

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to amend Schedule A of the FINRA By-Laws to amend the Gross Income Assessment and to change the references throughout Schedule A to NASD to FINRA.

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
 Title
 E-mail
 Telephone Fax

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date
 By Senior Vice President and Deputy General Counsel
 (Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to Section 1(c) of Schedule A to the FINRA By-Laws (“Schedule A”) to amend the Gross Income Assessment (“GIA”) paid by each FINRA member and to update the references to NASD that appear in Schedule A to the FINRA By-Laws.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on December 4, 2007, the Board of Governors of FINRA authorized the filing of the rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA is proposing that the effective date of the proposed rule change will be retroactive to January 1, 2008. FINRA will announce the proposed rule change and subsequent approval in a Regulatory Notice.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

¹ 15 U.S.C. 78s(b)(1).

On July 30, 2007, NASD and the New York Stock Exchange (“NYSE”) consolidated their member firm regulation operations into a combined organization, FINRA. The proposed rule change seeks to consolidate certain regulatory fees imposed by NASD and NYSE Regulation, Inc. (“NYSE Regulation”) to develop a single fee structure for FINRA that avoids duplicating fees charged by the two organizations.

FINRA’s member regulatory pricing structure currently consists primarily of the following fees: the GIA; the Trading Activity Fee (“TAF”); the Personnel Assessment (“PA”); and the Branch Office Assessment (“BOA”). As part of the consolidation, NYSE committed to transfer to FINRA certain regulatory revenues for the remainder of 2007.² NYSE fees subject to the transfer agreement include a gross FOCUS (Financial and Operational Combined Uniform Single Report) fee (“GFF”)³ (comparable to NASD’s GIA)⁴ and registration fees for branch offices⁵ (comparable to NASD’s Branch Office System Processing Fee)⁶ and registered representatives⁷ (comparable to NASD’s registration fees for the registration of representatives or principals).⁸

² See Securities Exchange Act Release No. 56145 (July 26, 2007); 72 FR 42169 (August 1, 2007) (Order Approving SR-NASD-2007-023).

³ See Securities Exchange Act Release No. 56181 (August 1, 2007), 72 FR 44206 (August 7, 2007) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2007-70).

⁴ See Section 1(c) of Schedule A.

⁵ See NYSE Rule 342, Supplementary Material .11.

⁶ See Section 4(a) of Schedule A.

⁷ See NYSE Rule 345, Supplementary Material .14.

⁸ See Section 4(b) of Schedule A.

In anticipation of the termination of the agreement to remit fees collected by NYSE, FINRA evaluated whether to consolidate or eliminate any duplicative fees, as well as whether to maintain or increase any non-duplicative fees. FINRA undertook its regulatory pricing review with the objectives of maintaining a fair assessment level for firms and of preserving revenue levels necessary to fund FINRA's member regulatory activities, including the regulation of members through examination, policymaking, rulemaking and enforcement activities.

To achieve these objectives, FINRA determined that the most appropriate regulatory pricing structure would be to: (1) eliminate NYSE Regulation's legacy registration fees for branch offices and registered representatives, which totals approximately \$18.6 million in fee reductions;⁹ (2) maintain NASD's fee structures and levels for the TAF, the BOA and the PA; and (3) consolidate, with certain adjustments, NASD's GIA rate structure with NYSE Regulation's GFF rate structure.¹⁰

The GIA is currently assessed through a three-tier rate structure with a minimum GIA of \$1,200.00. Under the current GIA, members are required to pay an annual GIA equal to the greater of \$1,200.00 or the total of:

- (1) 0.125% of annual gross revenue less than or equal to \$100 million;

⁹ See Securities Exchange Act Release No. 57093 (January 3, 2008) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2007-127).

¹⁰ The NYSE will continue to charge its member organizations an annual gross FOCUS fee; however, the fee was reduced by 75 percent beginning in 2008. See Securities Exchange Act Release No. 56181 (August 1, 2007), 72 FR 44206 (August 7, 2007) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2007-70). The reduced gross FOCUS fee charged by NYSE will be retained by NYSE and will not be forwarded to FINRA.

(2) 0.029% of annual gross revenue greater than \$100 million up to \$1 billion;

and

(3) 0.014% of annual gross revenue greater than \$1 billion.¹¹

In contrast, the legacy GFF was assessed at a flat rate of \$0.42 per \$1,000 of gross FOCUS revenue (or 0.042%).

