

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67247; File No. SR-FINRA-2012-030)

June 25, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Sections 4 and 6 of Schedule A to the FINRA By-Laws Regarding Fees Relating to the Central Registration Depository

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 11, 2012, Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change 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 Substance of the Proposed Rule Change

FINRA is proposing to amend Sections 4 and 6 of Schedule A to the FINRA By-Laws to implement changes to certain fees relating to the Central Registration Depository (“CRD<sup>®</sup>” or “CRD system”).

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 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

As described in further detail below, FINRA is proposing to amend Schedule A to the FINRA By-Laws ("Schedule A") to implement changes to certain fees relating to the CRD system.<sup>5</sup>

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<sup>5</sup> The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations ("SROs") to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers. Certain information reported to the CRD system is displayed in BrokerCheck<sup>®</sup>, an electronic system that provides the public with information on the professional background, business practices, and conduct of FINRA members and their associated persons. Investors use BrokerCheck to help make informed choices about the individuals and firms with which they currently conduct or are considering conducting business.

### Initial/Transfer Registration Fee

Under Section 4(b)(1) of Schedule A, FINRA charges an \$85 fee for each initial or transfer Uniform Application for Securities Industry Registration or Transfer (“Form U4”) filed by a member in the CRD system to register an individual. In those cases where a member is transferring the registrations of individuals in connection with the acquisition of all or part of another member’s business, FINRA provides a discount to the fee, ranging from 10 to 50 percent, based on the number of registered personnel being transferred. FINRA is proposing to increase the registration fee to \$100; it is not proposing to make any changes to the current discount schedule.

This fee has been static since 1995.<sup>6</sup> Since 1995, FINRA has regularly enhanced the CRD system by adding features and functionality (e.g., work queues, standard reports, email notifications) designed to make form filing more efficient for members, and to otherwise help members meet their reporting and related regulatory obligations. FINRA also has consistently made usability and navigational enhancements since deploying the web-based CRD system in 1999. Finally, FINRA has increased the number of registration categories available to individuals, as well as the number of SROs and jurisdictions with which individuals and firms may register.

### Disclosure Filing Fees

As part of the securities industry’s licensing and registration process, individuals and members are required to report certain disclosure events or proceedings to the CRD system. These disclosure matters include, for example, certain criminal charges and convictions, regulatory actions, investment-related civil judgments and injunctions, and financial events such

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<sup>6</sup> See Securities Exchange Act Release No. 36025 (July 26, 1995), 60 FR 39200 (August 1, 1995) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-95-32).

as bankruptcies and unsatisfied liens. Individuals report these disclosure events or proceedings through Form U4 or Uniform Termination Notice for Securities Industry Registration (“Form U5”), while members report disclosure matters in which they or a control affiliate have been involved via the Uniform Application for Broker-Dealer Registration (“Form BD”).

When a disclosure filing is made for either an individual or member, FINRA must, among other things, confirm that the matter is properly reported; review any documentation submitted and/or determine whether additional documentation is required; conduct any necessary independent research; and, depending on the matter reported, analyze whether the event or proceeding subjects the individual or member to a statutory disqualification pursuant to Section 3(a)(39) of the Act.<sup>7</sup>

Under Section 4(b)(3) of Schedule A, FINRA assesses a \$95 fee to process an initial or amended Form U4 or Form U5 that includes the initial reporting, amendment or certification of one or more disclosure events or proceedings. FINRA currently does not charge a fee to process a Form BD that contains a disclosure event or proceeding. FINRA is proposing to increase the disclosure filing fee for Forms U4 and U5 to \$110 and to establish a disclosure filing fee for Form BD of \$110.

Reviewing disclosure information has become more complex, in part because Forms U4 and U5 have added further disclosure questions<sup>8</sup> and FINRA’s By-Laws have been revised to expand the categories under which an individual or member can be subject to a statutory disqualification.<sup>9</sup> As a result, while costs to administer the CRD program have increased, those

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<sup>7</sup> 15 U.S.C. 78c(a)(39).

<sup>8</sup> See Securities Exchange Act Release No. 59916 (May 13, 2009), 74 FR 23750 (May 20, 2009) (Order Approving File No. SR-FINRA-2009-008).

