

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56347; File No. SR-NASD-2007-056)

August 31, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Establish a Membership Waive-In Process for Certain NYSE Member Organizations

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 July 25, 2007, the National Association of Securities Dealers, Inc. (“NASD”) (n/k/a Financial Industry Regulatory Authority, Inc.) 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 substantially prepared by NASD.³ On August 16, 2007, FINRA filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD proposes to adopt Interpretive Material 1013-1 (“IM-1013-1”), a membership waive-in process for certain New York Stock Exchange (“NYSE”) member organizations, and Interpretive Material Section 4(e) to Schedule A of the By-Laws, a membership application fee waiver for those NYSE member organizations that apply for membership pursuant to IM-1013-1.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007).

The proposed rule change is submitted in furtherance of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. (“NYSE Regulation”) (“Transaction”).⁴ The text of the proposed rule change, including the FINRA Waive-In Membership Application Form and Membership Agreement, is available at FINRA, the Commission’s Public Reference Room, and <http://www.finra.org>.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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 November 28, 2006, NASD and the NYSE Group announced a plan to consolidate their member regulation operations into a combined organization intended to be the sole U.S. private-sector provider of member firm regulation for securities firms that do business with the public. Upon closing of the Transaction, NASD adopted the new corporate name, FINRA.⁵ The consolidation is intended to streamline the broker-dealer regulatory system, combine

⁴ See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (File No. SR-NASD-2007-023).

⁵ See supra note 3. The Commission notes that the Transaction closed on July 30, 2007. See telephone conference between Nancy Burke-Sanow, Assistant Director, Commission, and Patrice Gliniecki, Senior Vice President and Deputy General Counsel, FINRA, on July 31, 2007.

technologies, permit the establishment of a single set of rules and group examiners with complementary areas of expertise in a single organization—all of which will serve to enhance oversight of U.S. securities firms and help ensure investor protection. Moreover, the new organization will be committed to reducing regulatory costs and burdens for firms of all sizes through greater regulatory efficiency.

On July 24, 2007, NYSE filed a proposed rule change requiring its member organizations to become members of FINRA to achieve the Transaction’s goal to eliminate duplicative member firm regulation (“Mandatory FINRA Membership filing”).⁶ Currently, there are approximately 95 NYSE member organizations that were not also NASD members that will be required to become FINRA members. In furtherance of the consolidation, the proposed rule change would establish a waive-in process for these firms to become members of FINRA. The proposed rule change would apply to firms that, as of July 25, 2007: (1) are approved NYSE member organizations or (2) have submitted an application to become an NYSE member organization and are subsequently approved for NYSE membership (together “NYSE-only member organizations”), provided that such firms were not also NASD members as of the closing of the Transaction (i.e., as of July 30, 2007).

NASD recognizes that NYSE has a comprehensive membership application and review process based on similar principles and standards to that of NASD. As such, those NYSE-only member organizations that will become FINRA members already have been subjected to an extensive screening process. Therefore, the proposed rule change would establish IM-1013-1, a process that would make such firms eligible to automatically become a FINRA member and to

⁶ See Securities Exchange Act Release No. 56173 (July 31, 2007), 72 FR 44205 (August 7, 2007) (SR-NYSE-2007-67).

automatically register all associated persons whose registrations are approved with NYSE in registration categories recognized by FINRA upon submission to FINRA's Member Regulation Department ("Department") of a signed waive-in membership application ("Waive-In Application").

FINRA does not intend to recognize any new registration categories upon the closing of the Transaction. Thus, associated persons of the NYSE-only member organizations will be automatically registered with FINRA only for those registration categories that are recognized jointly by NASD and NYSE – e.g., a General Securities Representative (Series 7); provided, however, that the firm must, upon approval of FINRA membership, submit an amended Form U4 for each such associated person, denoting the corresponding NASD registration category(ies) for such person.⁷ A list of those registration categories is included as part of the Waive-In Application. (Please note that both NASD and NYSE recognize the Series 9/10, but for NASD, persons who have passed the Series 9/10 may function only as a General Securities Sales Supervisor (see NASD Rule 1022(g).) For those associated persons registered in a category recognized only by NYSE, FINRA will acknowledge such registrations to permit such persons to continue to function in the capacity for which they are registered.

The Waive-In Application would require the following information:

(1) General company information, including Central Registration Depository (CRD[®]) Number and contact person.

(2) An attestation that all information on the applicant's CRD form, as of the date of submission of the Waive-In Application is accurate and complete and fully reflects all aspects of

⁷ FINRA intends to file a separate rule change to the Forms U4 and U5 to reflect NASD's change in corporate name to FINRA.

the applicant's current business, including, but not limited to, ownership structure, management, product lines and disclosures.

