# Regulatory Notice 08-07

# Regulatory Pricing Proposal

## FINRA and NYSE Filed Rule Changes with the SEC to Amend FINRA's Gross Income Assessment and Eliminate Certain NYSE Fees

**Effective Date: Upon SEC Approval With an Implementation Date of January 1, 2008**

### Executive Summary

On July 30, 2007, NASD and the New York Stock Exchange (NYSE) consolidated their member regulation operations. The combined organization, renamed FINRA, was funded by the legacy NASD fee structure and certain fees collected under NYSE authority and remitted to FINRA. As part of the ongoing consolidation, FINRA has proposed a series of changes to its funding structure. This regulatory pricing proposal, if approved, and prior rebate commitment would result in savings to the securities industry of approximately $25 million dollars annually.

Questions concerning this *Notice* should be directed to Finance, at (240) 386-5397; or the Office of General Counsel, at (202) 728-8071.

### Background & Discussion

As a result of the consolidation of NASD and NYSE member regulation operations, FINRA had two streams of income funding its regulatory programs: (1) NASD-legacy member regulatory fees; and (2) certain NYSE fees that NYSE Regulation agreed to transfer to FINRA for the remainder of 2007.

**February 2008**

### Notice Type

- Proposed Rule Amendments

### Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management

### Key Topic(s)

- Regulatory Fees
- Gross Income Assessment
- Gross FOCUS Fees
- Registration Fees

### Referenced Rules & Notices

- Sections 1 and 2 of Schedule A of the By-Laws
- NYSE Rule 129

FINRA™ Financial Industry Regulatory Authority

After careful review of the combined NASD and NYSE-transferred fees, FINRA has proposed to amend its fee structure to accomplish the following:

(1) eliminate duplicative registration fees for branch offices and registered representatives;

(2) maintain NASD's legacy fee structures and levels for its Trading Activity Fee, Branch Office Assessment and Personnel Assessment; and

(3) consolidate NASD's Gross Income Assessment (GIA) rate structure with NYSE Regulation's Gross FOCUS Fee (GFF) rate structure.

To effect these changes, both NYSE[1] and FINRA[2] have filed rule proposals with the SEC. In its rule filing, FINRA has proposed that the minimum assessment under the GIA of $1,200 remain, but that the annual gross revenue ceiling be increased from $960,000 to $1 million.[3] Because FINRA previously committed to a GIA rebate of $1,200 per year for five years, subject to annual Board approval, this effectively reduces the GIA rate to $0 for the first $1 million of annual gross revenue. For annual gross revenues assessed above $1 million, the regressive rate structure of the legacy GIA and the flat NYSE GFF rate structure would be combined into a tiered rate structure.

Under the rule proposal, member firms would be assessed a GIA of:

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

(2) 0.1215 percent of annual gross revenue greater than $1 million up to $25 million;

(3) 0.2599 percent of annual gross revenue greater than $25 million up to $50 million;

(4) 0.0518 percent of annual gross revenue greater than $50 million up to $100 million;

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

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

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

## Implementation

To minimize the impact on member firms, FINRA will implement the new rate structure over a three-year period beginning in 2008. During this period, the change in the GIA paid to FINRA by each member would be subject to a cap based on the fees that the member would have paid under the prior rate structures:

- In 2008, the new rate structure will not impact a firm's GIA.
- In 2009, FINRA will apply a five-percent cap on any increase or decrease to a firm's GIA resulting from the new rate structure.
- In 2010, FINRA will apply a ten-percent cap on any increase or decrease to a firm's GIA resulting from the new rate structure.

Please note that 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 results from the change in rate structure will be subject to the cap.

In addition, the new fee structure will be phased in based on the firm's membership affiliation:

- For **NASD-only members** (as of July 30, 2007) and **FINRA members** (on or after July 30, 2007, excluding NYSE-only members required to become FINRA members pursuant to NYSE Rule 2), the cap will be calculated based on the GIA that the member firm would have paid under the prior NASD GIA rate structure.
- For **NYSE-only members** (as of July 30, 2007), the cap will be calculated based on the NYSE GFF that the firm would have paid under the prior NYSE GFF rate structure.[4]
- For **Dual Members** (firms that were members of both NASD and NYSE as of July 30, 2007), the cap will be calculated based on the GIA and the NYSE GFF that the firm would have paid under the prior NASD GIA rate structure and the prior NYSE GFF rate structure.

## Overall Impact

FINRA estimates that the proposed fee structure will result in aggregate fee reductions to FINRA member firms of approximately $25 million dollars annually—approximately $18.6 million from the elimination of NYSE Regulation's registration fees and approximately $6.4 million from the $1,200 GIA rebate given to all FINRA member firms. FINRA estimates that, under the proposed rate structure, 93 percent of firms will have either an unchanged or reduced GIA. Certain firms with annual gross revenue exceeding $35 million, however, will have an increase to their GIA under the proposed new rate structure.

## SEC Request for Comment

The SEC requests comment on the regulatory pricing proposal. The comment period expires **February 28, 2008**. The rule proposal will be implemented upon SEC approval with a retroactive effective date of **January 1, 2008**.

## Endnotes

1 In addition to the registration fees for branch offices and registered representatives, NYSE also eliminated its Regulation T credit extensions fee, statutory disqualification fees, FOCUS feedback fee, regulatory element fee and the series 7 qualifications exam fee by deleting these fees from the NYSE Price List. *See* Securities Exchange Act Release No. 57093 (December 31, 2007), 73 FR 1654 (January 9, 2008) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2007-127).

2 Securities Exchange Act Release No. 57259 (February 1, 2008), 73 FR 7340 (February 7, 2008) (Notice of Filing of SR-FINRA-2008-001).

3 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.

4 In calculating the cap based on the GFF that a firm 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 NYSE to FINRA in 2007 (*i.e.*, 75 percent of the GFF paid by the firm).