<sup>9</sup> See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (Order Approving File No. SR-NASD-2007-023).

costs have not been offset by a commensurate increase in the current disclosure filing fee, which has remained static since 1995,<sup>10</sup> or the establishment of a fee to cover the costs associated with review of disclosure matters submitted on Form BD.

#### System Processing Fee

Under Section 4(b)(6) of Schedule A, FINRA currently charges an annual \$30 system processing fee for each member's registered individuals. FINRA is proposing to increase the system processing fee to \$45. This fee has not been increased since January 2000.<sup>11</sup> Since 2000, FINRA's costs to operate, develop, and maintain the CRD system (e.g., investments in system infrastructure and data security) have increased.

#### Fingerprint Fees

FINRA processes fingerprints submitted by members on behalf of their associated persons who are required to be fingerprinted pursuant to Section 17(f)(2) of the Act<sup>12</sup> and Rule 17f-2 thereunder.<sup>13</sup> Under Section 4(b)(4) of Schedule A, FINRA currently charges a fee of \$13 to process each set of fingerprints submitted by a member, plus an additional fee that FINRA collects on behalf of the Federal Bureau of Investigation ("FBI"), consistent with FBI guidelines.<sup>14</sup>

Members submit fingerprints to FINRA either electronically or via a hard copy fingerprint card. FINRA is proposing to increase the processing fee for fingerprints submitted

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<sup>10</sup> See supra note 6.

<sup>11</sup> See Securities Exchange Act Release No. 41937 (September 28, 1999), 64 FR 53762 (October 4, 1999) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-99-43).

<sup>12</sup> 15 U.S.C. 78q(f)(2).

<sup>13</sup> 17 CFR 240.17f-2.

<sup>14</sup> The current FBI fee is \$14.50. See Revised User Fee Schedule, 76 FR 78950 (December 20, 2011).

electronically to \$15 and to increase the fee for fingerprints submitted by a hard copy fingerprint card to \$30.

The fingerprint fee has not increased since 2003.<sup>15</sup> FINRA is proposing a two-tiered fingerprint processing fee structure in part to reflect that the costs associated with processing fingerprints submitted via a hard copy fingerprint card are much higher than those that are submitted electronically. Specifically, fingerprints submitted by a hard copy card require additional processing by FINRA, including adding a barcode, if necessary, to the card for tracking purposes; scanning the fingerprints and converting them to a digital image for submission to the FBI; and, for first-time registrants, entering the individual's personal and demographic information into the CRD system. FINRA also believes that the two-tiered fingerprint fee structure will incentivize firms to submit fingerprints electronically, making processing less time-intensive for FINRA staff. FINRA notes that members will be able to choose how they submit their associated persons' fingerprints and therefore will have some control over the fees they incur for fingerprint processing.

In addition to processing fingerprints submitted by members, FINRA also processes and posts fingerprint results and identifying information submitted by a member that have been processed through another SRO. Pursuant to Section 4(b)(5) of Schedule A, FINRA charges a fee of \$13 for processing and posting these submissions. FINRA is proposing to increase this fee to \$30.

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<sup>15</sup> See Securities Exchange Act Release No. 48379 (August 20, 2003), 68 FR 51622 (August 27, 2003) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2003-109).

This fee has been static since 2003.<sup>16</sup> FINRA notes there are higher costs associated with the processing and posting of fingerprint results and identifying information from other SROs. In this regard, upon receipt of the fingerprint results and identifying information, FINRA images and stores the documents received, verifies and matches the fingerprint processing results to an existing record in the CRD system, if available, and manually posts the results to the CRD system.

#### Mass Transfer Registration Fees

FINRA's Mass Transfer Program allows for the bulk transfer of registration and fingerprint information within the CRD system when a member is involved in a business combination such as a merger, consolidation or reorganization with another member. Under Section 6(b) of Schedule A, a member that FINRA determines to be a successor organization to a predecessor member is not required to pay the fees for the re-registration of branch offices and personnel of the predecessor as part of the mass transfer. A non-successor member, however, is required to pay these re-registration fees.