To consolidate these two legacy fees, FINRA proposes that the minimum assessment under the GIA of \$1,200.00 will remain, with the ceiling increased from \$960,000.00 to \$1 million of annual assessable revenue. Because FINRA has committed to reduce the GIA by \$1,200.00 per year for five years, subject to annual Board approval, this will effectively reduce the GIA to \$0 for the first \$1 million of annual assessable revenue. FINRA proposes that for annual gross revenue over \$1 million, the regressive rate structure of the legacy GIA and the flat rate structure of the legacy GFF be combined into a new rate structure. Specifically, FINRA proposes to create a seven-tiered rate structure that balances the legacy GIA tiered rate structure with the legacy GFF flat rate structure.

Under the proposed rule change, members will be assessed a GIA of:

- (1) \$1,200 on annual gross revenue up to \$1 million;
- (2) 0.1215% of annual gross revenue greater than \$1 million up to \$25 million;
- (3) 0.2599% of annual gross revenue greater than \$25 million up to \$50 million;
- (4) 0.0518% of annual gross revenue greater than \$50 million up to \$100 million;
- (5) 0.0365% of annual gross revenue greater than \$100 million up to \$5 billion;

¹¹ Gross revenue for assessment purposes is set out in Section 2 of Schedule A, which defines gross revenue as total income as reported on FOCUS form Part II or IIA excluding commodities income.

(6) 0.0397% of annual gross revenue greater than \$5 billion up to \$25 billion;
and

(7) 0.0855% of annual gross revenue greater than \$25 billion.

FINRA estimates that the proposed rule change will result in aggregate fee reductions of approximately \$25 million dollars in 2008 and forward, approximately \$18.6 million of which relates to the elimination of NYSE Regulation's legacy registration fees and approximately \$6.4 million for GIA rebates given to all FINRA member firms. FINRA estimates that, under the proposed rate structure described above, 93 percent of member firms will have either no change to their GIA or a reduced GIA due to this new rate structure. Certain firms with annual gross revenue exceeding \$35 million dollars, however, will have an increase to their GIA under the proposed rate structure.

To minimize the impact on members, the new rate structure will be implemented over a three-year period beginning in 2008. During this period, the change in the GIA paid to FINRA by each member will be subject to a cap based on the fees that the member would have paid under the prior NASD and NYSE rate structures. In 2008, a member's GIA will not be impacted by the new rate structure. In 2009, any increase or decrease to the member's GIA resulting from the new rate structure will be capped at a five percent increase or decrease. In 2010, any increase or decrease to the member's GIA resulting from the new rate structure will be capped at a ten percent increase or decrease. During this implementation period, a firm's GIA may increase or decrease due to a change in the member's assessable revenue from year to year; however, any changes to the firm's GIA that result from the change in rate structure will be subject to the cap.

For firms that were members of NASD only (not NYSE) as of July 30, 2007, the cap will be calculated based upon the GIA that the member firm would have paid under the prior NASD GIA rate structure. For firms that became, or become, FINRA members on or after July 30, 2007 (excluding those firms that were members of NYSE only as of July 30, 2007 and were subsequently required to become FINRA members pursuant to NYSE Rule 2), the cap will be calculated based upon the GIA that the member firm would have paid under the prior NASD GIA rate structure. For firms that were members of the NYSE only (not NASD) as of July 30, 2007, the cap will be calculated based upon the NYSE GFF that the member would have paid under the prior NYSE GFF rate structure.¹² For firms that were members of both NASD and the NYSE as of July 30, 2007 (“Dual Members”), the cap will be calculated based upon the GIA and the GFF that the member would have paid under the prior NASD GIA rate structure and the prior NYSE GFF rate structure.¹³

¹² In calculating the cap based upon the GFF that a member would have paid under the prior NYSE GFF rate structure, FINRA will use only that portion of the GFF that would have been transferred by the NYSE to FINRA (i.e., 75 percent of the GFF paid by the member firm).

