

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67240; File No. SR-FINRA-2012-031)

June 22, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 4 of Schedule A to the FINRA By-Laws to Increase the Branch Office Annual Registration and New Member Application Fees and Assess a New Continuing Membership Application 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 June 13, 2012, the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a 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 FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. 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 the Substance of the Proposed Rule Change

FINRA is proposing to amend Section 4 of Schedule A to the FINRA By-Laws to (1) increase the branch office annual registration fee; (2) increase the new member application fee; and (3) assess a new fee for continuing membership applications. The proposed rule change also

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

makes corresponding amendments to NASD Rules 1012, 1013, and 1017 regarding the revised new member application fee and new continuing membership application fee, as well as increases from \$350 to \$500 the processing fee for new member applications that are deemed not to be substantially complete and imposes a \$500 processing fee for continuing membership applications that are deemed not to be substantially complete.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

As discussed in further detail below, the proposed rule change amends Section 4 of Schedule A to the FINRA By-Laws to (1) increase the branch office annual registration fee; (2) increase the new member application fee; and (3) assess a new fee for continuing membership applications. The proposed rule change also makes corresponding amendments to NASD Rules 1012 (General Provisions), 1013 (New Member Application and Interview), and 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) regarding

the revised new member application fee and new continuing membership application fee, as well as increases from \$350 to \$500 the processing fee for new member applications that are deemed not to be substantially complete and imposes a \$500 processing fee for continuing membership applications that are deemed not to be substantially complete.

Branch Office Fees

Schedule A, Section 4(a) currently sets forth an initial registration fee of \$75 (and a branch office system processing fee of \$20) upon the registration of each branch office as defined in the FINRA By-Laws.⁵ Section 4 also assesses (1) an annual registration fee in an amount equal to the lesser of (i) \$75 per registered branch, or (ii) the product of \$75 and the number of registered representatives and registered principals associated with the member at the end of FINRA's fiscal year, and (2) an annual branch office system processing fee of \$20 per

⁵ Article I, paragraph (d) of the FINRA By-Laws defines "branch office" as an office defined as a branch office in FINRA's rules. NASD Rule 3010(g)(2)(A) states that a "branch office" is any location where one or more associated persons of a member regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding: (i) any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office; (ii) any location that is the associated person's primary residence, provided that certain enumerated conditions are met; (iii) any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the member complies with certain enumerated conditions; (iv) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office; (v) any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised; (vi) the floor of a registered national securities exchange where a member conducts a direct access business with public customers; or (vii) a temporary location established in response to the implementation of a business continuity plan. NASD Rule 3010(g)(2)(B) further provides that notwithstanding the exclusions in NASD Rule 3010(g)(2)(A), any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered to be a branch office.

registered branch. Pursuant to Section 4, FINRA waives, for one branch office per member per year, payment of the annual branch office registration fee (for those FINRA members who have been assessed the \$75 amount as their annual fee) and the \$20 annual branch office system processing fee (for all FINRA members).

Despite rising costs to administer the branch office registration and examination program, FINRA has not adjusted the branch office annual registration fee since 1994.⁶ In support of its branch office registration and examination program and other regulatory responsibilities, FINRA is proposing to revise the branch office annual registration fee structure by implementing a tiered regressive rate structure that will assess a per branch office annual registration fee ranging from \$75 to \$175 depending on the number of branch offices of the member.

Specifically, the proposed rule change would amend the annual registration fee requirement in Section 4(a) to provide that each member shall be assessed an annual registration fee of: (1) \$175, for the first 250 branch offices registered by the member; (2) \$150, for branch offices 251 to 500 registered by the member; (3) \$125, for branch offices 501 to 1,000 registered by the member; (4) \$100, for branch offices 1,001 to 2,000 registered by the member; and (5) \$75, for every branch office greater than 2,000 registered by the member. The proposed rule change would retain the \$20 annual branch office system processing fee per registered branch.

⁶ See Securities Exchange Act Release No. 35074 (December 9, 1994), 59 FR 64827 (December 15, 1994) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-94-58) (increasing the branch office registration and annual fees from \$50 to \$75 to reflect increased costs for registration and regulatory oversight of branch offices). In 2006, Schedule A, Section 4(a) was amended to establish an annual branch office system processing fee to reflect the costs of developing and implementing the Form BR, as well as costs associated with the ongoing branch office system maintenance and enhancements. See Securities Exchange Act Release No. 53955 (June 7, 2006), 71 FR 34658 (June 15, 2006) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2006-065).

Consistent with current practice, FINRA would assess each member's annual registration fee based on the member's total number of branch offices registered at the end of each calendar year.