FINRA is proposing to eliminate the exception to the payment of re-registration fees for successor members involved in a mass transfer. FINRA notes that a mass transfer, which is an optional service that FINRA makes available to member firms that engage in a business combination, involves significant work on FINRA's part, including reviewing transaction details; entering the mass transfer into the CRD system; addressing questions from firm personnel or, in certain circumstances, providing them with training; and post-mass transfer troubleshooting. The elimination of the exception will result in all members that participate in FINRA's Mass

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<sup>16</sup> See supra note 15.

Transfer Program to be [sic] assessed fees for the re-registration of branch offices and personnel of the predecessor member.

#### Late Disclosure Fee

Under Section 4(h) of Schedule A, FINRA charges a fee of \$10 per day, up to a maximum of \$300, for each day that a new disclosure event or a change in the status of a previously reported disclosure event is not timely filed on an initial or amended Form U5 or an amended Form U4. This fee is assessed starting on the day following the last date on which the event or change in status was required to be reported.

FINRA is proposing to increase the late disclosure fee to \$100 for the first day that an applicable disclosure event is not timely filed and \$25 for each subsequent day, up to a maximum of 60 days. Under the proposal, the maximum amount of the late disclosure fee will increase from \$300 to \$1,575.

The current late disclosure filing fee has been in effect and remained static since 2004.<sup>17</sup> Notwithstanding this fact, some members and individuals still fail to timely report initial or updated disclosure events.<sup>18</sup> While FINRA continues to address the issue of late disclosure filings through other avenues, including disciplinary actions, FINRA believes that it is appropriate to increase the late disclosure filing fee in part to help ensure that disclosure events are reported and updated in a timely manner.

#### Implementation

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<sup>17</sup> See Securities Exchange Act Release No. 49224 (February 11, 2004), 69 FR 7833 (February 19, 2004) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2003-192).

<sup>18</sup> See, e.g., MML Investors Services, LLC, FINRA AWC No. 2010020873501 (November 16, 2011); Goldman, Sachs & Co., FINRA AWC No. 2010022473801 (November 9, 2010), available at <http://www.finra.org/Industry/Enforcement/DisciplinaryActions/FDAS/>.



FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be January 2, 2013. Specifically, the proposed initial/transfer registration fee, disclosure filing, fingerprint, and late disclosure fees would become effective for filings or fingerprints submitted on or after January 2, 2013. The proposed changes to the mass transfer registration fees would become effective for mass transfers executed on or after January 2, 2013. Lastly, the proposed system processing fee would become effective for the 2013 Renewal Program.<sup>19</sup>

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>20</sup> 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 proposed fees are reasonable based on the increased costs associated with operating and maintaining its registration and disclosure programs, specifically the CRD system and BrokerCheck. The proposed fees also contribute to the general funding of FINRA's overall regulatory program and serve to ensure that FINRA is sufficiently capitalized to meet its regulatory responsibilities. The current fees have remained static for at least seven years and some of the fees have not been increased in over 16 years. During this time, several enhancements have been made to the CRD system, including: (1) incorporation of various uniform registration form changes; (2) electronic fingerprint processing; (3) Web EFT<sup>™</sup>, which allows subscribing firms to submit batch filings to the CRD system; (4) increases in the number

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<sup>19</sup> As part of the 2013 Renewal Program, Preliminary Renewal Statements reflecting the proposed \$45 system processing fee will be made available to members in the fourth quarter of 2012.

<sup>20</sup> 15 U.S.C. 78o-3(b)(5).

and types of reports available through the CRD system; and (5) significant changes to BrokerCheck, including making BrokerCheck easier to use and expanding the amount of information made available through the system.

FINRA further believes that the proposed fees are reasonable because they help to ensure the integrity of the information in the CRD system. The integrity of the information in the CRD system is very important because the Commission, FINRA, other SROs and state securities regulators use the CRD system to make licensing and registration decisions, among other things. Furthermore, the information displayed in BrokerCheck, which investors use to help make informed choices about the individuals and firms with which they currently conduct or are considering conducting business, is derived from the CRD system.

FINRA also believes that the proposed fees are equitably allocated in that they will apply equally to all individuals and members required to report information to the CRD system. Thus, those members that register more individuals or submit more filings through the CRD system will generally pay more in fees than those members that use the CRD system to a lesser extent.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>21</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>22</sup> 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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2012-030 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-2012-030. 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

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f)(2).

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 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-FINRA-2012-030 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.<sup>23</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).