

FINRA has proposed significant changes to the application fees to be charged to members for Continuing Membership Applications (“CMAs”) so as to defray some of the costs that it incurs in reviewing CMA applications.

The fee structure involves four types of applications:

- * a merger of a member firm with another member firm
- * a direct or indirect acquisition by a member firm of another member firm
- * a change in equity ownership or partnership capital of a member firm that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital
- * a material change in business operations as defined in NASD Rule 1011(k)

The new fee schedule imposes significant fees ranging from \$5,000 to \$100,000. My comments are specifically related to the fees to be charged to “Small Firms” of 1-150 registered representatives (“RRs”). The proposed fees for Small Firms range from a minimum of \$5,000 to \$20,000.

There are approximately 4,000 Small Firms. Of this number more than 3,000 (estimated) firms have fewer than 25 RRs. The proposed fee structure will impose a significant burden on the very Small Firm. FINRA appears to recognize the fact that FINRA’s definition of a Small Firm is too broad to impose the same costs on all Small Firms and a three tier fee structure has been created. Unfortunately, this step in the right direction falls far short of equitable treatment for the Small Firm.

As presently proposed, any CMA application for a Small Firm has a minimum cost of \$5,000. In many cases this is far too high. For example, my firm has five employee shareholders. If one shareholder were to retire he is required to sell his stock to the firm or the four other shareholders. This would result in one or more of our existing shareholders owning 25% or more of our firm’s stock. This would require filing a CMA for an Ownership Change and a \$5,000 fee when, in fact, there would be no significant change to the management or control of our firm.

The fees for a “Material Change” filing are also not fair to a Small Firm. For example, if a firm with 20 RRs filed to add a new business line, the application fee under the present proposal would be \$10,000 or the equivalent of \$500/RR. If a firm with 1,000 RRs filed a similar Material Change their fee would be \$35,000 or only \$35/RR! A Material Change filing for a firm with 5,000 RRs would be \$50,000 or only \$10/RR!

FINRA’s costs need to be taken into consideration when it establishes a fee structure for services that it provides. But FINRA also needs to keep in mind that it is an SRO and as such it should provide services to its members that are aligned with the member’s financial situation. A firm applies for a Material Change in anticipation of adding a new line of business and a commensurate new revenue stream. Small Firms provide products and services to a large sector of the population not served by larger firms. FINRA should not establish a fee structure that inhibits these firms from offering these products or services.

I am not proposing an elimination of a new CMA fee structure. I would, however, ask that FINRA consider an alternative fee schedule for Small Firms where a significant part of any new fees will be based upon the number of registered representatives employed by the firm or the number of shareholders that FINRA needs to review pursuant to a change of ownership. Below is one possible alternative. (I will leave comments on the Large and Medium Firm fees to others.)

	<i>Small Firms (1-150 RRs)</i>
<i>Merger</i>	<i>\$2,500 plus \$100/RR (with a maximum fee of \$20,000)</i>
<i>Material Change</i>	<i>\$1,000 plus \$100/RR (with a maximum fee of \$15,000)</i>
<i>Ownership Change</i>	<i>\$1,000 plus \$100 for each new shareholder (with a maximum fee of \$5,000)</i>
<i>Transfer of Assets</i>	<i>\$1,000 plus \$100/RR (with a maximum fee of \$5,000)</i>
<i>Acquisition</i>	<i>\$1,000 plus \$100/RR (with a maximum fee of \$5,000)</i>

Tying the new fees to the number of registered reps or the number of shareholders will be more equitable to the member and in many cases it is more likely to be aligned with the amount of work required by FINRA staff.

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