

Regulatory Notice

07-52

Mandatory FINRA Membership for NYSE Member Organizations

SEC Approves FINRA Membership Waive-In Process for Certain NYSE Member Organizations

Effective Date: October 12, 2007

Executive Summary

The SEC has approved NASD IM-1013-1, which establishes a waive-in application process for FINRA membership for certain NYSE-only member organizations that must become FINRA members as a result of NYSE's new mandatory FINRA membership requirement. The SEC also approved a membership application fee waiver for firms that become FINRA members pursuant to NASD IM-1013-1.

Questions concerning this *Notice* should be directed to:

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November 2007

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Registration
- Senior Management

Key Topic(s)

- Mandatory FINRA Membership for NYSE Member Organizations
- Member Application Process
- Membership Waive-In Application

Referenced Rules & Notices

- NASD IM-1013-1
- NASD IM-Section 4(b)(1) and (e)
- NASD Rule 1017
- NASD Rule 1021
- NASD Rule 1031
- NASD Rule 8000 Series
- NASD Rule 9000 Series
- NYSE Rule 2



Financial Industry Regulatory Authority

Background & Discussion

As part of the consolidation of NASD and the member regulatory functions of NYSE Regulation, Inc. into FINRA (the Transaction),¹ the SEC approved a rule change to the definition of “member organization” in NYSE Rule 2(b) to require all member organizations that are currently, or propose to become, NYSE member organizations to become members of FINRA.²

In connection with the mandatory membership requirement, FINRA established a waive-in process to expedite the approval of membership applications of the approximately 86 NYSE member organizations that must now become FINRA members. That process is set forth in NASD IM-1013-1, approved by the SEC on October 12, 2007.³ FINRA also established new IM-Section 4(b)(1) and (e) to Schedule A of the By-Laws, which waives the membership application fees for those firms that become FINRA members pursuant to NASD IM-1013-1.

Waive-In Process and Requirements

NASD IM-1013-1 establishes a waive-in process for 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 July 30, 2007, the closing date of the Transaction. The waive-in process makes these firms automatically eligible to become FINRA members and to register all associated persons whose registrations are approved with NYSE in registration categories recognized by FINRA upon submission to FINRA of a signed waive-in membership application (Waive-In Application) with certain specified information, as set forth below.

The Waive-In Application requires NYSE-only member organizations to submit the following to FINRA:

- General company information, including Central Registration Depository (CRD®) Number and contact person;
- 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 structure, management, product lines and disclosures;
- The identity of the firm’s Executive Representative;⁴
- Completed and signed Entitlement Forms;
- A signed FINRA membership agreement; and

- Representations that: (1) the applicant's Form BD will be amended as needed to remain current and accurate, (2) all individual and entity registrations with FINRA will be kept current, and (3) all information and statements contained in the Waive-In Application are current, true and complete.

Once an NYSE-only member organization has completed and submitted a Waive-In Application, FINRA has three business days to review the application, and, if complete, to issue an application approval notification letter. The FINRA membership agreement would become effective on the date of such notification letter.

FINRA has not recognized any new registration categories as a result of the Transaction. Thus, associated persons of the NYSE-only member organizations will be automatically registered with FINRA only for those registration categories that NASD and NYSE jointly recognized at the close of the Transaction (*e.g.*, a General Securities Representative Series 7); provided, however, that the firm must, upon approval of FINRA membership, submit an amended Form U4 for each such associated person, denoting the corresponding FINRA (NASD) registration category (or categories) for such person.

Membership Application Fee Waiver

FINRA also added IM-Section 4(b)(1) and 4(e) to Schedule A of the By-Laws. This provision provides that NYSE member organizations that become members of FINRA pursuant to the waive-in process shall not be assessed the fee set forth in Section 4(b)(1) to Schedule A for the initial Form U4 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. Also, such firms shall not be assessed the membership application fee set forth in Section 4(e) to Schedule A.

Applicable Rules

NYSE-only member organizations admitted pursuant to NASD IM-1013-1 are subject to: 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).⁵

If an NYSE-only member organization admitted pursuant to NASD IM-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, which requires an application and prior FINRA approval of material changes in a firm's operations before those changes may occur. Upon approval of such business expansion, the firm would become subject to all FINRA rules.