¹³ For example, assume that a Dual Member has assessable revenue (based on the prior year) of \$4.95 billion for each of the first three years of the new fee rate structure. Under the legacy rate structures, the firm would have paid income assessments to FINRA of \$2,512,800 each year (a legacy GFF of \$1,575,000 transferred to FINRA (i.e., 75 percent of the firm’s GFF); a legacy GIA to FINRA of \$939,000; and net of a \$1,200 rebate). Under the new rate structure in the proposed rule filing, the total income assessment charged by FINRA to the firm, without the cap, would be \$1,892,224 (a GIA of \$1,893,424 net of a \$1,200 rebate). This would represent a decrease of \$620,576. However, because the change is capped at zero percent in 2008, the firm would be assessed a GIA under the new rate structure of \$2,512,800 (i.e., the same amount as what the firm would have paid under the two legacy rate structures). In 2009, the firm would pay a GIA of \$2,387,160 (reflecting the maximum five percent change), and in 2010, the firm would pay a GIA of \$2,261,520 (reflecting the maximum ten

Despite the reduction in revenue that will result from the new rate structure, FINRA believes that the revenue collected under the pricing proposal will fund its member regulatory programs. The integration of the member firm regulation operations of NASD and NYSE into FINRA should take up to three years, given FINRA's need to establish a new examination and enforcement program under a consolidated rule book. A new cost structure and revised pricing structure will be evaluated once the integration is complete.

As noted in Item 2 of this filing, FINRA is proposing that the effective date of the proposed rule change will be retroactive to January 1, 2008. FINRA will announce the proposed rule change and subsequent approval in a Regulatory Notice.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹⁴ 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. The proposed rule change balances NASD and NYSE Regulation legacy fees in a manner that is consistent with FINRA's statutory obligation under Section 15A(b)(5) of the Act¹⁵ to ensure that its fees are reasonable and equitably allocated.

percent change). As discussed in footnote 10 above, Dual Members will also be subject to a reduced GFF charged by NYSE.

¹⁴ 15 U.S.C. 78o-3(b)(5).

¹⁵ 15 U.S.C. 78o-3(b)(5).

FINRA believes that the modified rates and the introduction of additional tiers appropriately balance the legacy fees. Moreover, FINRA has sought to minimize the impact that the proposed rule change will have on its members by phasing-in the proposed changes so that the changes will have minimal impact on members for the first three years.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.¹⁶

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

¹⁶ 15 U.S.C. 78s(b)(2).

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Proposed changes to Schedule A to the FINRA By-Laws.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2008-001)

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to FINRA’s Gross Income Assessment and Technical Changes to Schedules A to FINRA’s By-Laws

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 , Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) 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. 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 Schedule A to the FINRA By-Laws to amend the Gross Income Assessment (“GIA”) paid by each FINRA member and to update the references to NASD that appear in Schedule A to the FINRA By-Laws. The text of the proposed rule change is attached as Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

On July 30, 2007, NASD and the New York Stock Exchange ("NYSE") consolidated their member firm regulation operations into a combined organization, FINRA. The proposed rule change seeks to consolidate certain regulatory fees imposed by NASD and NYSE Regulation, Inc. ("NYSE Regulation") to develop a single fee structure for FINRA that avoids duplicating fees charged by the two organizations.

FINRA's member regulatory pricing structure currently consists primarily of the following fees: the GIA; the Trading Activity Fee ("TAF"); the Personnel Assessment ("PA"); and the Branch Office Assessment ("BOA"). As part of the consolidation, NYSE committed to transfer to FINRA certain regulatory revenues for the remainder of 2007.³ NYSE fees subject to the transfer agreement include a gross FOCUS (Financial and Operational Combined Uniform Single Report) fee ("GFF")⁴ (comparable to NASD's GIA)⁵ and registration fees for branch offices⁶ (comparable to NASD's Branch Office

³ See Securities Exchange Act Release No. 56145 (July 26, 2007); 72 FR 42169 (August 1, 2007) (Order Approving SR-NASD-2007-023).

⁴ See Securities Exchange Act Release No. 56181 (August 1, 2007), 72 FR 44206 (August 7, 2007) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2007-70).

⁵ See Section 1(c) of Schedule A.

⁶ See NYSE Rule 342, Supplementary Material .11.

System Processing Fee)⁷ and registered representatives⁸ (comparable to NASD's registration fees for the registration of representatives or principals).⁹

In anticipation of the termination of the agreement to remit fees collected by NYSE, FINRA evaluated whether to consolidate or eliminate any duplicative fees, as well as whether to maintain or increase any non-duplicative fees. FINRA undertook its regulatory pricing review with the objectives of maintaining a fair assessment level for firms and of preserving revenue levels necessary to fund FINRA's member regulatory activities, including the regulation of members through examination, policymaking, rulemaking and enforcement activities.

To achieve these objectives, FINRA determined that the most appropriate regulatory pricing structure would be to: (1) eliminate NYSE Regulation's legacy registration fees for branch offices and registered representatives, which totals approximately \$18.6 million in fee reductions;¹⁰ (2) maintain NASD's fee structures and levels for the TAF, the BOA and the PA; and (3) consolidate, with certain adjustments, NASD's GIA rate structure with NYSE Regulation's GFF rate structure.¹¹

⁷ See Section 4(a) of Schedule A.

