

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67239; File No. SR-FINRA-2012-028)

June 22, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adjust Fees for Review of Advertising Material Filed with FINRA

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 8, 2012, the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. 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 the Substance of the Proposed Rule Change

FINRA is proposing to amend Section 13 of Schedule A to the FINRA By-Laws (“Section 13”) governing the review charges for advertisements, sales literature, and other such material filed with or submitted to FINRA’s Advertising Regulation Department (the “Department”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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 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

The Department evaluates member firms' advertisements, sales literature and other communications for compliance with applicable rules of FINRA, the SEC, the Municipal Securities Rulemaking Board and the Securities Investors Protection Corporation. These public communications include print, television and radio advertisements, and electronic communications, including websites and social media. They also include brochures, form letters, mailers and telemarketing scripts. Pursuant to NASD Rule 2210 and Interpretations issued thereunder, the Department helps to ensure that all FINRA member firms' communications are based on principles of fair dealing and good faith, are fair and balanced, and provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry or

service.⁵ Among other things, FINRA rules prohibit member communications from including false, exaggerated, unwarranted, or misleading statements or claims.

The purpose of the proposed rule change is to amend Section 13 to raise the fee that may be charged by the Department for reviewing each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to FINRA (except for items that are filed or submitted in response to a written request from the Department issued pursuant to the spot check procedures set forth in FINRA rules).

Despite rising costs to administer the filings program, FINRA has not adjusted since 2005 the fees charged in connection with the review of advertisements, sales literature, and other such material. The volume of filings has increased substantially over that period. From 2004 to 2011, for example, the number of regular filings increased 19 percent from 77,983 to 92,879 and the number of expedited filings rose 29 percent from 5,474 to 7,047. In 2011, firms submitted 95 percent of filings electronically. Since 2004, FINRA has upgraded its technology and hired additional staff to maintain the program's effectiveness and ensure reasonable turnaround times, particularly given firms' increased use of technology to submit filings. FINRA anticipates a continued increase in the volume of filings in future years. Based on these operational demands, FINRA proposes to raise the fee charged for the review of printed material and video or audio media from \$100 to \$125. The surcharge for lengthy materials would remain unchanged.

⁵ We note that the Commission recently approved new consolidated FINRA communications with the public rules, including new FINRA Rule 2210, which maintains these principles. See Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (Order Approving File No. SR-FINRA-2011-035). FINRA will announce the effective date of the new rules in a Regulatory Notice to be published not later than June 27, 2012.

FINRA further proposes to increase the fee for expedited review from \$500 to \$600 per item, and the fee for pages in excess of 10 to \$50 per page from \$25.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be July 2, 2012.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁶ 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. FINRA believes that the rule change is consistent with Section 15A(b)(5) of the Act in that the proposed review fee is reasonable based on the Department's increasing operational costs. The proposed review fee also contributes to the general funding of FINRA's overall regulatory program and serves to ensure that FINRA is sufficiently capitalized to meet its regulatory responsibilities. Moreover, the proposed fee is equitably allocated among all members that file or submit advertisements, sales literature, and other such material, whether in printed, video or other form.

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

⁶ 15 U.S.C. 78o-3(b)(5).

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and paragraph (f)(2) of Rule 19b-4 thereunder.⁸ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.] [sic]

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. Please include File Number SR-FINRA-2012-028 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-2012-028. This file number should be included on the subject line if e-mail is used.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

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 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 offices 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-2012-028, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).