

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56653; File No. SR-NASD-2007-056)

October 12, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Order Approving Proposed Rule Change to Establish a Membership Waive-In Process for Certain NYSE Member Organizations

I. Introduction

On July 25, 2007, the National Association of Securities Dealers, Inc. (“NASD”) (n/k/a Financial Industry Regulatory Authority, Inc. (“FINRA”))¹ filed with the Securities and Exchange Commission (“Commission” or “SEC”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to adopt Interpretive Material 1013-1 (“IM-1013-1”), a membership waive-in process for certain New York Stock Exchange (“NYSE”) member organizations, and Interpretive Material Section 4(b)(1) and 4(e) (“IM-Section 4(b)(1) and 4(e)”) to Schedule A of the By-Laws, a membership application fee waiver for those NYSE member organizations that apply for membership pursuant to IM-1013-1. The proposed rule change was published for comment in the Federal Register on September 7, 2007.⁴ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

¹ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. (“NYSE Regulation”). See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 56347 (August 31, 2007), 72 FR 51483 (“Notice”).

II. Description of the Proposed Rule Change

In connection with the recently approved plan to consolidate the member regulation operations of NASD and NYSE Regulation into a single organization (“Transaction”),⁵ NASD proposed to establish a waive-in process to enable approximately 95 NYSE member organizations that are not also NASD members to become members of FINRA. The proposed waive-in process would apply to firms that, as of July 25, 2007: (1) are approved NYSE member organizations; or (2) have submitted an application to become an NYSE member organization and are subsequently approved for NYSE membership (together, “NYSE-only member organizations”), provided that such firms were not also NASD members as of the closing of the Transaction (i.e., as of July 30, 2007).⁶

IM-1013-1 would establish a process to allow NYSE-only member organizations to become automatically FINRA members and to register automatically all associated persons whose registrations are approved with NYSE in registration categories recognized by FINRA, upon submission to FINRA’s Member Regulation Department (“Department”) of a signed waive-in membership application (“Waive-In Application”).⁷ The Department would review the

⁵ On July 26, 2007, the Commission approved amendments to NASD’s By-Laws to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007). The date of closing of the Transaction was July 30, 2007.

⁶ The NYSE filed a companion proposal to amend NYSE Rule 2(b) to require its member organizations to be members of FINRA, which the Commission approved today. See Securities Exchange Act Release No. 56654 (SR-NYSE-2007-67) (“Release No. 34-56654”).

⁷ The Waive-In Application would require information such as: (1) general company information (including the Central Registration Depository (“CRD”) Number and contact person); (2) an attestation that all information on the applicant’s CRD form, as of the date of submission of the Waive-In Application is accurate and complete and fully reflects all aspects of the applicant’s current business, including, but not limited to, ownership

Waive-In Application within three business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement would become effective on the date of such notification letter.⁸ In addition, the proposed rule change would create IM-Section 4(b)(1) and 4(e) to Schedule A of the NASD By-Laws, which would exempt the applicants from the fee for each initial Form U-4 for the registration of any representative or principal associated with the firm at the time it submits its application for FINRA membership pursuant to IM-1013-1 and from the FINRA membership application fee.

As set forth in proposed IM-1013-1, the NYSE-only member organizations admitted to FINRA membership would be subject to the NYSE rules incorporated by FINRA, FINRA's By-Laws and Schedules to By-Laws, including Schedule A (Assessments and Fees), and NASD Rule 8000 (Investigations and Sanctions) and Rule 9000 (Code of Procedure) Series, provided that their securities business is limited to floor brokerage on the NYSE, or routing away to other markets orders that are ancillary to their core floor business under NYSE Rule 70.40 ("permitted floor activities").⁹ If an NYSE-only member organization admitted pursuant to proposed IM-

structure, management, product lines and disclosures; (3) the identity of the firm's Executive Representative; (4) completed and signed Entitlement Forms; (5) a signed FINRA Membership Agreement; and (6) representations that the applicant's Uniform Application for Broker-Dealer Registration (Form BD) will be amended as needed to keep current and accurate, that all individual and entity registrations with FINRA will be kept current; and that all information and statements contained in the Waive-In Application are current, true and complete.

⁸ The Commission notes that, under the amendment to NYSE Rule 2(b), which was approved today, NYSE-only member organizations are provided a 60 day grace period within which they must apply for and be approved for FINRA membership. See Release No. 34-56654, supra note 6.

⁹ For purposes of this filing, activities that are ancillary to a Floor broker's core business include: (i) routing orders in NYSE-traded securities to an away market for any reason relating to their ongoing Floor activity, including regulatory compliance or meeting best-execution obligations; or (ii) provided that the majority of transactions effected by the firm are effected on the NYSE, sending to other markets orders in NYSE-traded or non-

1013-1 seeks to expand its business operations to include any activities other than the permitted floor activities, such firm must apply for and receive approval to engage in such business activity pursuant to NASD Rule 1017. Upon approval of such business expansion, the firm would become subject to all NASD rules, in addition to those NYSE rules incorporated by FINRA.

In addition, associated persons of an NYSE-only member organization admitted to FINRA pursuant to IM-1013-1 would be subject to the same set of rules as the firm with which they are associated, namely the NYSE rules incorporated by FINRA, FINRA's By-Laws and Schedules to By-Laws, and the NASD Rule 8000 and 9000 Series.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(2) of the Exchange Act,¹¹ which requires a national securities association to be so organized and have the capacity to carry out the purposes of the Exchange Act and to enforce compliance by its members and persons associated with its members with the provisions of the Exchange Act. Further, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,¹² in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to

NYSE-traded securities and/or futures if such orders relate to hedging positions in NYSE-traded securities, or are part of arbitrage or program trade strategies that include NYSE-traded securities.

¹⁰ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78o-3(b)(2).

¹² 15 U.S.C. 78o-3(b)(6).

promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is intended to facilitate the consolidation of the member firm regulation functions of NASD and NYSE Regulation under a single self-regulatory organization, thereby encouraging more effective and efficient regulation of brokers and dealers and their associated persons. The Commission notes that NYSE has a comprehensive membership application and review process.¹³ Accordingly, eligible NYSE-only member organizations that will become FINRA members pursuant to the waive-in process already have been subject to NYSE's extensive screening process.

The proposed rule change provides eligible NYSE-only member organizations (and their associated persons) with an expedited process to become FINRA members, provided that they engage in permitted floor activities only. Moreover, an eligible NYSE-only member organization would not be assessed either FINRA's membership application fee or the initial Form U-4 registration fee when it submits its application for FINRA membership.

¹³ See, e.g., NYSE Rules 301 (Qualifications for Membership) and 304A (Member and Allied Member Examination Requirements).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-NASD-2007-056), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).