⁸ See NYSE Rule 345, Supplementary Material .14.

⁹ See Section 4(b) of Schedule A.

¹⁰ See Securities Exchange Act Release No. 57093 (January 3, 2008) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2007-127).

¹¹ The NYSE will continue to charge its member organizations an annual gross FOCUS fee; however, the fee was reduced by 75 percent beginning in 2008. See Securities Exchange Act Release No. 56181 (August 1, 2007), 72 FR 44206 (August 7, 2007) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2007-70). The reduced gross FOCUS fee charged by NYSE will be retained by NYSE and will not be forwarded to FINRA.

The GIA is currently assessed through a three-tier rate structure with a minimum GIA of \$1,200.00. Under the current GIA, members are required to pay an annual GIA equal to the greater of \$1,200.00 or the total of:

- (1) 0.125% of annual gross revenue less than or equal to \$100 million;
 - (2) 0.029% of annual gross revenue greater than \$100 million up to \$1 billion;
- and
- (3) 0.014% of annual gross revenue greater than \$1 billion.¹²

In contrast, the legacy GFF was assessed at a flat rate of \$0.42 per \$1,000 of gross FOCUS revenue (or 0.042%).

To consolidate these two legacy fees, FINRA proposes that the minimum assessment under the GIA of \$1,200.00 will remain, with the ceiling increased from \$960,000.00 to \$1 million of annual assessable revenue. Because FINRA has committed to reduce the GIA by \$1,200.00 per year for five years, subject to annual Board approval, this will effectively reduce the GIA to \$0 for the first \$1 million of annual assessable revenue. FINRA proposes that for annual gross revenue over \$1 million, the regressive rate structure of the legacy GIA and the flat rate structure of the legacy GFF be combined into a new rate structure. Specifically, FINRA proposes to create a seven-tiered rate structure that balances the legacy GIA tiered rate structure with the legacy GFF flat rate structure.

Under the proposed rule change, members will be assessed a GIA of:

- (1) \$1,200 on annual gross revenue up to \$1 million;

¹² Gross revenue for assessment purposes is set out in Section 2 of Schedule A, which defines gross revenue as total income as reported on FOCUS form Part II or IIA excluding commodities income.

- (2) 0.1215% of annual gross revenue greater than \$1 million up to \$25 million;
- (3) 0.2599% of annual gross revenue greater than \$25 million up to \$50 million;
- (4) 0.0518% of annual gross revenue greater than \$50 million up to \$100 million;
- (5) 0.0365% of annual gross revenue greater than \$100 million up to \$5 billion;
- (6) 0.0397% of annual gross revenue greater than \$5 billion up to \$25 billion; and
- (7) 0.0855% of annual gross revenue greater than \$25 billion.

FINRA estimates that the proposed rule change will result in aggregate fee reductions of approximately \$25 million dollars in 2008 and forward, approximately \$18.6 million of which relates to the elimination of NYSE Regulation's legacy registration fees and approximately \$6.4 million for GIA rebates given to all FINRA member firms. FINRA estimates that, under the proposed rate structure described above, 93 percent of member firms will have either no change to their GIA or a reduced GIA due to this new rate structure. Certain firms with annual gross revenue exceeding \$35 million dollars, however, will have an increase to their GIA under the proposed rate structure.

To minimize the impact on members, the new rate structure will be implemented over a three-year period beginning in 2008. During this period, the change in the GIA paid to FINRA by each member will be subject to a cap based on the fees that the member would have paid under the prior NASD and NYSE rate structures. In 2008, a member's GIA will not be impacted by the new rate structure. In 2009, any increase or decrease to the member's GIA resulting from the new rate structure will be capped at a five percent increase or decrease. In 2010, any increase or decrease to the member's GIA resulting from the new rate structure will be capped at a ten percent increase or decrease.

During this implementation period, a firm's GIA may increase or decrease due to a change in the member's assessable revenue from year to year; however, any changes to the firm's GIA that result from the change in rate structure will be subject to the cap.

