

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64590; File No. SR-FINRA-2011-020)

June 2, 2011

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

I. Introduction

On April 26, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² a proposed rule change related to FINRA's Trading Activity Fee ("TAF") for transactions in Covered Securities. The proposed rule change was published for comment in the Federal Register on May 3, 2011.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

FINRA's proposal would amend Section 1 of Schedule A to the FINRA By-Laws to adjust the rate of FINRA's TAF for transactions in Covered Securities that are equity securities. Covered Securities are defined in Section 1 of Schedule A to the FINRA By-Laws as: exchange-registered securities wherever executed (except debt securities that are not TRACE-Eligible Securities); OTC 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 reporting requirements. The rules governing the TAF

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 64353 (April 27, 2011), 76 FR 24942 ("Notice").

also include a list of exempt transactions.⁴ The TAF, along with the Personnel Assessment and the Gross Income Assessment fees, are used to fund FINRA's regulatory activities, including examinations; financial monitoring; and FINRA's policymaking, rulemaking, and enforcement activities.⁵

The current TAF rate is \$0.000075 per share for each sale of a Covered Security, with a maximum charge of \$3.75 per trade. In the Notice, the Exchange stated that over 95% of TAF revenue is generated by transactions in Covered Securities that are equity securities. Thus, FINRA's revenue from the TAF is substantially affected by changes in trading volume in the equities markets and, due to the substantial decrease in average daily share volumes since 2009, FINRA has experienced a commensurate substantial decline in revenue from the TAF. Accordingly, FINRA has proposed to increase the TAF rate for Covered Securities that are equity securities by \$0.000015 per share, from \$0.000075 per share to \$0.000090 per share, with a corresponding increase to the per-transaction cap for Covered Securities that are equity securities from \$3.75 to \$4.50.⁶ FINRA stated in the Notice that the TAF rate for Covered Securities that are equity securities has not been adjusted in over six years, and that the proposal is designed to "stabilize revenue flows necessary to support FINRA's regulatory mission."

FINRA proposes July 1, 2011 as the effective date of the adjusted TAF and will announce the effective date of the proposed rule change in a Regulatory Notice.

⁴ See FINRA By-Laws, Schedule A, §1(b)(2).

⁵ See FINRA By-Laws, Schedule A, §1(a).

⁶ Because transactions in Covered Securities that are equity securities account for over 95% of TAF revenues, FINRA is not proposing adjustments to the TAF rates for other types of Covered Securities.

III. Discussion and Commission's Findings

After carefully considering the proposed rule change, the Commission finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁷ In particular, the Commission finds that the proposal is consistent with Section 15A(b)(5) of the Act,⁸ 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.

⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-FINRA-2011-020), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Cathy H. Ahn
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).