Additionally, the proposed rule change would continue to waive, for one branch office per member per year, payment of the annual registration fee (and the \$20 annual branch office system processing fee), but increase the amount of the waiver from \$75 to \$175. The proposed rule change also would amend Schedule A, Section 4(a) to codify FINRA's current practice of waiving payment of the \$75 initial registration fee (and \$20 branch office system processing fee) for the first branch office registered by a member.

New Member Application Fee

Schedule A, Section 4(e) to the FINRA By-Laws currently requires new member applicants to pay an application fee of either \$5,000 or \$3,000, based generally on the net capital requirements for the type of business in which the applicant proposes to engage.

The new membership application fee has remained unchanged since 1994,⁷ notwithstanding the increase in complexity of such filings and the related resource demands. FINRA is proposing to revise the new member application fee structure to implement a fee structure that would assess fees ranging from \$7,500 to \$55,000 depending on the size of the new member applicant. The revised fee structure also would assess an additional \$5,000 surcharge for a new member applicant that intends to engage in any clearing and carrying activities. FINRA believes that assessing new member application fees based on the applicant's size and whether the applicant intends to engage in clearing and carrying activities will more closely reflect the resource demands associated with processing and reviewing applicants.

⁷ See Securities Exchange Act Release No. 33533 (January 27, 1994), 59 FR 5218 (February 3, 1994) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-94-05) (increasing from \$1,500 to \$3,000 the new member application fee for certain applicants).

Specifically, the proposed rule change would amend Section 4(e) of Schedule A to require that each applicant for membership shall be assessed an application fee based on the size of the applicant at the time the application is filed, as outlined in the tables below.

Number of Registered Persons Associated with Applicant	Small	Medium	Large
Tier 1	1-10	151-300	501-1,000
Tier 2	11-100	301-500	1,001-5,000
Tier 3	101-150	N/A	>5,000

Application Fee per Tier	Small	Medium	Large
Tier 1	\$7,500	\$25,000	\$35,000
Tier 2	\$12,500	\$30,000	\$45,000
Tier 3	\$20,000	N/A	\$55,000

As noted above, the proposed rule change also would amend Section 4(e) to require that each applicant for membership also pay \$5,000 if the applicant will be engaging in any clearing and carrying activity.

Additionally, the proposed rule change would make conforming amendments to NASD Rules 1012 and 1013. Specifically, the proposed rule change would amend the requirement in NASD Rule 1012(a) (Filing by Applicant or Service by FINRA) that an applicant for membership shall file an application in the manner prescribed in NASD Rule 1013 to require that the applicant include the timely submission of an application fee pursuant to Schedule A to the FINRA By-Laws and delete as unnecessary the requirement in NASD Rule 1013(a)(1) (How to File) that an applicant include the payment of the appropriate fee as part of its new member application. The proposed rule change also would amend NASD Rule 1012(b) (Lapse of Applicant) to require that if a new member application lapses, an applicant that wishes to continue to seek membership must submit a new application in the manner prescribed in NASD

Rule 1013, including the timely submission of an application fee pursuant to Schedule A to the FINRA By-Laws.

Further, FINRA is proposing to amend NASD Rule 1013(a)(3) (Rejection Of Application That Is Not Substantially Complete) to increase from \$350 to \$500 the processing fee retained by FINRA if the Department of Member Regulation (“Department”) determines that a new member application is not substantially complete. The proposed rule change also would amend NASD Rule 1013(a)(3) to require that, if an applicant submits another new member application, the applicant must submit the appropriate fee pursuant to Schedule A to the FINRA By-Laws.

Continuing Membership Application Fee

NASD Rule 1017 provides parameters for certain changes in a member’s ownership, control, or business operations that would require a continuing membership application. Among other things, those changes include a merger of a member with another member, a direct or indirect acquisition by a member of another member, a change in equity ownership or partnership capital of a member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital, or a material change in business operations as defined in NASD Rule 1011(k) (“material change in business operations”). NASD Rule 1011(k) defines a “material change in business operations” as including, but not limited to: (1) removing or modifying a membership agreement restriction; (2) market making, underwriting, or acting as a dealer for the first time; and (3) adding business activities that require a higher minimum net capital under SEA Rule 15c3-1.