Additionally, associated persons of an NYSE-only member organization admitted to FINRA pursuant to NASD 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.

Inasmuch as these associated persons would not be subject to NASD Rules 1021 or 1031, they would not be required to register in a registration category recognized by FINRA. To the extent that such persons continue to be associated solely with a firm whose business complies with the limitations imposed on those firms admitted to FINRA pursuant to the waive-in process, FINRA is not imposing any registration requirements beyond those that the NYSE requires, provided that their business is confined in scope as contemplated in NASD IM-1013-1. The licensing and other requirements applicable to the NYSE-only member organizations and their associated persons, however, are subject to change as part of the process of establishing a consolidated rulebook applicable to all FINRA members.

Endnotes

- 1 On July 26, 2007, the SEC 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* Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (File No. SR-NASD-2007-023). The SEC also approved a plan by FINRA and NYSE Regulation to allocate regulatory responsibility relating to the NYSE member firm regulation rules to FINRA. *See* Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (File No. 4-544).
- 2 *See* Exchange Act Release No. 56654 (October 12, 2007), 72 FR 59129 (October 18, 2007) (File No. SR-NYSE-2007-67); *see also* File No. SR-FINRA-2007-019.
- 3 *See* Exchange Act Release No. 56653 (October 12, 2007), 72 FR 59127 (October 18, 2007) (File No. SR-NASD-2007-056).
- 4 As required by Article IV, Section 3 of the FINRA By-Laws.
- 5 *See* Exchange Act Release No. 56653 (October 12, 2007), 72 FR 59127 (October 18, 2007), n. 9. Activities that are ancillary to a Floor broker's core business include: (1) 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 (2) 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-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.

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Attachment A

Below is the text of the rule change. New language is underlined; deletions are in brackets

* * * * *

NYSE Rule 2. “Member,” “Membership,” “Member Firm,” etc.

(a) No Change.

(b)

(i) The term “member organization” means a registered broker or dealer (unless exempt pursuant to the Securities Exchange Act of 1934) that is a member of the Financial Industry Regulatory Authority (“FINRA”) and approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. This term shall include a natural person so registered, approved and licensed and who directly effects transactions on the floor of the Exchange or any facility thereof.

(ii) The term “member organization” also includes [any] a registered broker or dealer that is a member of FINRA, which does not own a trading license and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed to regulate.

(iii) No Change.

(c) through (h) No Change.

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SCHEDULE A TO NASD BY-LAWS

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Section 1 through Section 4

No Change.

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 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. However, those firms will otherwise remain subject to FINRA's By-Laws and Schedules to By-Laws, including Schedule A.

Section 5 through Section 13

No Change.

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1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS

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1013. New Member Application and Interview

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IM-1013-1. Membership Waive-In Process for Certain New York Stock Exchange Member Organizations

This Interpretive Material sets forth a membership waive-in process for certain New York Stock Exchange ("NYSE") member organizations to become members of FINRA as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. ("NYSE Regulation"). It applies 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 July 30, 2007. Such firms are eligible to automatically become FINRA members and to automatically register all associated persons whose registrations are approved with NYSE in registration categories recognized by FINRA upon submission to FINRA's Member Regulation Department ("the Department") of a signed waive-in membership application ("Waive-In Application") with the following information:

(1) General company information, including 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 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.

(6) Representations that the NYSE 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.

The Department shall review the Waive-In Application within three (3) business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement shall become effective on the date of such notification letter.

Firms admitted pursuant to this Interpretive Material shall be subject to the NYSE rules incorporated by FINRA, FINRA's By-Laws and Schedules to By-Laws, including Schedule A, and the NASD Rule 8000 and Rule 9000 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"). If an NYSE-only member organization admitted pursuant to this Interpretive Material 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 shall be subject to all NASD rules, in addition to those NYSE rules incorporated by FINRA.

Pursuant to IM-Section 4(b)(1) and (e) to Schedule A of the NASD By-Laws, a firm applying to waive in for membership pursuant to this Interpretive Material shall not be assessed certain registration and application fees set forth in Sections 4(b)(1) and (e) to Schedule A of the NASD By-Laws.