Regulatory Notice 09-68

Regulatory Pricing Changes

SEC Approves Changes to the Personnel Assessment and Gross Income Assessment Fees

Effective Date: January 1, 2010

Executive Summary

The SEC has approved changes to FINRA's regulatory pricing structure as originally outlined in *Regulatory Notice 09-56* (September 2009). Effective January 1, 2010, FINRA will implement a new Personnel Assessment rate structure and a revised calculation for the Gross Income Assessment.[1]

The text of the amendments to Schedule A of the FINRA By-Laws is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- Finance at (240) 386-5397; or
- the Office of General Counsel at (202) 728-8071.

Background and Discussion

FINRA's primary pricing structure consists of the following fees: the Personnel Assessment (PA), the Gross Income Assessment (GIA), the Trading Activity Fee and the Branch Office Assessment. These fees are used to fund FINRA's regulatory activities, including its examination and enforcement programs. The SEC has approved a rule change that restructures the PA and the GIA to allow FINRA to continue to effectively discharge its regulatory obligations in a fiscally prudent way, while reducing its vulnerability to another market downturn.

November 2009

Notice Type

- Rule Amendments

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management

Key Topic(s)

- Gross Income Assessment
- Personnel Assessment
- Regulatory Fees

Referenced Rules & Notices

- Regulatory Notice 08-19
- Regulatory Notice 09-56
- Sections 1 and 2 of Schedule A of FINRA By-Laws

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The GIA currently is assessed through a seven-tiered rate structure with a minimum GIA of $1,200. Under the current pricing structure, firms are required to pay an annual GIA as follows:

(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;

(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.

The rule change amends Schedule A of the FINRA By-Laws to assess a GIA of the greater of (1) the amount that would be the GIA based on the existing rate structure (current year GIA) or (2) a three-year average of the GIA to be calculated by adding the current-year GIA plus the GIA assessed on the firm over the previous two calendar years, divided by three. For a newer firm that has only been assessed in the prior year, FINRA will compare the current year GIA to the firm's two-year average and assess the greater amount.

Otherwise, the existing GIA rate structure and phase-in implementation through 2010 remain the same. Thus, for 2010, the current year GIA would remain subject to the cap set forth in *Regulatory Notice 08-19* (April 2008), which describes the new funding structure that resulted from the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA. FINRA states in the *Notice* that it will apply a 10 percent cap on any increase or decrease of a firm's 2010 current year GIA resulting from the new pricing structure implemented in January 2008.[2]

Firms should note that FINRA is committed to its practice of providing rebates to firms when revenues exceed the expenditures necessary to discharge its regulatory obligations.

The rule change also increases the PA to better align FINRA's revenues with its costs. The PA is currently assessed on a three-tiered rate structure: firms with one to five registered representatives and principals are assessed $75 for each registered person; 6 to 25 registered persons, $70 each; and 26 or more registered persons, $65 each. The rule change increases those rates to $150, $140 and $130, respectively, based on the same tiered structure.

Implementation

The rule changes are effective **January 1, 2010**.

Endnotes

1 *See* Exchange Act Release No. 61042 (November 20, 2009), 74 FR 62616 (November 30, 2009) (Order Approving SR-FINRA-2009-057).

2 The actual amount of GIA assessed in any given year—*e.g.*, the capped amount or the three-year average—will be used to calculate subsequent three-year average determinations. The caps, if applicable, would be applied to the current-year assessment and the resulting number would be used to calculate the three-year average.

Attachment A

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

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SCHEDULE A TO THE BY-LAWS OF THE CORPORATION

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

* * * * *

Section 1 — Member Regulatory Fees

(a) through (b) No Change.

(c) Each member shall pay an annual Gross Income Assessment equal to the <u>greater</u> [total] of:

<u>(1) the total of:</u>

[(1)]<u>(A)</u> $1,200.00 on annual gross revenue up to $1 million;

[(2)]<u>(B)</u> 0.1215% of annual gross revenue greater than $1 million up to $25 million;

[(3)]<u>(C)</u> 0.2599% of annual gross revenue greater than $25 million up to $50 million;

[(4)]<u>(D)</u> 0.0518% of annual gross revenue greater than $50 million up to $100 million;

[(5)]<u>(E)</u> 0.0365% of annual gross revenue greater than $100 million up to $5 billion;

[(6)]<u>(F)</u> 0.0397% of annual gross revenue greater than $5 billion up to $25 billion; and

[(7)]<u>(G)</u> 0.0855% of annual gross revenue greater than $25 billion[.]<u>; or</u>

<u>(2) The average Gross Income Assessment from the preceding three calendar years, to be determined by adding the Gross Income Assessment calculation pursuant to paragraph (c)(1) to the actual Gross Income Assessment in the preceding two calendar years, then dividing by three.</u>

The rate structure set forth in paragraph (c)(1) [above] will be implemented over a three year period beginning in 2008 in such manner as specified by FINRA.

For the purpose of paragraph (c)(1), [E]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]$150.00 per principal and each representative up to five principals and representatives as defined below;

(2) [$70]$140.00 per principal and each representative for six principals and representatives up to twenty-five principals and representatives as defined below; or

(3) [$65]$130.00 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 FINRA as of December 31st of the prior fiscal year.

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