

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59076; File No. SR-FINRA-2008-053)

December 10, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Amend Section 4(c) of Schedule A of the FINRA By-Laws to Increase Certain Qualification Examination Fees

I. Introduction

On October 15, 2008, the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Section 4(c) of Schedule A of the FINRA By-Laws (“Schedule A”) to increase certain qualification examination fees. The proposed rule change was published for comment in the Federal Register on October 29, 2008.³ The Commission received one comment letter on the proposed rule change.⁴ This order approves the proposed rule change.

II. Description

Any person associated with a member firm who is engaged in the securities business of the firm must register with FINRA. As part of the registration process, securities professionals must pass a qualification examination to demonstrate competence in each area in which they intend to work. These mandatory qualification examinations cover a broad range of subjects on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58832 (October 22, 2008); 73 FR 64374 (“Notice”).

⁴ See Letter to Florence E. Harmon, Acting Secretary, Commission, from Dennis P. Beirne, Vice President and Chief Compliance Officer, People’s Securities, Inc., dated November 12, 2008 (“People’s Securities Letter”).

the markets, products, a person's responsibilities in a given position, securities industry rules and the regulatory structure. The proposed rule change amends Schedule A to increase certain qualification examination fees.⁵

III. Comment Letter

The Commission received one comment letter in response to the proposed rule change.⁶ People's Securities, Inc. ("People's Securities") submitted a comment letter in opposition to the proposal, arguing that FINRA's decision to increase examination fees comes at a time when many firms are suffering from a reduction in business and have resorted to measures such as reducing the number of new hires and current staff in order to decrease expenditures. People's Securities states that an increase in examination fees would result in a "significant burden" on firms, and for People's Securities in particular, as many of the proposed fee increases are for the examinations that People's Securities uses the most. People's Securities suggests that if FINRA increases these fees, these changes will result in fewer registered representatives which will detrimentally affect the ability of firms to service the needs of investors.

In its response to the People's Securities Letter,⁷ FINRA acknowledged People's Securities' economic arguments but explained that FINRA has experienced a rise in its own costs of developing, administering, and delivering the exams, and consequently had to raise examination fees. In support of its decision, FINRA stated that it had not raised any examination fees since 2006, and that it had conducted a test based on a sample of its regulated firms and

⁵ Schedule A sets forth examination fees for those examinations that are sponsored or co-sponsored by FINRA and/or that may be required by FINRA for its members.

⁶ Supra note 4.

⁷ See Letter to Florence E. Harmon, Acting Secretary, Commission, from Erika L. Lazar, Senior Attorney, FINRA, dated November 26, 2008 ("FINRA Letter").

concluded that its proposed fee changes would increase a firm's overall examination fees on average by less than 10% each year.

IV. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act,⁹ 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 filing increases certain qualification examination fees to reflect FINRA's increased costs in developing, administering and delivering qualification examinations. While the Commission recognizes the issues raised by People's Securities, FINRA has represented that an increase in fees is necessary to account for increases in its own costs to manage its qualification examinations, many of which are utilized throughout the securities industry and are used to ensure that registered persons new to the securities industry have the basic knowledge to enable them to do their jobs and comply with industry rules and regulations. The Commission notes FINRA's representation that it will continue to maintain an examination fee structure at a reasonable cost in light of the current economic culture.

⁸ 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).

⁹ 15 U.S.C. 78q-3(b)(5).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-FINRA-2008-053) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Acting Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).