

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66276; File No. SR-FINRA-2011-071)

January 30, 2012

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

I. Introduction

On December 14, 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 to increase FINRA’s Trading Activity Fee (“TAF”) rate for transactions in covered equity securities. The proposed rule change was published for comment in the Federal Register on December 30, 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.⁴ The rules governing the TAF also include a list of exempt transactions.⁵ The TAF, along with

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 66050 (December 23, 2011), 76 FR 82334 (“Notice”)

⁴ 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.

⁵ See FINRA By-Laws, Schedule A, § 1(b)(2).

the Personnel Assessment and the Gross Income Assessment fees, are used to fund FINRA's regulatory activities.⁶

The current TAF rate is \$0.000090 per share for each sale of a covered equity security, with a maximum charge of \$4.50 per trade.⁷ In the Notice, FINRA 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. According to FINRA, since it previously increased the TAF in July 2011, there was a momentary spike in equity securities trading volume in the month of August followed by a general decline in volumes heading into the fourth quarter of 2011. FINRA states that, as a result of declining volume, it is necessary to adjust the TAF rate for 2012 to "stabilize revenue flows necessary to support FINRA's regulatory mission."⁸ Under the proposal, FINRA's TAF rate for Covered Securities that are equity securities would increase by \$0.000005 per share, from \$0.000090 per share to \$0.000095 per share, while the per-transaction cap for Covered Securities that are equity securities would increase by \$0.25, from \$4.50 to \$4.75. FINRA stated that increasing the TAF rate on these securities by \$0.000005 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 and that it intends the proposed increase to remain revenue neutral, as it did previously when it adjusted the TAF rate.⁹

FINRA stated that it intends to make the proposal effective on February 1, 2012.

⁶ See FINRA By-Laws, Schedule A, § 1(a).

⁷ The current TAF rates were approved by the Commission on June 2, 2011. See Securities Exchange Act Release No. 64590 (June 2, 2011), 76 FR 33388 (June 8, 2011).

⁸ Notice, 76 FR at 82335.

⁹ See *id.*

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.¹⁰ In particular, the Commission finds that the proposal is consistent with Section 15A(b)(5) of the Act,¹¹ 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.

¹⁰ 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).

¹¹ 15 U.S.C. 78o-3(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-FINRA-2011-071) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill
Deputy Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).