



# The Security Traders Association of New York, Inc.

Members of the Security Traders Association

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February 18, 2004

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## **RE: Release No. 34-49114; File No. SR-NASD-2003-201 Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The National Association of Securities Dealers, Inc. To Amend the Trading Activity Fee Rate and Add TRACE-Eligible and Municipal Securities as Covered Securities**

Dear Mr. Katz:

The Security Traders Association of New York, Inc. ("STANY")<sup>1</sup> respectfully submits this comment letter in response to the above captioned Release No. 34-49114; File No. SR-NASD-2003-201. Speaking on behalf of our membership, with the caveats discussed below, we generally support NASD's proposed amendments to the Trading Activity Fee (TAF) rate.

On October 21, 2003 STANY wrote to the National Association of Securities Dealers ("NASD") seeking to commence a dialogue and to express members' serious concerns about the operation and significant financial effect of the NASD's recently enacted<sup>2</sup> and even more recently increased transaction-based Trading Activity Fee (TAF).<sup>3</sup>

Together with The Security Traders Association (STA), STANY argued that the implementation of the TAF 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. Likewise, we expressed our concern that our membership lacked the information necessary to determine whether the fees levied on, and collected from, certain types of members relate to the specific regulatory resources

STANY is pleased to see that the NASD considered the comments of the STA<sup>4</sup>, and by association those concerns expressed in STANY's letter of October 21, 2003 to Robert R. Glauber and Mary L. Schapiro. The NASD is proposing a reduction of the TAF rate on covered equity securities from the current rate of \$0.10 per 1,000 shares to \$0.075 per \$1,000 shares. Partially as a response to concerns expressed by STA and others, the NASD has in addition proposed that the maximum charge per trade on covered equities under TAF be reduced from the current cap of \$10.00 per trade (based on 100,000 shares) to \$3.75 per trade (based on 50,000 shares)<sup>5</sup>.

<sup>1</sup> STANY is a professional trade organization serving individual traders in the New York metropolitan area. It works to improve the ethics, business standards and working environment for its members, who are engaged in the purchase, sale and trading of securities. STANY represents the shared interests of its approximately 2,000 members from over 300 firms. STANY is the largest affiliate of the STA.

<sup>2</sup> Securities Exchange Act Release No. 47946 (May 30, 2003)

<sup>3</sup> Securities Exchange Act Release No. 48234 (July 28, 2003).

<sup>4</sup> Securities Exchange Act Release No. 49114 (January 28, 2004) Ft. 9.

<sup>5</sup> The NASD also cites "its commitment to analyze revenues and expenses and to reduce the share of the member regulators program funded by TAF in 2004" as the basis for the proposed TAF rate reduction. See Securities Exchange Act Release No. 49114 (January 28, 2004).

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STANY supports the proposed reduction in TAF fees. We believe that there is an immediate need to assess the apparent inequitable allocation of the TAF among NASD members and the non-alignment of the TAF to the NASD's member regulatory functions, efforts and costs. The proposed reduction in the fee cap makes progress toward rebalancing the burden of the TAF currently placed on lower priced securities.

STANY recognizes the value, necessity, and advantage of self-regulation. STANY has supported the NASD in its efforts to ensure adequate funding levels for its member regulatory programs. However, we have, and continue 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 have also questioned whether the TAF better aligns NASD's regulatory fees with its members' regulation functions, efforts, and costs, consistent with its stated goal. While STANY supports any measure that will reduce the existing trading activity fee, we remain concerned that the application of a share-based fee may unfairly burden the buyers and sellers of lower priced securities as opposed to proportionately reflect regulatory needs. Likewise, we question the scope of trades covered by TAF and suggest that, in certain cases there is no nexus between TAF "taxed" transactions and regulation. For example, broker-to-broker traders are currently covered under TAF, but such trades are regulated by the NASDAQ's market regulation, and not subject to the type of regulation funded by the TAF<sup>6</sup>. Fees should only apply to those trades that are subject to regulatory scrutiny by the NASD.

In order that the members of the NASD may be in a position to assess and properly comment on the fairness of the proposed reduction in the TAF, it is necessary that the NASD provide its members with the information they need, as outlined in STANY's letter of October 21, 2003. We are unaware of any accounting done by the NASD, which shows revenue generated by transactions or the relationship between the "taxed" transaction and the cost of regulation associated with those transactions.

We respectfully request that the Commission approve the proposed reduction of TAF fees and require the NASD to provide an accounting of revenue generated by TAF and the regulatory use to which that revenue has been put. We believe that TAF fees should be assessed in a manner that is fair, equitable, and consistent with the regulatory needs of the NASD. We are willing to work with the Commission and the NASD in any way possible on this and other critical industry initiatives.

Respectfully Submitted,

Lisa Utasi  
President

Kimberly Unger  
Executive Director

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<sup>6</sup>NASD Notice to Members 02-75 (November 2002) "NASD has amended Section 8(a) of Schedule A to NASD's By-Laws to eliminate the Regulatory Fee and to institute a new transaction-based Trading Activity Fee. This fee is used by NASD solely to fund NASD's member regulatory activities, including the supervision and regulation of members through examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretive, and enforcement activities. The Trading Activity Fee does not fund Market Regulation activities which are funded solely through contracts with NASDAQ and other Exchanges."

