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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67241; File No. SR-FINRA-2012-029)

June 22, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adjust Fees for Filing Documents Pursuant to FINRA Rule 5110

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 8, 2012, Financial Industry Regulatory Authority (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the 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 the Substance of the Proposed Rule Change

FINRA is proposing to amend Section 7 of Schedule A to the FINRA By-Laws to adjust fees for filing documents pursuant to FINRA Rule 5110 (Corporate Financing Rule-Underwriting Terms and Arrangements). The text of the proposed rule change is available at

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

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

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

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

<http://www.finra.org>, at the principal office of FINRA, and at the Commission's Public Reference Room.

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend Section 7 of Schedule A to the FINRA By-Laws ("Section 7") to (1) increase the rate from .01 percent to .015 percent for the fee for the filing of initial documents and amendments pursuant to the Corporate Financing Rule; (2) increase the maximum fee from \$75,500 to \$225,500 for such filings; and (3) increase the fee from \$75,500 to \$225,500 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 Securities Act Rule 415 by a Well-Known Seasoned Issuer as defined in Securities Act Rule 405.

FINRA's Corporate Financing Department (the "Department") is responsible for reviewing the proposed underwriting terms and arrangements of proposed public offerings of securities for compliance with the requirements of FINRA Rule 5110. The public offerings reviewed by the Department include initial and secondary offerings of unseasoned issuers, best efforts offerings of direct participation programs ("DPPs") and real estate investment trusts

(“REITs”), but generally exclude public offerings of seasoned issuers that are not broker-dealers or their affiliates and offerings of investment grade securities.

The Department’s review is complementary to the SEC’s registration process, which defers to FINRA to establish reasonable levels of underwriting compensation and adequate disclosure of the underwriting terms and conflicts. Pursuant to FINRA Rule 5110, no member or person associated with a member may participate in a public offering subject to the Rule, or to FINRA Rules 5121 (Public Offerings of Securities With Conflicts of Interest) and 2310 (Direct Participation Programs), unless the documents and information specified in the Rule have been filed with and reviewed by the Department. Typically, the book-running manager for the offering files the documents on behalf of the participating members. The fee charged to members for this review is set forth in Section 7.

Under Section 7(a), the current fee for filings of initial documents relating to any offering pursuant to FINRA Rule 5110 is equal to (i) \$500 plus .01 percent 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 Securities Act Rule 415 by a Well-Known Seasoned Issuer as defined in Securities Act Rule 405.<sup>5</sup> Similarly, under Section 7(b), the current fee for filings of any amendment or other change to documents initially filed pursuant to FINRA Rule 5110 is .01 percent 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 Securities Act Rule 462(b)

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<sup>5</sup> Section 7(a) provides that the amount of the filing fee may be rounded to the nearest dollar.

registration statement, or reflected on any Securities Act Rule 430A prospectus, or included on any other type of offering document. Section 7(b) also provides that 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. Thus, under Section 7, fees are currently capped with respect to offerings with an aggregate offering price of \$750 million or more.

The rate of the filing fee rate has remained static since it was adopted in 1970, while the cap has been adjusted periodically, most recently in 2004.<sup>6</sup> However, the nature and complexity of offerings filed with the Department have changed substantially since the most recent adjustment. Many filings seek expedited review or “same day clearance” and FINRA has deployed (and continues to deploy) significant technology resources and process enhancements to accommodate those needs.<sup>7</sup> The Department also has seen growth in filings of unlisted REITs, business development companies and other DPPs, which raise complex issues.

In support of its reviews under FINRA Rule 5110 and other regulatory responsibilities, FINRA is proposing to increase the rate and the fee cap for filings pursuant to FINRA Rule 5110. This fee, which is assessed on members, though typically borne by issuers, funds the Department’s reviews as well as FINRA’s extensive regulatory programs and services that support the public capital markets being accessed by issuers through such member firms. The proposed fee would increase the rate of the filing fee from .01 percent to .015 percent of the

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<sup>6</sup> See Securities Exchange Act Release No. 50984 (Jan. 6, 2005), 70 FR 2440 (Jan. 13, 2005) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2004-177) (setting the maximum fee at \$75,500). The fees for automatically effective Form S-3 or F-3 offerings were added in 2007 without adjusting the existing rates. See Securities Exchange Act Release No. 55360 (Feb. 27, 2007), 72 FR 9813 (Mar. 5, 2007) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2007-006).

<sup>7</sup> See, e.g., Regulatory Notice 12-22 (April 2012).

proposed maximum aggregate offering price or other applicable value of the securities, and would increase the maximum fee from \$75,500 to \$225,500.

### Implementation

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be July 2, 2012. Specifically, the proposed adjusted fees and fee cap would become effective for filings and amendments made on or after July 2, 2012.

### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>8</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed fees are reasonable based on the nature and scope of the Department's review pursuant to FINRA Rule 5110. The proposed fee also contributes to the general funding of FINRA's overall regulatory program and serves to ensure that FINRA is sufficiently capitalized to meet its regulatory responsibilities. The proposed fees are equitably allocated among members (or borne by issuers) as they are assessed as a percentage of the aggregate maximum offering proceeds in much the same way that SEC registration fees are assessed under Section 6(b) of the Securities Act of 1933. Moreover, the cap on offerings above \$1.5 billion ensures that the fees collected from any particular member (or borne by any particular issuer) with respect to a filing are equitably allocated and not disproportionately borne by members (or issuers) participating in the very largest offerings.

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<sup>8</sup> 15 U.S.C. 78q-3(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act.<sup>9</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.] [sic]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2012-029 on the subject line.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(a)(i). [sic]

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-2012-029. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

should refer to File Number SR-FINRA-2012-029, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).