For firms that were members of NASD only (not NYSE) as of July 30, 2007, the cap will be calculated based upon the GIA that the member firm would have paid under the prior NASD GIA rate structure. For firms that became, or become, FINRA members on or after July 30, 2007 (excluding those firms that were members of NYSE only as of July 30, 2007 and were subsequently required to become FINRA members pursuant to NYSE Rule 2), the cap will be calculated based upon the GIA that the member firm would have paid under the prior NASD GIA rate structure. For firms that were members of the NYSE only (not NASD) as of July 30, 2007, the cap will be calculated based upon the NYSE GFF that the member would have paid under the prior NYSE GFF rate structure.¹³ For firms that were members of both NASD and the NYSE as of July 30, 2007 ("Dual Members"), the cap will be calculated based upon the GIA and the GFF that the member would have paid under the prior NASD GIA rate structure and the prior NYSE GFF rate structure.¹⁴

¹³ In calculating the cap based upon the GFF that a member would have paid under the prior NYSE GFF rate structure, FINRA will use only that portion of the GFF that would have been transferred by the NYSE to FINRA (i.e., 75 percent of the GFF paid by the member firm).

¹⁴ For example, assume that a Dual Member has assessable revenue (based on the prior year) of \$4.95 billion for each of the first three years of the new fee rate structure. Under the legacy rate structures, the firm would have paid income assessments to FINRA of \$2,512,800 each year (a legacy GFF of \$1,575,000 transferred to FINRA (i.e., 75 percent of the firm's GFF); a legacy GIA to FINRA of \$939,000; and net of a \$1,200 rebate). Under the new rate structure in the proposed rule filing, the total income assessment charged by FINRA to the firm, without the cap, would be \$1,892,224 (a GIA of \$1,893,424 net of a \$1,200 rebate). This would represent a decrease of \$620,576. However, because the

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FINRA is proposing that the effective date of the proposed rule change will be retroactive to January 1, 2008. FINRA will announce the proposed rule change and subsequent approval 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,¹⁵ 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. The proposed rule change balances NASD and NYSE Regulation legacy fees in a manner that is consistent with FINRA's statutory obligation under Section 15A(b)(5)

change is capped at zero percent in 2008, the firm would be assessed a GIA under the new rate structure of \$2,512,800 (i.e., the same amount as what the firm would have paid under the two legacy rate structures). In 2009, the firm would pay a GIA of \$2,387,160 (reflecting the maximum five percent change), and in 2010, the firm would pay a GIA of \$2,261,520 (reflecting the maximum ten percent change). As discussed in footnote 11 above, Dual Members will also be subject to a reduced GFF charged by NYSE.

¹⁵ 15 U.S.C. 78o-3(b)(5).

of the Act¹⁶ to ensure that its fees are reasonable and equitably allocated. FINRA believes that the modified rates and the introduction of additional tiers appropriately balance the legacy fees. Moreover, FINRA has sought to minimize the impact that the proposed rule change will have on its members by phasing-in the proposed changes so that the changes will have minimal impact on members for the first three years.

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 35 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 such proposed rule change, or

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

¹⁶ 15 U.S.C. 78o-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-2008-001 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-001. 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 Web site (<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

inspection and copying in the Commission's Public Reference Room. 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-2008-001 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Nancy M. Morris

Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

SCHEDULE A TO [NASD]THE BY-LAWS OF THE CORPORATION

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of [NASD]the Corporation shall be determined on the following basis.

Section 1 — Member Regulatory Fees

(a) Recovery of cost of services. [NASD]FINRA shall, in accordance with this section, collect member regulatory fees that are designed to recover the costs to [NASD]FINRA of the supervision and regulation of members, including performing examinations, [processing of membership applications,] financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. [NASD]FINRA shall periodically review these revenues in conjunction with these costs to determine the applicable rate. [NASD]FINRA shall publish notices of the fees and adjustments to the assessment rates applicable under this section.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) No Change.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(A) through (E) No Change.

(F) Proprietary transactions by a firm that is a member of both [NASD]FINRA and a national securities exchange, effected in its capacity as an exchange specialist or market maker, that are subject to Securities Exchange Act of 1934, Section 11(a) and Rule 11a1-1(T)(a) thereunder; however this exemption does not apply to other transactions permitted by Section 11(a) such as bona fide arbitrage or hedge transactions;

(G) Transactions by a firm that is a floor based broker and that is a member of both [NASD]FINRA and a national securities exchange provided that the floor based broker qualifies for exemption from [NASD]FINRA membership under Exchange Act Rule 15b9-1;

(H) through (J) No Change.

