

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58149; File No. SR-FINRA-2008-034)

July 11, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Elimination of Certain Fee References in the Incorporated NYSE Rules

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 26, 2008, 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. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Incorporated NYSE Rules 311, 342, 345, 346, and 416 to delete references to legacy New York Stock Exchange (“NYSE”) fees that are not charged by FINRA pursuant to those rules.

The text of the proposed rule change is available at FINRA, the Commission’s Public Reference Room, and at <http://www.finra.org/RulesRegulation/RuleFilings/index.htm>.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

On July 30, 2007, NASD and NYSE consolidated their member firm regulation operations into a combined organization, FINRA. As part of the consolidation, NYSE committed to transfer to FINRA certain regulatory revenues for the remainder of 2007. NYSE fees subject to the transfer agreement included a gross FOCUS (Financial and Operational Combined Uniform Single Report) fee³ (comparable to NASD's Gross Income Assessment)⁴ and registration fees for branch offices⁵ (comparable to NASD's Branch Office System Processing Fee)⁶ and registered representatives⁷ (comparable to NASD's registration fees for the registration of representatives or principals).⁸

As part of the consolidation, FINRA evaluated whether to consolidate or eliminate any duplicative fees, as well as whether to maintain or increase any non-duplicative fees. As a result of that process, FINRA determined that a number of fees previously charged by NYSE could be

³ See Securities Exchange Act Release No. 56181 (August 1, 2007), 72 FR 44206 (August 7, 2007) (SR-NYSE-2007-70).

⁴ See Section 1(c) of Schedule A to FINRA's By-Laws ("Schedule A"). The Commission recently approved a new fee structure for the Gross Income Assessment that combines the two legacy fee structures of NASD and NYSE. See Securities Exchange Act Release No. 57474 (March 11, 2008), 73 FR 14517 (March 18, 2008).

⁵ See NYSE Rule 342.11.

⁶ See Section 4(a) of Schedule A.

⁷ See NYSE Rule 345.14.

⁸ See Section 4(b) of Schedule A.

eliminated because they are duplicative of other FINRA fees. On December 31, 2007, NYSE filed a proposed rule change with the Commission to eliminate certain NYSE registration and regulatory fees effective as of January 1, 2008.⁹ The current proposed rule change deletes references in the Incorporated NYSE Rules to NYSE fees that were eliminated by NYSE effective as of January 1, 2008, and that are not charged by FINRA pursuant to those rules.

Specifically, the proposed rule change would delete from the Incorporated NYSE Rules references to the following fees:

- The NYSE membership application fee referenced in NYSE Rule 311;¹⁰
- The NYSE Branch Office Fees referenced in NYSE Rule 342.11;¹¹
- The NYSE Registered Persons Fees referenced in NYSE Rule 345.14;¹²
- The Statutory Disqualification Filing Fee and the Statutory Disqualification Review Fee referenced in NYSE Rule 346(f);¹³ and
- The late filing fee referenced in NYSE Rule 416(b).¹⁴

FINRA proposes that the effective date of this proposed change be retroactive to January 1, 2008, to coincide with the NYSE's elimination of these fees as of January 1, 2008.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹⁵ which require, among other things, that FINRA rules provide for the

⁹ See Securities Exchange Act Release No. 57093 (January 3, 2008), 73 FR 1654 (January 9, 2008) (SR-NYSE-2007-127) (“Release No. 34-57093”).

¹⁰ FINRA charges its own application fees pursuant to Sections 4(b) and 4(e) of Schedule A.

¹¹ FINRA charges a similar fee pursuant to Section 4(a) of Schedule A.

¹² FINRA charges a similar fee pursuant to Section 4(b) of Schedule A.

¹³ FINRA charges a similar fee pursuant to Section 12 of Schedule A.

¹⁴ FINRA charges a similar fee pursuant to Section 4(g) of Schedule A.

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 deleting the references in the Incorporated NYSE Rules to fees that FINRA does not impose pursuant to those rules will reduce confusion and conform the Incorporated NYSE Rules to FINRA's practice.

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. 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-2008-034 on the subject line.

Paper Comments:

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

¹⁵ 15 U.S.C. 78q-3(b)(5).

All submissions should refer to File Number SR-FINRA-2008-034. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office 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-2008-034 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval

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 and, in particular, the requirements of Section 15A(b)(5) of the Act¹⁶ and the rules and regulations thereunder.¹⁷

¹⁶ 15 U.S.C. 78o-3(b)(5).

¹⁷ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

The Commission notes that FINRA's proposed rule change to eliminate references to the NYSE legacy fees in FINRA's Incorporated NYSE Rules is consistent with NYSE's elimination of these fees that took effect on January 1, 2008.¹⁸ Because these legacy NYSE fees are not charged by FINRA, the Commission believes that it is appropriate for FINRA to remove references to these fees from the Incorporated NYSE Rules.¹⁹ The Commission also believes that approving these changes on a retroactive basis to January 1, 2008, is appropriate because that is the effective date of NYSE's elimination of these fees.²⁰

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the Federal Register. Granting accelerated approval of the proposed rule change would help reduce any confusion FINRA members may have, because these legacy NYSE fees no longer are being charged, and would conform these Incorporated NYSE Rules to FINRA's current practice. Accordingly, the Commission believes there is good cause, consistent with Sections 15A(b)(5) and 19(b) of the Act,²¹ to approve the proposed rule change on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²² that the

¹⁸ See Release No. 34-57093, supra note 9.

¹⁹ 15 U.S.C. 78o-3(b)(5).

²⁰ See Release No. 34-57093, supra note 9.

²¹ 15 U.S.C. 78o-3(b)(5) and 78s(b).

²² 15 U.S.C. 78s(b)(2).

proposed rule change (File No. SR-FINRA-2008-034) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Florence E. Harmon
Acting Secretary

²³ 17 CFR 200.30-3(a)(12).