

perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by allowing the Exchange the flexibility to conduct background checks of staff, independent contractors and other persons using the means deemed most efficient by Exchange management.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition 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*

No written comments were either solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other 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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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](mailto:rule-comments@sec.gov). Please include File No. SR-CHX-2008-03 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File No. SR-CHX-2008-03. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. 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 No. SR-CHX-2008-03 and should be submitted on or before April 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57474; File No. SR-FINRA-2008-001]

### **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**

March 11, 2008.

#### **I. Introduction**

On January 10, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association

of Securities Dealers, Inc. ("NASD"))<sup>1</sup> filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> 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.<sup>4</sup> 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 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.<sup>5</sup> NYSE fees subject to the transfer agreement include a gross FOCUS (Financial and Operational Combined Uniform Single Report) fee ("GFF")<sup>6</sup>

<sup>1</sup> 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).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

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

<sup>5</sup> 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).

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

<sup>7</sup> 17 CFR 200.30-3(a)(12).

and registration fees for branch offices<sup>7</sup> and registered representatives.<sup>8</sup>

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;<sup>9</sup> (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.<sup>10</sup>

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.<sup>11</sup> 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

(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.<sup>12</sup> For firms that were members of both NASD and the 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.<sup>13</sup>

### 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.<sup>14</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act<sup>15</sup> 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 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.

<sup>12</sup> 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).

<sup>13</sup> For an example of how the fees are calculated, see Notice, *supra* note 4, at note 15.

<sup>14</sup> 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).

<sup>15</sup> 15 U.S.C. 78o-3(b)(5).

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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).

<sup>10</sup> 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 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.

<sup>11</sup> 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.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> 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.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-5355 Filed 3-17-08; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57480; File No. SR-FINRA-2008-008]

#### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1013 (New Member Application and Interview) and the Manner in Which Membership Applicants Submit Their Applications to FINRA

March 12, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 29, 2008, the Financial Industry Regulatory Authority, Inc., ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. FINRA has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon filing with 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 Substance of the Proposed Rule Change

FINRA proposes to amend NASD Rule 1013 (New Member Application and

Interview) to change the manner in which membership applicants submit their applications to FINRA. FINRA also proposes changes to online Form NMA to make it a more interactive, user-friendly document that applicants can use to submit application information. The text of the proposed rule change is available at <http://www.finra.org>, FINRA, and 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

In an effort to streamline the membership application process and make it more efficient, FINRA recently required membership applicants to complete and submit electronically via the Electronic Filing System ("EFS") FINRA's standardized membership application form, the Form NMA. NASD Rule 1013 requires that the Form NMA and other required application materials be filed with the Department of Member Regulation ("Department") at the district office in the district in which the applicant intends to have its principal place of business. Although the Form NMA can be forwarded electronically to the district offices, applicants must submit certain required application materials, such as the Form BD, fingerprint cards of associated persons, the new member assessment report, CRD entitlement forms, and the membership application fee via first class mail, overnight courier, or hand delivery.<sup>5</sup>

The instant proposed rule change would amend NASD Rule 1013 to require that an application be filed directly with the Department. Pursuant

to the proposed rule change, FINRA will require applicants to send all hard copy application materials to a central location within the Department, and EFS automatically will route the Form NMA to the same location within the Department. The proposed rule change also would amend NASD Rule 1013 to eliminate the requirement that applicants submit the membership application fee by physical check. Instead, FINRA will require applicants to pay the fees electronically.

Further, FINRA proposes to change the Form NMA from a static electronic document to an interactive, user-friendly document that will provide a more tailored application experience. The revised Form NMA automatically will retrieve certain information (e.g., identification information, proposed business lines, etc.) from the applicants' Forms U4 and the Form BD, which FINRA will require applicants to submit prior to completion of the Form NMA.<sup>6</sup> The revised form also will have applicants provide a greater level of detail regarding the required application information. FINRA anticipates that these changes to the Form NMA will result in a more complete and accurate application that, in turn, will allow FINRA staff to conduct a more timely evaluation and make fewer information requests during the course of the review.

The proposed rule change would alter the manner in which FINRA receives a membership application and revise the online Form NMA to make it more interactive; it would not change the information applicants must submit pursuant to NASD Rule 1013 during the application process or the standards set forth in NASD Rule 1014 for granting an applicant's membership application. Additionally, the proposed changes are consistent with the FINRA By-Laws, which allow FINRA to require that new member applications be made "via electronic process or such other process as the Corporation may prescribe."<sup>7</sup>

Finally, the proposed rule change would amend the NASD Rule Series 1010 (Membership Proceedings) to reflect FINRA's change in corporate name or to otherwise delete references to "the Association."

Prior to the proposed rule change becoming operative, FINRA will outline in a *Regulatory Notice* the details regarding the changes to the electronic

<sup>6</sup> Although applicants submit their Form BD in hard copy, the revised Form NMA will be able to retrieve the information via an electronic database that FINRA staff currently populates with Form BD information. Applicants already submit Forms U4 in an electronic format accessible to the revised form.

<sup>7</sup> FINRA By-Laws, Art. IV, Sec. 1(a).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> See NASD Rule 1012(a)(2) (requiring an applicant to file application documents and information by first class mail, overnight courier, or hand delivery where FINRA has not otherwise prescribed an electronic or alternative filing process).