

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57474; File No. SR-FINRA-2008-001)

March 11, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Amendments to FINRA's Gross Income Assessment and Technical Changes to Schedule A to FINRA's By-Laws

I. Introduction

On January 10, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD"))¹ filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ a proposed rule change to amend Schedule A to the FINRA By-Laws to amend the Gross Income Assessment ("GIA") paid by each FINRA member and to update the references to NASD that appear in Schedule A to the FINRA By-Laws. The proposed rule change was published for comment in the Federal Register on February 7, 2008.⁴ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

On July 30, 2007, NASD and the NYSE consolidated their member firm regulation operations into a combined organization, FINRA. The proposed rule change seeks to consolidate

¹ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and New York Stock Exchange Regulation, Inc ("NYSE"). See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 57259 (February 1, 2008), 73 FR 7340 ("Notice").

certain regulatory fees imposed by NASD and NYSE that will be applied retroactively to January 1, 2008. FINRA will announce this fee change in a Regulatory Notice.

FINRA's member regulatory pricing structure currently consists primarily of the following fees: the GIA; the Trading Activity Fee ("TAF"); the Personnel Assessment ("PA"); and the Branch Office Assessment ("BOA"). As part of the consolidation, NYSE committed to transfer to FINRA certain regulatory revenues for the remainder of 2007.⁵ NYSE fees subject to the transfer agreement include a gross FOCUS (Financial and Operational Combined Uniform Single Report) fee ("GFF")⁶ and registration fees for branch offices⁷ and registered representatives.⁸

FINRA now proposes to: (1) eliminate NYSE's legacy registration fees for branch offices and registered representatives, which totals approximately \$18.6 million in fee reductions;⁹ (2) maintain FINRA's fee structures and levels for the TAF, the BOA and the PA; and (3) consolidate, with certain adjustments, FINRA's GIA rate structure with NYSE's GFF rate structure.¹⁰

⁵ See Securities Exchange Act Release No. 56181 (August 1, 2007); 72 FR 44206 (August 7, 2007) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2007-70).

⁶ The GFF is comparable to FINRA's GIA. See Section 1(c) of Schedule A of FINRA By-Laws.

⁷ See NYSE Rule 342, Supplementary Material .11. NYSE's registration fee for branch offices is comparable to FINRA's Branch Office System Processing Fee. See also Section 4(a) of Schedule A of FINRA By-Laws.

⁸ See NYSE Rule 345, Supplementary Material .14. NYSE's registration fee for registered representatives is comparable to FINRA's registration fees for the registration of representatives or principals. See also Section 4(b) of Schedule A of FINRA By-Laws.

⁹ See Securities Exchange Act Release No. 57093 (January 3, 2008), 73 FR 1654 (January 9, 2008) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2007-127).

¹⁰ The NYSE will continue to charge its member organizations an annual gross FOCUS fee; however, the fee was reduced by 75 percent beginning in 2008. See Securities Exchange

The GIA is currently assessed through a three-tier rate structure with a minimum GIA of \$1,200.00. Under the current GIA, members are required to pay an annual GIA equal to the greater of \$1,200.00 or the total of: (1) 0.125% of annual gross revenue less than or equal to \$100 million; (2) 0.029% of annual gross revenue greater than \$100 million up to \$1 billion; and (3) 0.014% of annual gross revenue greater than \$1 billion.¹¹ In contrast, the legacy GFF was assessed at a flat rate of \$0.42 per \$1,000 of gross FOCUS revenue (or 0.042%).

