

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67971; File No. SR-FINRA-2012-044)

October 3, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Trading Activity Fee Rate for Transactions in Security Futures

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 September 26, 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. 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 filing with 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 Section 1 of Schedule A to the FINRA By-Laws to adjust the rate of FINRA’s Trading Activity Fee (“TAF”) for round turn transactions in security futures.

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.

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).

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

FINRA's primary member fee structure consists of the following: 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.⁵ The proposed rule change amends the TAF rate for round turn transactions in security futures to match the fee charged by the National Futures Association ("NFA").

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.⁶ 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

⁵ See FINRA By-Laws, Schedule A, § 1(a).

⁶ See Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002).

Municipal Securities Rulemaking Board reporting requirements. The rules governing the TAF also include a list of transactions exempt from the TAF, including transactions in security futures held in futures (as opposed to securities) accounts.⁷

For transactions in security futures held in securities accounts, members must pay to FINRA a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.⁸ The current TAF rate for security futures transactions is \$0.04 per contract for each round turn transaction.⁹

On June 1, 2012, the NFA submitted an NFA Interpretive Notice to the Commodity Futures Trading Commission (“CFTC”) regarding the NFA’s assessment fee on diminutive notional value contracts and security futures products.¹⁰ Pursuant to the NFA Filing, effective September 1, 2012, the NFA reduced its assessment fee on security futures transactions from \$0.04 per contract for each round turn transaction to \$0.00008 with a minimum fee of \$0.01 per round turn transaction. The NFA Filing notes that the \$0.04 rate had been in place since 2002 and, when adopted, was intended “to ensure that NFA’s fees do not provide a disincentive for customers to carry [security futures products] in the futures accounts of NFA Member firms.”

To ensure that the TAF does not create a disincentive to holding security futures in securities accounts, FINRA is proposing to amend the TAF rate for security future transactions from \$0.04 per contract for each round turn transaction to \$0.00008 per contract for each round turn transaction, with a minimum fee of \$0.01 per round turn transaction. FINRA believes that

⁷ See FINRA By-Laws, Schedule A, § 1(b)(2)(J).

⁸ See FINRA By-Laws, Schedule A, § 1(b)(3)(C).

⁹ See FINRA By-Laws, Schedule A, § 1. This rate has been in place since October 1, 2002. See NASD Notice to Members 02-75 (November 2002).

¹⁰ See NFA Notice to Members I-12-15 (July 20, 2012); NFA Filing from Thomas W. Sexton, Senior Vice President and General Counsel, NFA, to David A. Stawick, Office of the Secretariat, CFTC, dated June 1, 2012 (“NFA Filing”).

amending the TAF rate on security futures transactions to match the rate charged on such transactions by the NFA will ensure that transaction fees do not influence the decision on whether to hold security futures in a futures or in a securities account.¹¹

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

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹² 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 NFA's amendment to its assessment fee for transactions in security futures held in futures accounts, FINRA believes that the proposed rate change to the TAF is now necessary to ensure that there is no disincentive to hold security futures in a security account because of the fees charged on round turn transactions in security futures.

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

¹¹ FINRA notes that the NFA Filing states that the NFA was adjusting its assessment rate on security futures, at least in part, to avoid having the assessment rate provide a disincentive to holding security futures in a futures account. The NFA Filing notes that a disincentive could be created because FINRA does not charge the security futures TAF rate on trades in security futures that result in delivery of the underlying securities "but rather charges a securities fee that is capped at \$4.50." See NFA Filing, supra note 10, at 4. Since the TAF was adopted, FINRA has charged such transactions based on the TAF equity rate structure rather than the rate for round turn transactions in security futures. See NASD Notice to Members 02-63, Question 10 (September 2002); see also TAF Frequently Asked Question 500.4, available at www.finra.org/taf/faq. FINRA notes that it is not changing this guidance; however, as of July 1, 2012, the cap on the TAF assessment for transactions in equity securities was increased to \$5.95. See Regulatory Notice 12-31 (June 2012).

¹² 15 U.S.C. 78q-3(b)(5).

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 Act¹³ and paragraph (f)(2) of Rule 19b-4 thereunder.¹⁴ 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. Please include File Number SR-FINRA-2012-044 on the subject line.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

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-2012-044. 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 such filing also will be available for website inspection and printing 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 publicly available. All submissions should refer

to File Number SR-FINRA-2012-044 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).