

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68942; File No. SR-FINRA-2013-015)

February 15, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 4 of Schedule A to the FINRA By-Laws to Adopt a Waiver Process for the Continuing Membership Application Fee and Amend NASD Rules 1013 and 1017 to Provide for a Refund of the Application Fee for the Withdrawal of a New Member or Continuing Membership Application

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 February 5, 2013, 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 and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal 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 Section 4 of Schedule A to the FINRA By-Laws to adopt a waiver process for the continuing membership application fee where FINRA determines that the application is proposing less significant changes that do not require substantial staff review. The proposed rule change also would amend NASD Rules 1013 (New

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

Member Application and Interview) and 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) to provide for a refund of the application fee (less a \$500 processing fee) if a new member applicant or continuing membership applicant withdraws an application within 30 days after filing the application.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective July 23, 2012, FINRA amended Section 4 of Schedule A to its By-Laws to, among other things, assess a new fee for continuing membership applications ("CMAs").⁴ In light of comments raised on the CMA fee, FINRA proposes to amend

⁴ See Securities Exchange Act Release No. 67240 (June 22, 2012), 77 FR 38694 (June 28, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2012-031). On July 23, 2012, FINRA also made available a new Form CMA for optional use by continuing membership applicants; applicants were required to use Form CMA effective August 27, 2012. See Securities Exchange Act Release No. 67484 (July 23, 2012), 77 FR 44298 (July 27, 2012) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2012-036).

Section 4 of Schedule A to the FINRA By-Laws to adopt a waiver process for the CMA fee where FINRA determines that the CMA is proposing less significant changes that do not require substantial staff review.⁵ The proposed rule change also would amend NASD Rules 1013 (New Member Application and Interview) and 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) to refund the requisite application fee (less \$500, which shall be retained by FINRA as a processing fee) if an applicant withdraws a new membership application (“NMA”) or CMA within 30 days after filing the application.

CMA Fee Waiver

NASD Rule 1017 provides parameters for changes in a member’s ownership, control, or business operations that would require a CMA,⁶ and NASD Rule 1012

⁵ See also Letter from Philip Shaikun, Associate Vice President and Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, SEC, dated August 3, 2012, in response to comments on SR-FINRA-2012-031 (indicating FINRA’s intent to consider a waiver program for the CMA fee).

⁶ NASD Rule 1017(a) (Events Requiring an Application) requires a member to file an application for approval of any of the following changes to its ownership, control, or business operations: (1) a merger of the member with another member, unless both are members of the NYSE or the surviving entity will continue to be a member of the NYSE; (2) a direct or indirect acquisition by the member of another member, unless the acquiring member is a member of the NYSE; (3) direct or indirect acquisitions or transfers of 25 percent or more in the aggregate of the member’s assets, or any asset, business, or line of operation that generates revenues comprising 25 percent or more in the aggregate of the member’s earnings measured on a rolling 36-month basis, unless both the seller and the acquirer are members of the NYSE; (4) a change in the equity ownership or partnership capital of the member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or (5) a material change in business operations as defined in NASD Rule 1011(k) (Material Change in Business Operations). NASD Rule 1011(k) defines a “material change in business operations” as including, but not limited to: (1) removing or modifying a membership agreement restriction; (2) market making, underwriting, or acting as a dealer for the first time; and (3) adding business activities that require a higher minimum net capital under SEA [sic] Rule 15c3-1.

(General Provisions) requires an applicant filing a CMA to submit an application fee pursuant to Schedule A to the FINRA By-Laws. Section 4(i) of Schedule A to the FINRA By-Laws assesses applicants a CMA fee ranging from \$5,000 to \$100,000 depending on the number of registered persons associated (or to be associated) with the applicant and the type of change in ownership, control, or business operations being contemplated (merger, material change, ownership change, transfer of assets, or acquisition). For instance, the fee structure assesses a member with only one to ten registered persons a fee ranging between \$5,000 and \$7,500, depending on the type of CMA, whereas a member with 301 to 500 registered persons is assessed a fee ranging between \$10,000 and \$30,000 depending on the type of CMA. This tiered fee structure recognizes that more complex changes and larger applicants generally require additional staff resources.

The proposed rule change would provide FINRA with flexibility to grant a waiver of the CMA fee for those applications that propose less significant changes to a member firm's structure or operations. Specifically, FINRA proposes to amend Section 4(i) of Schedule A to the FINRA By-Laws to provide that FINRA shall waive the CMA fee when FINRA determines that the CMA is proposing less significant changes that do not require substantial staff review.

