

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64353; File No. SR-FINRA-2011-020)

April 27, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA's Trading Activity Fee Rate for Transactions in Covered Equity Securities

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 April 26, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. 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 is proposing to amend Section 1 of Schedule A to the FINRA By-Laws to adjust the rate of FINRA's Trading Activity Fee ("TAF") for transactions in covered equity securities.

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

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

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

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

FINRA’s primary member regulatory pricing structure consists of the following fees: the Personnel Assessment (PA); the Gross Income Assessment (GIA); and the Trading Activity Fee (TAF). These fees are used to fund FINRA’s regulatory activities, including examinations; financial monitoring; and FINRA’s policymaking, rulemaking, and enforcement activities.<sup>3</sup> Because the proceeds from these fees are used to fund FINRA’s regulatory mandate, Section 1 of Schedule A to FINRA’s By-Laws notes that “FINRA shall periodically review these revenues in conjunction with costs to determine the applicable rate.”<sup>4</sup>

FINRA initially adopted the TAF in 2002 as a replacement for an earlier regulatory fee based on trades reported to Nasdaq’s Automated Confirmation Transaction system then in place.<sup>5</sup> Currently, the TAF is generally assessed on the sale of all exchange registered securities wherever executed (except debt securities that are not TRACE-Eligible Securities), over-the-counter equity securities, security futures, TRACE-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to Municipal Securities Rulemaking Board (“MSRB”) reporting requirements. The rules governing the TAF also include a list of transactions exempt from the TAF.<sup>6</sup>

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<sup>3</sup> See FINRA By-Laws, Schedule A, § 1(a).

<sup>4</sup> Id.

<sup>5</sup> See Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002).

<sup>6</sup> See FINRA By-Laws, Schedule A, § 1(b)(2).

The current TAF rates are \$0.000075 per share for each sale of a covered equity security, with a maximum charge of \$3.75 per trade; \$0.002 per contract for each sale of an option; \$0.04 per contract for each round turn transaction of a security future; and \$0.00075 per bond for each sale of a covered TRACE-Eligible Security and/or municipal security, with a maximum charge of \$0.75 per trade. In addition, if the execution price for a covered security is less than the TAF rate on a per share, per contract, or round turn transaction basis, then no TAF is assessed.

The current TAF rate for covered equity securities of \$0.000075 per share has been in place for over six years.<sup>7</sup> Over that time period, FINRA has proposed the restructuring of both the GIA and the PA. For example, effective January 1, 2010, the GIA and PA were restructured to stabilize cash flows by shifting a greater portion of the regulatory fees from the GIA, which is based on industry revenue, to the PA, which is based on the more constant figure of registered persons, while seeking to remain revenue neutral to FINRA.<sup>8</sup>

As FINRA noted when it restructured the GIA and the PA, because the GIA is assessed based on a member's annual gross revenue for the preceding calendar year, FINRA's revenues derived from the GIA are subject to the year-to-year volatility of members' revenues. A similar unpredictability of revenue flows exists with the TAF. The TAF generally is assessed on sales of securities by members and is collected from clearing firms on a monthly basis. Although the TAF is generally charged on transactions in equity securities, TRACE-reportable securities, options, and futures, over 95% of TAF revenue is generated by transactions in covered equity securities. Thus, FINRA's revenue from the TAF is substantially affected by changes in trading volume in the equities markets. Because of the substantial decrease in average daily share

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<sup>7</sup> See Securities Exchange Act Release No. 50485 (October 1, 2004), 69 FR 60445 (October 8, 2004); NASD Notice to Members 04-84 (November 2004).

<sup>8</sup> See Securities Exchange Act Release No. 61042 (November 20, 2009), 74 FR 62616 (November 30, 2009); see also Regulatory Notice 09-68 (November 2009).

volumes (ADSV) since 2009, FINRA has seen a commensurate substantial decline in revenue from the TAF.

To stabilize revenue flows necessary to support FINRA's regulatory mission, FINRA is proposing an increase to the TAF rate for covered equity securities from \$0.000075 per share to \$0.000090 per share, with a corresponding increase to the per-transaction cap for covered equity securities from \$3.75 to \$4.50.<sup>9</sup> As noted above, FINRA has not adjusted the TAF rate for covered equity securities in over six years,<sup>10</sup> and FINRA believes that increasing the TAF rate on these securities by \$0.000015 per share is the minimum increase necessary to bring the revenue from the TAF to its needed levels to adequately fund FINRA's member regulatory obligations. As with the prior restructuring of the GIA and PA described above, the proposed increase to the TAF rate on transactions in covered equity securities seeks to remain revenue neutral to FINRA (i.e., as adjusted, FINRA would aim to receive a substantially similar amount in revenue from the TAF as the TAF has generated in prior years).

The effective date of the proposed rule change will be July 1, 2011. FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.

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<sup>9</sup> Because, as noted above, transactions in covered equity securities account for over 95% of TAF revenues, FINRA is not proposing adjustments to the TAF rates for other types of securities.

<sup>10</sup> In 2004, FINRA decreased the TAF rate for covered equity securities. Before the adjustment, the TAF rate for covered equity securities was \$0.0001 per share with a maximum charge of \$10 per trade. In 2004, FINRA also expanded the scope of the TAF to cover transactions in corporate debt securities reportable to TRACE and transactions in municipal securities subject to the MSRB reporting requirements. See NASD Notice to Members 04-84 (November 2004).

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>11</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. As noted above, FINRA has not adjusted the TAF rate for transactions in covered equity securities for over six years. Because of the recent decrease in trading volumes in the equity markets, FINRA believes that the proposed rate change to the TAF is now necessary to ensure that FINRA can continue to maintain a robust regulatory program and meet its regulatory obligations effectively while attempting to remain revenue neutral.

### 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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer 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 or disapprove such proposed rule change, or

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<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

(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 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2011-020 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-2011-020. 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, 100 F Street, NE, Washington, DC 20549, 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 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 No. SR-FINRA-2011-020 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Cathy H. Ahn  
Deputy Secretary

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