculating the TAF are up to date and accurate. New questions will be marked "new," and previously published questions will be marked "updated" when they are updated or revised.

Firms are encouraged to contact FINRA at the numbers listed above to suggest additional topics or questions for inclusion in the TAF FAQ.

Endnotes

- 1 See Securities Exchange Act Release No. 63196 (October 27, 2010).
- 2 See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003). Transactions in over-the-counter (“conventional”) options are exempted from the TAF with respect to all FINRA members. See FINRA By-Laws, Schedule A, § 1(b)(2)(H).
- 3 17 CFR 240.17d-2.
- 4 See Securities Exchange Act Release No. 46800 (November 8, 2002), 67 FR 69774 (November 19, 2002).
- 5 See Securities Exchange Act Release No. 57987 (June 18, 2008), 73 FR 36156 (June 25, 2008).
- 6 Following the consolidation of NASD and NYSE member regulation operations in 2007, FINRA announced that it serves as the DOEA for all FINRA member firms. See *Regulatory Notice 08-37* (July 2008). FINRA had previously published a list of firms that had a DOEA other than FINRA. See *NTM 05-03* (January 2005).
- 7 See, e.g., *NTM 06-37* (August 2006); *NTM 05-23* (March 2005); *NTM 03-30* (June 2003); *NTM 02-75* (November 2002); *NTM 02-63* (September 2002).