

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66924; File No. SR-FINRA-2012-023)

May 4, 2012

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 2, 2012, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. 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 Substance of the Proposed Rule Change

FINRA is proposing to amend Section 1 of Schedule A to the FINRA By-Laws to adjust the rate of FINRA's Trading Activity Fee ("TAF") for transactions in covered equity securities.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

FINRA’s primary member regulatory pricing structure consists of the following fees: the Personnel Assessment; the Gross Income Assessment; and the TAF. These fees are used to fund FINRA’s regulatory activities, including examinations; financial monitoring; and FINRA’s policymaking, rulemaking, and enforcement activities.³ Because the proceeds from these fees are used to fund FINRA’s regulatory mandate, Section 1 of Schedule A to FINRA’s By-Laws notes that “FINRA shall periodically review these revenues in conjunction with costs to determine the applicable rate.”⁴

FINRA initially adopted the TAF in 2002 as a replacement for an earlier regulatory fee based on trades reported to Nasdaq’s Automated Confirmation Transaction system then in place.⁵ Currently, the TAF is generally assessed on the sale of all exchange registered securities wherever executed (except debt securities that are not TRACE-Eligible Securities), over-the-counter 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 also include a list of transactions exempt from the TAF.⁶

³ See FINRA By-Laws, Schedule A, § 1(a).

⁴ Id.

⁵ See Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002).

⁶ See FINRA By-Laws, Schedule A, § 1(b)(2).

The current TAF rate for covered equity securities is \$0.000095 per share for each sale of a covered equity security, with a maximum charge of \$4.75 per trade. This rate has been in place for trades occurring on or after March 1, 2012, and was based on estimated trading volumes.⁷ If the execution price for a covered equity security is less than the TAF rate on a per share basis, then no TAF is assessed.

Because the TAF is based on trading volumes, FINRA's revenues derived from the TAF are subject to the volatility of trading in the securities markets and, in particular, the equity markets. Although the TAF is generally charged on transactions in equity securities, TRACE-reportable securities, options, and futures, over 95% of TAF revenue is generated by transactions in covered equity securities. Thus, FINRA's revenue from the TAF is substantially affected by changes in trading volume in the equities markets.

Share volume in the equity markets has been difficult to project given the volatility of the markets through 2011 and into the early months of 2012. Declining share volume during December 2011 and the first two months of 2012 indicate that share volumes are not holding to the level seen in 2011 as FINRA anticipated. Given this trend, FINRA's TAF projections for the year indicate a shortfall. Equity trading volume from December 2011 through February 2012 averaged approximately 6.7 billion shares per day; when setting the previous TAF rate, FINRA estimated average equity trading of approximately 7.7 billion shares per day. Recognizing these volume conditions remain weaker than anticipated, it is necessary for FINRA to adjust the TAF rate for the second half of 2012.

To stabilize revenue flows necessary to support FINRA's regulatory mission in light of

⁷ See Regulatory Notice 12-06 (January 2012); see also Securities Exchange Act Release No. 66287 (February 1, 2012), 77 FR 6161 (February 7, 2012); Securities Exchange Act Release No. 66276 (January 30, 2012), 77 FR 5613 (February 3, 2012).

the decreased volume of trading in the equity markets, FINRA is proposing an increase to the TAF rate for covered equity securities from \$0.000095 per share to \$0.000119 per share, with a corresponding increase to the per-transaction cap for covered equity securities from \$4.75 to \$5.95.⁸ FINRA believes that increasing the TAF rate on these securities by \$0.000024 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. As with the prior rate change to the TAF, the proposed increase to the TAF rate on transactions in covered equity securities seeks to remain revenue neutral to FINRA (i.e., as adjusted, FINRA would aim to receive a substantially similar amount in revenue from the TAF as the TAF has generated in prior years).

When FINRA proposed replacing the former NASD Regulatory Fee with the TAF in 2002, several commenters at the time expressed concern to the Commission that FINRA could raise the TAF rate at any time without notice and comment and Commission approval.⁹ In approving the TAF, the Commission noted that it did not share the commenters' concern, that FINRA must file any proposed changes to the TAF with the SEC, and that FINRA agreed to file all future changes to the TAF for full notice and comment pursuant to Section 19(b)(2) of the Act.¹⁰

Consistent with the recent amendments by Congress to Section 19(b)(3)(A) of the Act¹¹ to clarify the authority of a self-regulatory organization ("SRO") to file proposed rule changes establishing or changing a due, fee, or other charge imposed by the SRO for immediate

⁸ Because, as noted above, transactions in covered equity securities account for over 95% of TAF revenues, FINRA is not proposing adjustments to the TAF rates for other types of securities.

⁹ See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003).

¹⁰ See *id.* at 34024.

¹¹ 15 U.S.C. 78s-3(b)(3) [sic].

effectiveness,¹² FINRA believes it is appropriate to file future amendments to the TAF rates under Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4 thereunder¹⁴ rather than for full notice and comment under Section 19(b)(2) of the Act.¹⁵ FINRA notes that it will continue to file all TAF rate changes with the Commission, and the Commission summarily may temporarily suspend a proposed rule change changing a TAF rate filed pursuant to Section 19(b)(3)(A) of the Act within 60 days of filing “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].”¹⁶ As noted above, FINRA anticipates filing proposed changes to TAF rates (either to increase or to decrease a rate) only when necessary to account for changes in trading volume with the goal of making the TAF revenue-neutral for FINRA (i.e., FINRA aims to receive a substantially similar amount in revenue from the TAF from year to year).

The effective date of the proposed rule change will be July 1, 2012. FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.

¹² Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended Section 19(b)(3)(A) of the Act to explicitly allow SROs to file proposed rule changes for immediate effectiveness if the proposed rule change establishes or changes a due, fee, or other charge imposed by the SRO on members or non-members.

¹³ 15 U.S.C. 78s-3(b)(3)(A) [sic].

¹⁴ 17 CFR 240.19b-4. Paragraph (f)(2) of Rule 19b-4 permits a proposed rule change filed by an SRO to take effect upon filing with the SEC if the SRO designates the proposed rule change as establishing or changing a due, fee, or other charge applicable only to a member. 17 CFR 240.19b-4(f)(2). The TAF is charged only to FINRA members.

¹⁵ 15 U.S.C. 78s-3(b)(2) [sic].

¹⁶ 15 U.S.C. 78s-3(b)(3)(C) [sic].

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹⁷ 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. Because of the recent decrease in trading volumes in the equity markets described above, FINRA believes that the proposed rate change to the TAF is now necessary to ensure that FINRA can continue to maintain a robust regulatory program and meet its regulatory obligations effectively while attempting to remain revenue neutral.

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

Within 45 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 the self-regulatory organization consents, the Commission will:

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

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

¹⁷ 15 U.S.C. 78q-3(b)(5).

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-2012-023 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-2012-023. 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 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at 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 publicly available. All submissions should refer to File Number SR-FINRA-2012-023 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.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).