To consolidate these two legacy fees, FINRA proposes to retain the minimum assessment under the GIA of \$1,200.00, with the ceiling increased from \$960,000.00 to \$1 million of annual assessable revenue. Because FINRA has committed to reduce the GIA by \$1,200.00 per year for five years, subject to annual approval by FINRA's Board of Directors, the proposal will effectively reduce the GIA to \$0 for the first \$1 million of annual assessable revenue. For annual gross revenue over \$1 million, the regressive rate structure of the legacy GIA and the flat rate structure of the legacy GFF will be combined into a new seven-tiered rate structure. Under the proposed rule change, members will be assessed a GIA of:

- (1) \$1,200 on annual gross revenue up to \$1 million;
- (2) 0.1215% of annual gross revenue greater than \$1 million up to \$25 million;
- (3) 0.2599% of annual gross revenue greater than \$25 million up to \$50 million;
- (4) 0.0518% of annual gross revenue greater than \$50 million up to \$100 million;
- (5) 0.0365% of annual gross revenue greater than \$100 million up to \$5 billion;
- (6) 0.0397% of annual gross revenue greater than \$5 billion up to \$25 billion; and

Act Release No. 56181, supra note 5. The reduced gross FOCUS fee charged by NYSE will be retained by NYSE and will not be forwarded to FINRA.

¹¹ Gross revenue for assessment purposes is set out in Section 2 of Schedule A of FINRA's By-Laws, which defines gross revenue as total income as reported on FOCUS form Part II or IIA excluding commodities income.

(7) 0.0855% of annual gross revenue greater than \$25 billion.

The new rate structure will be implemented over a three-year period beginning in 2008. During this period, the change in the GIA paid to FINRA by each member will be subject to a cap based on the fees that the member would have paid under the prior NASD and NYSE rate structures. In 2008, a member's GIA will not be impacted by the new rate structure. In 2009, any increase or decrease to the member's GIA resulting from the new rate structure will be capped at a five percent increase or decrease. In 2010, any increase or decrease to the member's GIA resulting from the new rate structure will be capped at a ten percent increase or decrease. During this implementation period, a firm's GIA may increase or decrease due to a change in the member's assessable revenue from year to year; however, any changes to the firm's GIA that result from the change in rate structure will be subject to the cap.

For firms that were members of NASD only (not NYSE) as of July 30, 2007, the cap will be calculated based upon the GIA that the member firm would have paid under the prior NASD GIA rate structure. For firms that became, or become, FINRA members on or after July 30, 2007 (excluding those firms that were members of NYSE only as of July 30, 2007 and were subsequently required to become FINRA members pursuant to NYSE Rule 2), the cap will be calculated based upon the GIA that the member firm would have paid under the prior NASD GIA rate structure. For firms that were members of the NYSE only (not NASD) as of July 30, 2007, the cap will be calculated based upon the NYSE GFF that the member would have paid under the prior NYSE GFF rate structure.¹² For firms that were members of both NASD and the

¹² In calculating the cap based upon the GFF that a member would have paid under the prior NYSE GFF rate structure, FINRA will use only that portion of the GFF that would have been transferred by the NYSE to FINRA (i.e., 75 percent of the GFF paid by the member firm).

NYSE as of July 30, 2007 (“Dual Members”), the cap will be calculated based upon the GIA and the GFF that the member would have paid under the prior NASD GIA rate structure and the prior NYSE GFF rate structure.¹³

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.¹⁴ Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act¹⁵ in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

The proposed rule change creates a single fee structure for FINRA that avoids duplicative fees charged by both FINRA and NYSE. Specifically, the proposed rule change creates a seven-tiered rate structure that balances NASD’s legacy GIA tiered rate structure with NYSE’s legacy GFF flat rate structure. FINRA represents that the proposed rule change will result in aggregate fee reductions of approximately \$25 million dollars in 2008 and forward. FINRA estimates that, under the proposed rate structure, 93 percent of member firms will have either no change to their GIA or a reduced GIA due to this new rate structure. In addition, to minimize the impact on members, the new rate structure will be implemented over a three-year period beginning in 2008. Despite the reduction in revenue that will result from the new rate structure, FINRA also represents that the revenue collected under the proposal will adequately fund its member

¹³ For an example of how the fees are calculated, see Notice, supra note 4, at note 15.

¹⁴ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78o-3(b)(5).

regulatory programs, including the regulation of members through examination, policymaking, rulemaking and enforcement activities. Accordingly, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-FINRA-2008-001), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).