

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary
(202) 728-8062-Direct
(202) 728-8075-Fax

June 10, 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-2003-93 - Proposed Rule Change to By-Laws Regarding the Trading Activity Fee**

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,

Barbara Z. Sweeney
Senior Vice President
and Corporate Secretary

Enclosures

File No. SR-NASD-2003-93
Consists of 18 Pages
June 10, 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 NASD By-Laws, Schedule A, Section 1(b)(3) to amend its Trading Activity Fee (“TAF”). NASD is amending the TAF to adjust the rates for covered equity securities. In addition, NASD is renumbering certain subsections included in Section 1. 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:

[(i)](A) All exchange registered securities wherever executed
(other than bonds, debentures, and other evidence of indebtedness);

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

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

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

[(i)](A) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

[(ii)](B) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

[(iii)](C) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

[(iv)](D) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security;

[(v)](E) Transactions that are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3-1 and any approved plan filed thereunder;

[(vi)](F) Proprietary transactions by a firm that is a member of both NASD and a national securities exchange, effected in its capacity as an exchange specialist or market maker, that are subject to Securities Exchange Act of 1934, Section 11(a) and Rule 11a1-1(T)(a) thereunder;

however this exemption does not apply to other transactions permitted by Section 11(a) such as bona fide arbitrage or hedge transactions;

[(vii)](G) Transactions by a firm that is a floor based broker and that is a member of both NASD and a national securities exchange provided that the floor based broker qualifies for exemption from NASD membership under Exchange Act Rule 15b9-1;

[(viii)](H) Transactions in conventional options;

[(ix)](I) Transactions in options and futures involving narrow and broad based indexes;

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

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

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

(3) Fee Rates*

[(i)](A) Each member shall pay to NASD a fee per share for each sale of a covered equity security.

[(ii)](B) Each member shall pay to NASD a fee per contract for each sale of an option.

~~[(iii)]~~(C) Each member shall pay to NASD a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.

* Trading Activity Fee rates are as follows: Each member shall pay to NASD [~~\$0.00005~~]\$0.0001 per share for each sale of a covered equity security, with a maximum charge of [~~\$5~~]\$10 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. In addition, if the execution price for a covered security is less than the Trading Activity Fee rate (~~[\$0.00005]~~\$0.0001 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) No Change.

(c) through (d) No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Board of Governors authorized the filing of rule changes relating to the Trading Activity Fee, the Personnel Assessment, and the Gross Income Assessment at its May 23, 2002 meeting. 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 is proposing that the TAF rate change take effect the first day of the month following Commission approval of this filing.

(b) Questions regarding this rule filing may be directed to Kathy 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

On May 30, 2003, the SEC approved the last component of a series of changes to NASD's member regulatory fee structure. Under the new fee structure, there are now three types of fees and assessments used to fund NASD's member regulatory activities: (1) Trading Activity Fee ("TAF");¹ (2) Personnel Assessment; and (3) Gross Income Assessment.² These fees, assessed upon and paid by member firms, are used by NASD to fund NASD's member regulatory activities, including the regulation of members through examinations, processing of membership applications, financial monitoring, policy making, rulemaking, and enforcement activities. The new member regulatory fee structure was designed to be revenue neutral to NASD and to better align NASD's regulatory fees with its functions, efforts, and costs.

Today, NASD is filing a proposal to adjust the TAF rate, and related maximum charge and minimum price exceptions, for equity securities only. NASD has been collecting the TAF for transactions effected after October 1, 2002 on a pilot basis, and

¹ Securities Exchange Act Rel. No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003).

² Securities Exchange Act Rel. No. 47106 (Dec. 30, 2002), 68 FR 819 (Jan. 7, 2003).

has determined that the equity rate needs to be increased to ensure adequate funding levels for its member regulatory program. Therefore, NASD is proposing that the TAF be increased from 0.00005 per share to 0.0001 per share for covered equity securities, effective the first day of the month following SEC approval.

The proposed rate change is driven by lower than expected TAF revenues, not increased or unexpected member regulatory costs. NASD originally had proposed a rate of 0.0001 per share for equity securities (announced on Sept. 27, 2002 and published on NASD's Web site at www.nasd.com/trading_fee2.asp) but after informal feedback from the membership about the level of volume meeting the definition of "covered equity security," decided to reduce the rate to 0.00005.³ Six months' experience with the TAF has demonstrated that the initially proposed rate is more accurate to ensure revenue neutrality and adequate funding.

Although the current proposed rate change is driven by the need for NASD to remain revenue neutral in its transition from the old member regulatory funding structure, consistent with its stated policy, NASD periodically will analyze rates, volumes, and regulatory responsibilities to ensure adequate funding levels for its member regulatory programs.⁴ NASD also will perform an analysis for the annual Personnel Assessment and Gross Income Assessment, to ensure adequate contributions from each component fee, as well as adequate levels of funding overall. In addition, NASD previously stated

³ See Securities Exchange Act Rel. No. 46818 (Nov. 12, 2002), 67 FR 69782 (Nov. 19, 2002) (approving SR-NASD-2002-147) and Securities Exchange Act Rel. No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (approving SR-NASD-2002-148).