(K) Transactions in exchange listed options effected by a member when [NASD]FINRA is not the designated options examining authority for that member; and

(L) Proprietary transactions in TRACE-eligible securities by a firm that is a member of both [NASD]FINRA and a national securities exchange and that are effected in the firm's capacity as an exchange specialist or exchange market maker.

[NASD]FINRA may exempt other securities and transactions as it deems appropriate.

(3) Fee Rates*

(A) Each member shall pay to [NASD]FINRA a fee per share for each sale of a covered equity security.

(B) Each member shall pay to [NASD]FINRA a fee per contract for each sale of an option.

(C) Each member shall pay to [NASD]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.

(D) Each member shall pay to [NASD]FINRA a fee per bond for each sale of a covered TRACE-eligible security and/or municipal security.

(4) Reporting of Transactions. Members shall report to [NASD]FINRA the aggregate share, bond, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by [NASD]FINRA from time to time.

(c) Each member shall pay an annual Gross Income Assessment equal to[the greater of \$1,200.00 or] the total of:

(1) \$1,200.00 on annual gross revenue up to \$1 million;

* Trading Activity Fee rates are as follows: Each member shall pay to [NASD]FINRA \$0.000075 per share for each sale of a covered equity security, with a maximum charge of \$3.75 per trade; \$0.002 per contract for each sale of an option; \$0.04 per contract for each round turn transaction of a security future; and \$.00075 per bond for each sale of a covered TRACE-eligible and/or municipal security, with a maximum charge of \$0.75 per trade. In addition, if the execution price for a covered security is less than the Trading Activity Fee rate (\$0.000075 for covered equity securities, \$0.002 for covered option contracts, or \$0.04 for a security future) on a per share, per contract, or round turn transaction basis then no fee will be assessed.

(1) 0.125% of annual gross revenue greater than \$1 million up to \$25 million [less than or equal to \$100,000,000.00];

(2) 0.029% of annual gross revenue greater than \$100,000,000.00 \$25 million up to \$1,000,000,000.00 \$50 million; [and]

(3) 0.014% of annual gross revenue greater than \$1,000,000,000.00 \$50 million up to \$100 million;

(4) 0.0365% of annual gross revenue greater than \$100 million up to \$5 billion;

(5) 0.0397% of annual gross revenue greater than \$5 billion up to \$25 billion; and

(6) 0.0855% of annual gross revenue greater than \$25 billion.

The rate structure set forth above will be implemented over a three year period beginning in 2008 in such manner as specified by FINRA.

Each member is to report annual gross revenue as defined in Section 2 of this Schedule, for the preceding calendar year.

(d) Each member shall pay an annual Personnel Assessment equal to:

(1) \$75.00 per principal and each representative up to five principals and representatives as defined below;

(2) \$70.00 per principal and each representative for six principals and representatives up to twenty-five principals and representatives as defined below;

or

(3) \$65.00 per principal and each representative for twenty-six or more principals and representatives as defined below.

A principal or representative is defined as a principal or representative in the member's organization who is registered with [NASD]FINRA as of December 31st of the prior fiscal year.

Section 2 — Gross Revenue for Assessment Purposes

No Change.

Section 3 — Regulatory Transaction Fee

Each member shall be assessed a regulatory transaction fee. The amount shall be determined periodically in accordance with Section 31 of the Act. Transactions assessable under this Section 3 that must be reported to [NASD]FINRA shall be reported in an automated manner.

IM-Section 3 Temporary Program to Address Accumulated Funds

Pursuant to Section 3 of Schedule A, [NASD] FINRA makes an assessment on member firms that [NASD] FINRA uses to pay fees owing to the SEC in accordance with Section 31 of the Act (“the Section 3 assessment”). The Section 31 fees payable by [NASD] FINRA to the SEC is determined based on the aggregate dollar amount of “covered sales,” as defined by SEC Rule 31, effected otherwise than on an exchange by or through any member of [the NASD] FINRA. Members, in many cases, have passed along the Section 3 assessment on a trade-by-trade basis to their customers or correspondent firms. For certain reasons, including the difference between the calculation of the Section 3 assessment on an aggregate basis and its collection by member firms from customers or correspondent firms on a disaggregated trade-by-trade basis, there has been an historical accumulation of funds collected by members that are in excess of their Section 3 assessment. Consequently, these funds were not remitted to [NASD] FINRA.

[NASD] FINRA has determined that it is appropriate for these accumulated funds, if remitted to [the NASD] FINRA, to be used to pay [NASD] FINRA's current Section 31 fees, which conforms the use of those funds with the stated purpose for which they were collected. Consequently, members may voluntarily remit all or part of historically accumulated funds that were collected and are in surplus to the Section 3 assessment of such firms in accordance with the terms of this Interpretive Material.

