

Finally, with respect to filing future amendments to the TAF under Section 19(b)(3)(A), FINRA stated that Section 19(b)(3)(A) and Rule 19b-4(f)(2) thereunder specifically contemplate such types of fee filings. Furthermore, FINRA noted that filing adjustments to the TAF under Section 19(b)(3)(A) would allow it to adjust rates in response to market volatility—both up and down—more efficiently, and would not run afoul of the rulemaking system's set of checks and balances established in the Act and the SEC's rules thereunder.

#### IV. Discussion and Commission's Findings

After carefully considering the proposed rule change, the comments submitted, and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>35</sup> In particular, the Commission finds that the proposal is consistent with Section 15A(b)(5) of the Act,<sup>36</sup> 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 other persons using any facility or system that FINRA operates or controls. The Commission believes that the proposal is reasonably designed to secure adequate funding to support FINRA's regulatory duties.

FINRA has represented that its proposed increases to the TAF rate and per-transaction cap are necessary to adequately fund FINRA's member regulatory obligations, and that the proposed increase to the TAF, like prior adjustments, seeks to remain revenue neutral to FINRA. Although commenters argue that the proposal would disproportionately harm firms that provide liquidity in covered equity securities and that the TAF is subject to volatility in the equity markets, the Commission agrees with FINRA that adjusting the TAF rate and the per-transaction cap as proposed is warranted. FINRA represented that trading in equity markets drives a significant portion of its regulatory costs, and therefore it is equitable to recover some of those costs from fees generated from equity trading activity. Moreover, as the Commission stated in 2009,

Adequate regulatory funding is critical to FINRA's ability to meet [its] statutory requirements. While some member firms understandably question whether it is reasonable for FINRA to increase regulatory fees at a time when the securities industry has faced declining revenues as a result of the economic downturn, it is incumbent on FINRA to continue to support a robust regulatory program irrespective of market events.<sup>37</sup>

Furthermore, the Commission notes that the TAF constitutes only a portion of the fees that FINRA charges members to support its regulatory function. FINRA also charges a Gross Income Assessment Fee and a Personnel Assessment Fee, which are not directly correlated to equity trading volumes.

Finally, the Commission finds that FINRA may, consistent with the Act, submit future filings to adjust the TAF rate and the per-transaction fee cap for immediate effectiveness under Section 19(b)(3)(A) of the Act. Section 19(b)(3)(A)(ii) allows an SRO to file an immediately effective proposed rule change if such filing is designated as "establishing or changing a due, fee, or other charge imposed by the self-regulatory organization."<sup>38</sup> Proposed adjustments to the TAF rate and per-transaction fee cap clearly fall within the scope of this provision.

The Commission notes that commenter concerns regarding the opportunity to comment on proposed TAF adjustments are mitigated by the fact that such filings would still be subject to comment and Commission review even when filed under Section 19(b)(3)(A). The Commission summarily may temporarily suspend such a proposed rule change within 60 days of filing "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 Act]."<sup>39</sup>

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>40</sup> that the proposed rule change (SR-FINRA-2012-023) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67239; File No. SR-FINRA-2012-028]

#### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adjust Fees for Review of Advertising Material Filed With FINRA

June 22, 2012.

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 June 8, 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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 13 of Schedule A to the FINRA By-Laws ("Section 13") governing the review charges for advertisements, sales literature, and other such material filed with or submitted to FINRA's Advertising Regulation Department (the "Department").

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

<sup>35</sup> In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>36</sup> 15 U.S.C. 78o-3(b)(5).

<sup>37</sup> Securities Exchange Act Release No. 61042 (November 20, 2009), 74 FR 62616, 62818 (November 30, 2009).

<sup>38</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>39</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</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)(ii).

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

## 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

The Department evaluates member firms' advertisements, sales literature and other communications for compliance with applicable rules of FINRA, the SEC, the Municipal Securities Rulemaking Board and the Securities Investors Protection Corporation. These public communications include print, television and radio advertisements, and electronic communications, including Web sites and social media. They also include brochures, form letters, mailers and telemarketing scripts. Pursuant to NASD Rule 2210 and Interpretations issued thereunder, the Department helps to ensure that all FINRA member firms' communications are based on principles of fair dealing and good faith, are fair and balanced, and provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry or service.<sup>5</sup> Among other things, FINRA rules prohibit member communications from including false, exaggerated, unwarranted, or misleading statements or claims.

The purpose of the proposed rule change is to amend Section 13 to raise the fee that may be charged by the Department for reviewing each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to FINRA (except for items that are filed or submitted in response to a written request from the Department issued

pursuant to the spot check procedures set forth in FINRA rules).

Despite rising costs to administer the filings program, FINRA has not adjusted since 2005 the fees charged in connection with the review of advertisements, sales literature, and other such material. The volume of filings has increased substantially over that period. From 2004 to 2011, for example, the number of regular filings increased 19 percent from 77,983 to 92,879 and the number of expedited filings rose 29 percent from 5,474 to 7,047. In 2011, firms submitted 95 percent of filings electronically. Since 2004, FINRA has upgraded its technology and hired additional staff to maintain the program's effectiveness and ensure reasonable turnaround times, particularly given firms' increased use of technology to submit filings. FINRA anticipates a continued increase in the volume of filings in future years. Based on these operational demands, FINRA proposes to raise the fee charged for the review of printed material and video or audio media from \$100 to \$125. The surcharge for lengthy materials would remain unchanged. FINRA further proposes to increase the fee for expedited review from \$500 to \$600 per item, and the fee for pages in excess of 10 to \$50 per page from \$25.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be July 2, 2012.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>6</sup> 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 other persons using any facility or system that FINRA operates or controls. FINRA believes that the rule change is consistent with Section 15A(b)(5) of the Act in that the proposed review fee is reasonable based on the Department's increasing operational costs. The proposed review fee also contributes to the general funding of FINRA's overall regulatory program and serves to ensure that FINRA is sufficiently capitalized to meet its regulatory responsibilities. Moreover, the proposed fee is equitably allocated among all members that file or submit advertisements, sales literature, and other such material, whether in printed, video or other form.

### 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 Act<sup>7</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>8</sup> 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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2012-028 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-2012-028. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently,

<sup>5</sup> We note that the Commission recently approved new consolidated FINRA communications with the public rules, including new FINRA Rule 2210, which maintains these principles. See Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (Order Approving File No. SR-FINRA-2011-035). FINRA will announce the effective date of the new rules in a *Regulatory Notice* to be published not later than June 27, 2012.

<sup>6</sup> 15 U.S.C. 78o-3(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

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 Web site 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-2012-028, and should be submitted on or before July 19, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-15851 Filed 6-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67240; File No. SR-FINRA-2012-031]

### 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

June 22, 2012.

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 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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 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 Web site 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.<sup>5</sup> Section

<sup>5</sup> 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

<sup>9</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)(ii).

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