⁴ Specifically, NASD stated in the text of the TAF rule language 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).

its intent to reduce the percentage that the TAF contributes to the overall funding structure in 2004 and again in 2005 (increasing the percentage funded by the PA and holding the GIA percentage static). NASD remains committed to that program, and should regulatory costs and market volumes remain constant, fee levels for 2004 could be expected to drop by approximately 20%. Of course, NASD will analyze all relevant factors prior to making that filing.

(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. The TAF is objectively allocated to NASD members. Moreover, the level of the fee is reasonable because it relates directly to the recovery of the costs of regulating members.

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.

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)

NASD requests the Commission to find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. NASD strongly believes the fees are consistent with the Act, and NASD needs to adjust its rates to allow it to recover its costs associated with providing member regulatory services.

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: _____
Barbara Z. Sweeney, Senior Vice President and
Corporate Secretary

Date: June 10, 2003

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-

; File No. SR-NASD-2003-93)

June , 2003

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Rule Change to By-Laws Regarding the Trading Activity Fee

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 its Trading Activity Fee (“TAF”). NASD is amending the TAF to adjust the rates for covered equity securities. In addition, NASD is renumbering certain subsections included in Section 1. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Schedule A to NASD By-Laws

* * * * *

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

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:

[(i)](A) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness);

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

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

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

[(i)](A) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

[(ii)](B) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

[(iii)](C) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

[(iv)](D) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security;

[(v)](E) Transactions that are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3-1 and any approved plan filed thereunder;

[(vi)](F) Proprietary transactions by a firm that is a member of both NASD and a national securities exchange, effected in its capacity as an exchange specialist or market maker, that are subject to Securities Exchange Act of 1934, Section 11(a) and Rule 11a1-1(T)(a) thereunder; however this exemption does not apply to other transactions permitted by Section 11(a) such as bona fide arbitrage or hedge transactions;

[(vii)](G) Transactions by a firm that is a floor based broker and that is a member of both NASD and a national securities exchange provided that the floor based broker qualifies for exemption from NASD membership under Exchange Act Rule 15b9-1;

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(4) No Change.

(c) through (d) No Change.

* * * * *

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

On May 30, 2003, the SEC approved the last component of a series of changes to NASD's member regulatory fee structure. Under the new fee structure, there are now three types of fees and assessments used to fund NASD's member regulatory activities: (1) Trading Activity Fee ("TAF");³ (2) Personnel Assessment; and (3) Gross Income Assessment.⁴ These fees, assessed upon and paid by member firms, are used by NASD to fund NASD's member regulatory activities, including the regulation of members through examinations, processing of membership applications, financial monitoring, policy making, rulemaking, and enforcement activities. The new member regulatory fee

³ Securities Exchange Act Rel. No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003).

⁴ Securities Exchange Act Rel. No. 47106 (Dec. 30, 2002), 68 FR 819 (Jan. 7, 2003).

structure was designed to be revenue neutral to NASD and to better align NASD's regulatory fees with its functions, efforts, and costs.

Today, NASD is filing a proposal to adjust the TAF rate, and related maximum charge and minimum price exceptions, for equity securities only. NASD has been collecting the TAF for transactions effected after October 1, 2002 on a pilot basis, and has determined that the equity rate needs to be increased to ensure adequate funding levels for its member regulatory program. Therefore, NASD is proposing that the TAF be increased from 0.00005 per share to 0.0001 per share for covered equity securities, effective the first day of the month following SEC approval.

The proposed rate change is driven by lower than expected TAF revenues, not increased or unexpected member regulatory costs. NASD originally had proposed a rate of 0.0001 per share for equity securities (announced on Sept. 27, 2002 and published on NASD's Web site at www.nasd.com/trading_fee2.asp) but after informal feedback from the membership about the level of volume meeting the definition of "covered equity security," decided to reduce the rate to 0.00005.⁵ Six months' experience with the TAF has demonstrated that the initially proposed rate is more accurate to ensure revenue neutrality and adequate funding.

Although the current proposed rate change is driven by the need for NASD to remain revenue neutral in its transition from the old member regulatory funding structure, consistent with its stated policy, NASD periodically will analyze rates, volumes, and regulatory responsibilities to ensure adequate funding levels for its member regulatory

⁵ See Securities Exchange Act Rel. No. 46818 (Nov. 12, 2002), 67 FR 69782 (Nov. 19, 2002) (approving SR-NASD-2002-147) and Securities Exchange Act Rel. No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (approving SR-NASD-2002-148).

programs.⁶ NASD also will perform an analysis for the annual Personnel Assessment and Gross Income Assessment, to ensure adequate contributions from each component fee, as well as adequate levels of funding overall. In addition, NASD previously stated its intent to reduce the percentage that the TAF contributes to the overall funding structure in 2004 and again in 2005 (increasing the percentage funded by the PA and holding the GIA percentage static). NASD remains committed to that program, and should regulatory costs and market volumes remain constant, fee levels for 2004 could be expected to drop by approximately 20%. Of course, NASD will analyze all relevant factors prior to making that filing.

(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. The TAF is objectively allocated to NASD members. Moreover, the level of the fee is reasonable because it relates directly to the recovery of the costs of regulating members.

(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.

⁶ Specifically, NASD stated in the text of the TAF rule language 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).

(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 on the current proposal.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that the fees are consistent with the Act, and NASD needs to increase its rates to effectively recover its costs.

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 change take effect the first day of the month following Commission approval of this filing.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change [as amended] 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. 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 will also 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