This temporary program will automatically sunset six months after the effective date, and thereafter may not be utilized by members after a date certain. Members are reminded that the SEC stated in its release adopting new Rule 31 and Rule 31T that "it is misleading to suggest that a customer or [self-regulatory] member incurs an obligation to the Commission under Section 31." Further, [NASD] FINRA has issued guidance to members in the form of two *Notices to Members* to ensure there is no confusion in the marketplace between [NASD] FINRA's "Regulatory Transaction Fee" and the "SEC's Section 31 Fee."

Section 4 — Fees

(a) Each member shall be assessed a registration fee of \$75.00 and a branch office system processing fee of \$20.00 upon the registration of each branch office, as defined in the By-Laws. Each member also shall be assessed: (1) an annual registration fee in an amount equal to the lesser of (i) \$75.00 per registered branch, or (ii) the product of \$75.00 and the number of registered representatives and registered principals associated with the member at the end of [NASD]FINRA's fiscal year; and (2) an annual branch office system processing fee of \$20.00 per registered branch. As of July 3, 2006, [NASD]FINRA shall waive, for one branch office per member per year, payment of the

\$75.00 annual registration fee (where such fee has been assessed pursuant to paragraph (a)(1)(i)) and the \$20.00 annual branch office system processing fee assessed pursuant to paragraph (a)(2).

(b) [NASD]FINRA shall assess each member a fee of:

(1) \$85.00 for each initial Form U-4 filed by the member with [NASD]FINRA for the registration of a representative or principal, except that the following discounts shall apply to the filing of Forms U-4 to transfer the registration of representatives or principals in connection with acquisition of all or a part of a member's business by another member:

Number of Registered Personnel Transferred	Discount
1,000 – 1,999	10%
2,000 – 2,999	20%
3,000 – 3,999	30%
4,000 – 4,999	40%
5,000 and over	50%

(2) \$40.00 for each initial Form U-5 filed by the member with [NASD]FINRA for the termination of a registered representative or registered principal, plus a late filing fee of \$80.00 if the member fails to file the initial Form U-5 within 30 days after the date of termination;

(3) \$95.00 for the additional processing of each initial or amended Form U-4 or Form U-5 that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings;

(4) \$13.00 for processing and posting to the CRD system each set of fingerprints submitted by the member to [NASD]FINRA, plus any other charge that may be imposed by the United States Department of Justice for processing each set of fingerprints; and

(5) \$13.00 for processing and posting to the CRD system each set of fingerprint results and identifying information that have been processed through another self-regulatory organization and submitted by a member to [NASD]FINRA.

(6) \$30.00 annually for each of the member's registered representatives and principals for system processing.

(7) 10% of a member's final annual renewal assessment or \$100, whichever is greater, with a maximum charge of \$5,000, if the member fails timely to pay the amount indicated on its preliminary annual renewal statement.

(c) through (f) No Change.

(g)(1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph, a fee of \$100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business days. Requests for such extension of time must be submitted to [NASD]FINRA at least three business days prior to the due date; and

(2) through (3) No Change.

(h) [NASD]FINRA shall assess each member 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 as required by [NASD]FINRA on an initial Form U5, an amendment to a Form U5, or an amendment to a Form U4, with such fee to be assessed starting on the day following the last date on which the event was required to be reported.

IM-Section 4(b)(1) and (e) Exemption from Certain Registration and Membership Application Fees for Certain New York Stock Exchange Member Organizations

NYSE member organizations that become members of FINRA pursuant to IM-1013-1 shall not be assessed the fee set forth in Section 4(b)(1) to Schedule A of the [NASD] By-Laws of the Corporation for the initial Form U-4 filed by firms for the registration of any representative or principal associated with the member organization at the time a firm submits its application for FINRA membership. Such firms also shall not be assessed the membership application fee set forth in Section 4(e) to Schedule A of the [NASD] By-Laws of the Corporation. However, those firms will otherwise remain subject to FINRA's By-Laws and Schedules to By-Laws, including Schedule A.

