Regulatory Notice 08-19

Gross Income Assessment

SEC Approves Rule Change to Amend FINRA's Gross Income Assessment

Effective Date: January 1, 2008

Executive Summary

On March 11, 2008, the SEC approved amendments to FINRA's Gross Income Assessment (GIA) with a retroactive effective date of January 1, 2008.[1] The amendments establish a new structure for the GIA that combines aspects of NASD's legacy GIA fee structure with the prior rate structure of NYSE Regulation's Gross FOCUS Fee (GFF). The amendments also made technical changes to Schedule A of the FINRA By-Laws.

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 in 2007, 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. After careful review of the combined NASD and NYSE-transferred fees, FINRA proposed to amend its fee structure to:

(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 GIA rate structure with NYSE Regulation's GFF rate structure.

April 2008

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management

Key Topic(s)

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

Referenced Rules & Notices

- Notice 08-07
- Schedule A to the FINRA By-Laws

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To effect these changes, both NYSE[2] and FINRA[3] filed rule proposals with the SEC. On March 11, 2008, the SEC approved FINRA's proposal to establish a new GIA rate structure.[4] Under the new structure, the minimum assessment under the GIA of $1,200 remains, but the annual gross revenue ceiling has been increased from $960,000 to $1 million.[5] 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 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 has been combined into a tiered rate structure.

Under the new GIA rate structure, member firms will be assessed a GIA of the total 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 of the new rate structure on member firms, FINRA will implement the new rate structure over a three-year period beginning this year. 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 firm would have paid under the prior rate structure(s):

- In 2008, the new rate structure will not affect a firm's GIA.
- In 2009, FINRA will apply a five-percent cap on any increase or decrease to a member 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 member firm's GIA resulting from the new rate structure.
- Beginning in 2011, each member firm's GIA will be calculated based solely on the new GIA rate structure set forth above without reference to the prior applicable rate structure(s).

Please note that during this implementation period, a firm's GIA may increase or decrease due to a change in the member firm'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 GIA rate structure will be phased in based on each 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.[6]
- For **Dual Members** (*i.e.,* 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 new GIA rate structure, along with the elimination of certain NYSE fees, will result in aggregate fee reductions to FINRA member firms of approximately $25 million 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 new GIA rate structure, 93 percent of member 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 new GIA rate structure.

Endnotes

1 *See* Securities Exchange Act Release No. 57474 (March 11, 2008), 73 FR 14517 (March 18, 2008) (Order Approving SR-FINRA-2008-001).

2 *See* Securities Exchange Act Release No. 57093 (January 3, 2008), 73 FR 1654 (January 9, 2008) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2007-127). 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 qualification exam fees from the NYSE Price List.

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

4 *See* Securities Exchange Act Release No. 57474 (March 11, 2008), 73 FR 14517 (March 18, 2008). FINRA's proposed rule changes also included technical amendments to Schedule A to the FINRA By-Laws to change references from "NASD" to "FINRA" throughout Schedule A.

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

6 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).