A CMA qualifying for a fee waiver under this proposed rule change may include, for example, a CMA where the proposed change does not make any day-to-day changes in the applicant's business activities, management, supervision, assets, or liabilities, and the applicant is only proposing a change in the: (1) applicant's legal structure (e.g., changing from a corporation to an LLC); (2) equity ownership, partnership capital, or

other ownership interest in an applicant held by a corporate legal structure that is due solely to a reorganization of ownership or control of the applicant within the corporate legal structure (e.g., reorganizing only to add a holding company to the corporate legal structure's ownership or control chain of the applicant); or (3) percentage of ownership interest or partnership capital of an applicant's existing owners or partners resulting in an owner or partner owning or controlling 25 percent or more of the ownership interest or partnership and that owner or partner has no disclosure or disciplinary issues in the preceding five years.

In addition, a CMA may qualify for a fee waiver pursuant to the proposed rule change if it is filed by an applicant in connection with a direct or indirect acquisition or transfer of 25 percent or more in the aggregate of the applicant's assets or any asset, business, or line of operation that generates revenues composing 25 percent or more in the aggregate of the applicant's earnings measured on a rolling 36-month basis where the applicant also is ceasing operations as a broker or dealer (including filing a Form BDW with the SEC). There also must be either: (1) no pending or unpaid settled customer related claims (including, but not limited to, pending or unpaid settled arbitration or litigation actions) against the applicant or any of its associated persons; or (2) pending or unpaid settled customer related claims (including, but not limited to, pending or unpaid settled arbitration or litigation actions) against the applicant or its associated persons, but the applicant demonstrates in the CMA its ability to satisfy in full any unpaid customer related claim (e.g., sufficient capital or escrow funds, proof of adequate insurance for customer related claims).

The proposed changes in business operations outlined above are examples of changes that may qualify for a CMA fee waiver pursuant to the proposed rule change.⁷ Other proposed changes in business operations also may qualify for a fee waiver pursuant to the proposed rule change. FINRA's determination to waive a fee for a particular CMA will depend on the individual facts and circumstances.

An applicant seeking a waiver of the CMA fee would submit its request to FINRA's Department of Member Regulation in writing as part of the supporting documentation submitted with the applicant's Form CMA. Form CMA's Standard 1 (Overview of the Applicants) instructs the applicant to attach enumerated types of supporting documents. A waiver request would most appropriately be attached in response to the request for "[a]ny other documentation that would be pertinent to FINRA's review of this Standard."

NMA and CMA Fee Refund

FINRA also proposes to amend NASD Rules 1013 and 1017 to provide that if an applicant withdraws a NMA or CMA within 30 days after filing the application, FINRA shall refund the application fee, less \$500 which shall be retained by FINRA as a processing fee. The proposed rule change also clarifies that, if the applicant determines to again seek membership or apply for approval of a change in ownership, control, or business operations, the applicant must submit a new NMA or CMA (under NASD Rule 1013 or NASD Rule 1017, as applicable) and requisite application fee pursuant to Schedule A to the FINRA By-Laws.

⁷ FINRA expects that the proposed changes in business operations outlined above typically will not be significant and will not require substantial staff review. However, whether FINRA grants a fee waiver under the proposed rule change will depend on the individual facts and circumstances of each CMA.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act in that it would establish a waiver process for the CMA fee for those applications that seek less significant changes. The proposed rule change also would provide a refund (subject to a processing fee) of the requisite application fee to an applicant withdrawing a NMA or CMA within 30 days after filing the application. Both the CMA fee waiver process and the NMA and CMA fee refunds provide relief for new member and continuing membership applicants where the demands on FINRA resources are less significant.

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. The CMA fee waiver process will provide FINRA with the flexibility to grant a waiver of the CMA fee for those applications that propose less significant changes to a

⁸ 15 U.S.C. 78o-3(b)(6).

member firm's structure or operations. The proposed rule change also would provide a refund (subject to a processing fee) of the requisite application fee to an applicant withdrawing a NMA or CMA within 30 days after filing the application. Accordingly, both the CMA fee waiver process and the NMA and CMA fee refunds reduce members' potential regulatory costs by providing relief for new member and continuing membership applicants where the demands on FINRA resources are less significant.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

FINRA has requested that the Commission waive the 30-day operative delay to permit the proposed rule change to become operative immediately. The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest because the waiver will enable members submitting applications that propose less significant changes to receive an immediate waiver of the CMA fees, and would also enable members withdrawing applications to receive an immediate refund of

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

certain application fees. Therefore, the Commission designates the proposal operative effectively.¹¹

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-2013-015 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.

¹¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-FINRA-2013-015. 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 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 available publicly. All

submissions should refer to File Number SR-FINRA-2013-015, 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.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).