Although FINRA does not currently assess a fee for submitting a continuing membership application, the membership program incurs substantial costs in reviewing the application materials and assessing whether the application meets the required standards. Based on these

operational demands, FINRA is proposing to amend Schedule A to the FINRA By-Laws to require that an applicant submitting a continuing membership application pay an application fee based on the number of registered persons associated with the applicant and the type of change in ownership, control, or business operations being contemplated. Because the effort required to review a continuing membership application generally depends on the facts and circumstances, with more complex changes and larger applicants requiring additional resources, FINRA believes that the proposed matrix will be an effective means of assessing related fees. For instance, the proposed fee structure would assess a member with only one to ten registered persons a fee ranging between \$5,000 and \$7,500, depending on the type of continuing membership application, whereas a member with 301 to 500 registered persons would be assessed a fee ranging between \$10,000 and \$30,000 depending on the type of continuing membership application.

Specifically, the proposed rule change would amend Section 4 of Schedule A to require that, in addition to any dues or fees otherwise payable, each applicant submitting an application for approval of a change in ownership, control, or business operations shall be assessed an application fee, based on the number of registered persons associated with the applicant (including registered persons proposed to be associated with the applicant upon approval of the application) at the time the application is filed and the type of change in ownership, control, or business operations, as outlined in the tables below:

Number of Registered Persons Associated with Applicant	Small	Medium	Large
Tier 1	1-10	151-300	501-1,000
Tier 2	11-100	301-500	1,001-5,000
Tier 3	101-150	N/A	>5,000

Application Fee per Tier and Application Type	Small	Medium	Large
Merger			
Tier 1	\$7,500	\$25,000	\$50,000
Tier 2	\$12,500	\$30,000	\$75,000
Tier 3	\$20,000	N/A	\$100,000
Material Change			
Tier 1	\$5,000	\$20,000	\$35,000
Tier 2	\$10,000	\$25,000	\$50,000
Tier 3	\$15,000	N/A	\$75,000
Ownership Change	\$5,000	\$10,000	\$15,000
Transfer of Assets	\$5,000	\$10,000	\$15,000
Acquisition	\$5,000	\$10,000	\$15,000

The proposed rule change also would clarify that if an applicant's request for approval of a change in ownership, control, or business operations involves more than one type of application identified in the "application fee per tier and application type" table above, the application fee shall be the highest amount of the applicable "application type" fees (e.g., the application fee for an applicant associated with 1-10 registered persons filing an application involving a merger and material change would be \$7,500).

Additionally, the proposed rule change would make conforming changes to NASD Rule 1012. Specifically, the proposed change would amend NASD Rule 1012(a) (Filing by Applicant or Service by FINRA) to require that applicant seeking approval of a change in ownership, control, or business operations pursuant to NASD Rule 1017 must include the timely submission of an application fee pursuant to Schedule A to the FINRA By-Laws. The proposed rule change also would amend NASD Rule 1012(b) (Lapse of Application) to require that, if a continuing membership application lapses, an applicant that wishes to continue to seek membership or approval of a change in ownership, control, or business operations must submit a new application

in the manner prescribed in NASD Rule 1017, including the timely submission of an application fee pursuant to Schedule A to the FINRA By-Laws.

Finally, FINRA is proposing to amend NASD Rule 1017(d) (Rejection Of Application That Is Not Substantially Complete) to provide that, if the Department determines that a continuing membership application is not substantially complete, the Department shall, among other things, refund the application fee, less \$500, which shall be retained by FINRA as a processing fee. The proposed rule change also would amend NASD Rule 1013(a)(3) to require that, if an applicant submits another continuing membership application, the applicant must submit the appropriate fee pursuant to Schedule A to the FINRA By-Laws.

Implementation

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date for the fees assessed in Schedule A to the FINRA By-Laws, Section 4(e) (the new member application fee) and new Section 4(i) (the continuing membership application fee), and the corresponding amendments to NASD Rules 1012, 1013, and 1017, will be July 23, 2012. FINRA will announce the implementation date for the fees assessed in Schedule A to the FINRA By-Laws, Section 4(a) (branch office annual registration fee (and related waiver)), which will be on or after January 1, 2013, in a Regulatory Notice or similar communication.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁸ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and

⁸ 15 U.S.C. 78o-3(b)(5).

other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed fees are reasonable based on the nature and scope of the Membership Department's examination program and application review processes and the related costs of maintaining the program. The proposed fees also contribute to the general funding of FINRA's overall regulatory program and serve to ensure that FINRA is sufficiently capitalized to meet its regulatory responsibilities. FINRA also believes that the proposed fees are equitably allocated among members and applicants for membership as they are assessed based on the size of the member or applicant, and in the case of the continuing membership application fee, also on the type of continuing membership application being filed.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and paragraph (f)(2) of Rule 19b-4 thereunder.¹⁰ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.] [sic]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2012-031 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2012-031. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). 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 website viewing and printing in the Commission's Public Reference Room on official business days between the

hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2012-031, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).