Section 5 — Elimination of Duplicate Assessments and Fees

Two or more members under substantially the same ownership or control shall be required to pay (1) only one personnel assessment and one system processing fee annually for those individuals employed by more than one of the members; (2) only one fee annually for each branch office registered at the same location by more than one of the members; and (3) one registration fee, one fingerprint processing fee, and one termination fee applicable to each applicant registered or terminated simultaneously with two or more members under substantially the same ownership or control. To establish their eligibility to receive the reduction in fees described herein, members must provide

[NASD]FINRA with information as requested by [NASD]FINRA and in the format specified by [NASD]FINRA prior to [NASD]FINRA's assessment of such fees.

Section 6 — Assessments and Fees for New Members, Resigning Members and Successor Organizations

(a) The assessment of a firm, which is not a member throughout [NASD]FINRA's full calendar year from January 1 to December 31, shall be based upon the number of quarter years of membership. The proration for a new member shall include the quarter year in which the member is admitted to membership. The proration for a member which resigns shall include the quarter year in which the member's letter of resignation is received in [NASD]FINRA's Executive Office.

(b) A member that is a successor organization to a previous member or members shall assume the unpaid balance of the assessments of its predecessor or predecessors and its next assessment shall be determined, if applicable, upon the assessment data of its predecessors. Such successor member shall not be required to re-register branch offices and personnel of predecessor members or pay registration fees therefor. Whether a member is the successor organization to a previous member or members shall be determined by [NASD]FINRA upon a consideration of the terms and conditions of the particular merger, consolidation, reorganization, or succession. A member that has simply acquired the personnel and offices of another member under circumstances that do not constitute the member a successor organization shall not be required to assume the unpaid assessments of the other member. Such non-successor member shall be required to re-register the branch offices and personnel acquired from the other member and pay applicable registration fees.

Section 7 — Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) There shall be a fee imposed for the filing of initial documents relating to any offering filed with [NASD]FINRA pursuant to the Corporate Financing Rule equal to: (1) \$500 plus .01% of the proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not exceed \$75,500; or (2) \$75,500 for an offering of securities on an automatically effective Form S-3 or F-3 registration statement filed with the SEC and offered pursuant to SEC Rule 415 by a Well-Known Seasoned Issuer as defined in SEC Rule 405. The amount of the filing fee may be rounded to the nearest dollar.

(b) There shall be an additional fee imposed for the filing of any amendment or other change to the documents initially filed with [NASD]FINRA pursuant to the Corporate Financing Rule equal to .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related Rule 462(b) registration statement, or reflected on any Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not exceed \$75,500.

Section 8 —Service Charge for Processing Extension of Time Requests

No Change.

Section 9 — Subscription Charges for Registration Batch Filing/Data Download Via the Web CRD Electronic File Transfer (EFT) System

No Change.

Section 10 — Request for Data and Publications

No Change.

Section 11 — Reserved

No Change.

Section 12 — Application and Annual Fees for Member Firms with Statutorily Disqualified Individuals

(a) Any member firm seeking to employ or continuing to employ as an associated person any individual who is subject to a disqualification from association with a member as set forth in Article III, Section 4 of [NASD's]the By-Laws of the Corporation shall, upon the filing of an application pursuant to Article III, Section 3, paragraph (d) of [NASD's]the By-Laws of the Corporation, pay to [NASD]FINRA a fee of \$1,500.00. Any member firm whose application filed pursuant to Article III, Section 3, paragraph (d) of [NASD's]the By-Laws of the Corporation results in a full hearing for eligibility in [NASD]FINRA pursuant to the Rule 9640 Series, shall pay to [NASD]FINRA an additional fee of \$2,500.00.

(b) Any member firm continuing to employ as an associated person any individual subject to disqualification from association with a member as set forth in Article III, Section 4 of [NASD's]the By-Laws of the Corporation shall pay annually to [NASD]FINRA a fee of \$1,500.00 when such person or individual is classified as a Tier 1 statutorily disqualified individual, and a fee of \$1,000.00 when such person or individual is classified as a Tier 2 statutorily disqualified individual.

Section 13 — Review Charge for Advertisement, Sales Literature, and Other Such Material Filed or Submitted

There shall be a review charge for each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to [NASD]FINRA, except for items that are filed or submitted in response to a written request from [NASD]FINRA's Advertising Regulation Department issued pursuant to the spot check procedures set forth in [NASD]FINRA's Rules as follows: (1) for printed material reviewed, \$100.00, plus \$10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, \$100.00, plus \$10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Advertising Regulation Department there shall be a review charge of \$500.00 per item plus \$25 for each page reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Advertising Regulation Department, unless a shorter or longer period is agreed to by the Advertising Regulation Department. The Advertising Regulation Department may, in its sole discretion, refuse requests for expedited review.

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