(3) The identity of the firm's Executive Representative.

(4) Completed and signed Entitlement Forms.

(5) A signed FINRA Membership Agreement.

(6) Representations that the applicant's Uniform Application for Broker-Dealer

Registration (Form BD) will be amended as needed to keep current and accurate; that all individual and entity registrations with FINRA will be kept current; and that all information and statements contained in the Waive-In Application are current, true and complete.

The proposed rule change would require the Department to review the Waive-In Application within three (3) business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement would become effective on the date of such notification letter.⁸

As set forth in proposed IM-1013-1, the NYSE-only member organizations admitted pursuant to proposed IM-1013-1 would be subject to the NYSE rules incorporated by FINRA, FINRA's By-Laws and Schedules to By-Laws, including Schedule A (Assessments and Fees), and NASD Rule 8000 (Investigations and Sanctions) and Rule 9000 (Code of Procedure) Series, provided that their securities business is limited to floor brokerage on the NYSE, or routing away to other markets orders that are ancillary to their core floor business under NYSE Rule 70.40

⁸ NASD understands that the Mandatory FINRA Membership filing would extend the NYSE-only member organizations a 60-day grace period within which they must apply for and be approved for FINRA membership. This grace period would run from the later of the date of Commission approval of either the instant proposed rule change or the Mandatory FINRA Membership filing.

(“permitted floor activities”).⁹ If an NYSE-only member organization admitted pursuant to proposed IM-1013-1 seeks to expand its business operations to include any activities other than the permitted floor activities, such firm must apply for and receive approval to engage in such business activity pursuant to NASD Rule 1017. Upon approval of such business expansion, the firm would become subject to all NASD rules, in addition to those NYSE rules incorporated by FINRA.

Associated persons of an NYSE-only member organization admitted to FINRA pursuant to proposed IM-1013-1 would be subject to the same set of rules as the firm with which they are associated, namely the NYSE rules incorporated by FINRA, FINRA’s By-Laws and Schedules to By-Laws, and the NASD Rule 8000 and 9000 Series. Inasmuch as these associated persons would not be subject to NASD Rules 1021 or 1031, they would not be required to register in a registration category recognized by FINRA. To the extent that such persons continue to be associated solely with a firm whose business complies with the limitations imposed on those firms admitted to FINRA pursuant to proposed IM-1013-1, FINRA is not imposing any registration requirements beyond those required by the NYSE, provided their business is confined in scope as contemplated in proposed IM-1013-1.¹⁰

⁹ For purposes of this filing, activities that are ancillary to a Floor broker’s core business include: (i) routing orders in NYSE-traded securities to an away market for any reason relating to their ongoing Floor activity, including regulatory compliance or meeting best-execution obligations; or (ii) provided that the majority of transactions effected by the firm are effected on the NYSE, sending to other markets orders in NYSE-traded or non-NYSE-traded securities and/or futures if such orders relate to hedging positions in NYSE-traded securities, or are part of arbitrage or program trade strategies that include NYSE-traded securities.

¹⁰ The licensing and other requirements applicable to the NYSE-only member organizations and their associated persons are subject to change as part of the process of establishing a consolidated rulebook applicable to all FINRA members.

Finally, the proposed rule change would create Interpretive Material Section 4(b)(1) and 4(e) of Schedule A of the NASD By-Laws, which would exempt the applicants from the assessment of a FINRA membership application fee and from fees for each initial Form U4 filed by the applicant with FINRA for the registration of a representative or principal associated with the firm at the time it submits its application for FINRA membership pursuant to proposed IM-1013-1. NASD believes the exemption is appropriate, since NYSE is mandating FINRA membership in furtherance of the Transaction and because the waive-in application process will not require the same resources by the Department as when a new applicant that is not already a member of NYSE seeks membership.

The effective date of the proposed rule change will be the date of Commission approval of the proposed rule change.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(6) of the Act,¹¹ in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and, in general, to protect investors and the public interest. The proposed rule change will facilitate the consolidation of member regulation functions under a single self-regulatory organization, resulting in more effective and efficient regulation of brokers and dealers, thereby enhancing investor protection, while also ensuring that those NYSE-only member organizations eligible for the waive-in process meet suitable standards for admission into FINRA.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on

¹¹ 15 U.S.C. 78o-3(b)(6).

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 35 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 NASD consents, the Commission will:

(A) by order approve such proposed rule change, or

(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. Please include File Number SR-NASD-2007-056 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASD-2007-056. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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 Number SR-NASD-2007-056 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).