Securities Industry Association
120 Broadway • New York, NY 10271-0080 • (212) 608-1500 •Fax: (212) 968-0690

November 8, 2005

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

Re: Notice To Members 05-61

Dear Ms. Sweeney:

The Operations Committee (the "Committee") of the Securities Industry Association ("SIA")[1] appreciates the opportunity to comment on NASD Notice To Members 05-61, in which the NASD solicits comment on a possible realignment of the Trading Activity Fee ("TAF"). As you know, SIA is a strong supporter of self-regulation and we fully support member firm funding of self-regulatory activities when costs are apportioned fairly among member firms. Accordingly, in the past, SIA has offered to assist the NASD in determining how funding should be shared by member firms in an equitable way, and administered in an efficient and accurate reporting and collection system.[2] We continue to believe that member firms should be actively involved in overseeing the budgeting and revenue-raising processes.

According to the Notice, the TAF, which is specifically designed to fund NASD's member regulatory efforts, is currently assessed for covered equity securities upon a class of transactions where there is no public customer involved in the transaction, and is not assessed on certain transactions that have direct customer involvement. The result is that

[1] The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated $236.7 billion in domestic revenue and an estimated $340 billion in global revenues. (More information about SIA is available at: www.sia.com.)

[2] Letter to Barbara Z. Sweeney, NASD, from Christopher R. Franke, SIA Self-Regulation and Supervisory Practices Committee, George Jennison, SIA Trading Committee, and C. Michael Viviano, SIA Operations Committee, dated March 8, 2002. http://www.sia.com/2002_comment_letters/pdf/NASD_02-09.PDF.

TAF assessments are concentrated in a small number of member firms or business lines within member firms that may not be significant drivers of member regulatory expenses. The changes the NASD proposes would spread the fee over a wider group of NASD members, re-distributing the fee from firms or business lines within firms that execute large numbers of transactions to firms or business lines that deal directly with customers or trade proprietarily. This would be accomplished by assessing the TAF on all buy and sell transactions where a member trades as principal or riskless principal with a customer, or acts as agent on behalf of a customer, and on all proprietary transactions not effected in a member's capacity as a market maker.

Although we appreciate the NASD's efforts to address an unintended consequence of the TAF as originally imposed, we cannot state with certainty that the realignment will resolve the inequitable distribution of the fee, or that there are not other instances in which the fee is inequitably applied. It is difficult to assess the fairness and feasibility of the TAF without more transparency in the overall fee-setting process.

We note that the Securities and Exchange Commission ("SEC") recently sought public comment on a range of issues related to the self-regulatory system of the securities industry.[3] In related rulemaking, the SEC proposed enhancements to the SRO governance structure that includes transparency and reporting rules which, if approved, will require SROs to submit substantial information concerning various aspects of their regulatory operations.[4] In addition to filing quarterly and annual reports about their regulatory programs, the SROs would be required to provide greater disclosure regarding revenues and expenses.

We expect that such disclosure would include specific information about the costs borne by the NASD (and other SROs) and the relationship of those costs to the fees charged. In comments submitted in response to the Governance and Transparency Proposal, SIA acknowledged that members contribute a large portion of SRO revenue through membership and trade activity fees, such as the TAF. Because members account for so much of an SRO's revenue, it is both appropriate and necessary that members participate in decisions regarding the use and allocation of those funds.[5] The Committee strongly supports those proposals. We firmly believe that transparency and industry participation in the fee-setting process is necessary to assure that fees are justified and apportioned fairly among market participants.

Thank you for the opportunity to comment. Again, the Committee stands ready to assist in any way we can as you consider ways to restructure the TAF. If you have any

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[3] Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256.

[4] Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (the "Governance and Transparency Proposal").

[5] Letter to Jonathan G. Katz, Secretary, SEC, from Marc E. Lackritz, President, SIA, dated March 9, 2005. http://www.sia.com/2005_comment_letters/5218.pdf.

questions, or would like to discuss our comments further, please contact Richard Bommer, SIA Assistant Vice President and Director of Operations, at 212.608.1500.

Sincerely,

D. Stuart Bowers
Chairman
SIA Operations Committee

CC: SIA Operations Committee