

Continuing Membership Application Fee Waiver Process

FINRA Provides a Process for Waiving CMA Fees for Less Significant CMA Changes and Refunding of NMA and CMA Fees for Applications Withdrawn Within 30 Days After Filing

Effective Date: Immediately

Executive Summary

Effective immediately, FINRA will waive the requisite continuing membership application (CMA) fee where FINRA determines that a CMA is proposing less significant changes that do not require substantial staff review. Examples of changes that may qualify for a CMA fee waiver are described below. Also effective immediately, FINRA will refund the application fee (less a \$500 processing fee) if an applicant withdraws a new membership application (NMA) or CMA within 30 days after filing the application with FINRA.¹ The text of the rule amendments effecting these changes is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- ▶ Allison Reid, Associate Director, Membership Application Program (MAP), at (212) 858-4418;
- ▶ Lisa Robinson, Associate Director, MAP, at (212) 858-4764; or
- ▶ Joseph Sheirer, Director and Counsel II, MAP, at (212) 858-5132.

March 2013

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Corporate Finance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management

Key Topics

- ▶ Continuing Membership Application Fee
- ▶ Continuing Membership Application Fee Waiver
- ▶ Form CMA
- ▶ Form NMA
- ▶ New Membership Application Fee

Referenced Rules & Notices

- ▶ NASD Rule 1011
- ▶ NASD Rule 1012
- ▶ NASD Rule 1013
- ▶ NASD Rule 1017
- ▶ Section 4(i) of Schedule A to the FINRA By-Laws
- ▶ Regulatory Notice 12-33

Background & Discussion

I. CMA Fee Waiver

CMA applications are subject to an application fee under Section 4(i) of Schedule A to the FINRA By-Laws. Effective immediately, amendments to Section 4(i) of Schedule A provide that FINRA will waive the CMA fee where FINRA determines that the CMA is proposing less significant changes that do not require substantial staff review. Section 4(i) of Schedule A provides examples of changes in ownership, control or business operations that may qualify a CMA for a fee waiver. Specifically, a CMA may qualify for a fee waiver pursuant to Section 4(i) of Schedule A where the proposed change:

- ▶ does not make any day-to-day changes in the applicant's business activities, management, supervision, assets or liabilities, and the applicant is only proposing a change in the:
 - ▶ applicant's legal structure (*e.g.*, changing from a corporation to an LLC);
 - ▶ equity ownership, partnership capital or other ownership interest in an applicant held by a corporate legal structure that is due solely to a reorganization of ownership or control of the applicant within the corporate legal structure (*e.g.*, reorganizing only to add a holding company to the corporate legal structure's ownership or control chain of the applicant); or
 - ▶ percentage of ownership interest or partnership capital of an applicant's existing owners or partners resulting in an owner or partner owning or controlling 25 percent or more of the ownership interest or partnership and that owner or partner has no disclosure or disciplinary issues in the preceding five years; or
- ▶ is filed by an applicant in connection with a direct or indirect acquisition or transfer of 25 percent or more in the aggregate of the applicant's assets or any asset, business or line of operation that generates revenues composing 25 percent or more in the aggregate of the applicant's earnings measured on a rolling 36-month basis where the applicant also is ceasing operations as a broker or dealer (including filing a Form BDW with the SEC) and there are either:
 - ▶ no pending or unpaid settled customer related claims (including, but not limited to, pending or unpaid settled arbitration or litigation actions) against the applicant or any of its associated persons; or
 - ▶ pending or unpaid settled customer related claims (including, but not limited to, pending or unpaid settled arbitration or litigation actions) against the applicant or its associated persons, but the applicant demonstrates in the CMA its ability to satisfy in full any unpaid customer related claim (*e.g.*, sufficient capital or escrow funds, proof of adequate insurance for customer related claims).

The changes in ownership, control or business operations listed above are examples of changes that may qualify for a CMA fee waiver pursuant to Section 4(i) of Schedule A.² Other proposed changes in ownership, control or business operations also may qualify for a fee waiver where FINRA determines from the individual facts and circumstances of a CMA that the application is proposing less significant changes that do not require substantial staff review. An applicant may contact Member Regulation prior to filing a CMA to discuss whether a proposed change in business operations might qualify for a fee waiver. Firms may also consult with Member Regulation regarding whether changes they contemplate are sufficiently material even to require a CMA application.

An applicant seeking a waiver of the CMA fee should submit its request to FINRA in writing as part of the supporting documentation in Standard 1 (Overview of the Applicants) submitted with the applicant's Form CMA.³ Form CMA's Standard 1 instructs the applicant to attach enumerated types of supporting documents. A waiver request should be attached in response to the request for "[a]ny other documentation that would be pertinent to FINRA's review of this Standard."⁴

II. NMA and CMA Fee Refund

Also effective immediately, amendments to NASD Rules 1013 (New Member Application and Interview)⁵ and 1017 provide that if an applicant withdraws an NMA or CMA within 30 days after filing the application, FINRA shall refund the application fee, less \$500, which FINRA will retain as a processing fee. If the applicant determines to again seek membership or apply for approval of a change in ownership, control or business operations, the applicant must submit a new NMA or CMA (under NASD Rule 1013 or NASD Rule 1017, as applicable) and requisite application fee pursuant to Schedule A to the FINRA By-Laws.

Endnotes

1. See Securities Exchange Act Release No. 68942 (February 15, 2013), 78 FR 12405 (February 22, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2013-015).
2. FINRA expects that the listed changes typically will not be significant and will not require substantial staff review; however, whether FINRA grants a fee waiver for these changes will depend on the individual facts and circumstances of each CMA.
3. NASD Rule 1017 requires an applicant for continuing membership to submit a standardized online Form CMA as part of its application. See Securities Exchange Act Release No. 67082 (May 31, 2012), 77 FR 33539 (June 6, 2012) (SR-FINRA-2012-018) (Order Granting Approval of SR-FINRA-2012-018 as Modified by Amendment No. 1, to Amend NASD Rules 1012 and 1017 to Adopt Form CMA); see also [Regulatory Notice 12-33](#) (FINRA Amends Electronic Form NMA and Adopts New Electronic Form CMA Filing Requirements).
4. Currently, FINRA invoices a CMA applicant after the applicant files the Form CMA and FINRA reviews the application to determine whether it is substantially complete. See NASD Rule 1017(d) (requiring a CMA to be rejected and deemed not filed if FINRA determines within 30 days after the filing of the CMA that the application is not substantially complete). During that time, FINRA also will review CMAs that include a fee waiver request to determine whether the CMA qualifies for the fee waiver pursuant to Section 4(i) to Schedule A.
5. NASD Rule 1013 requires an applicant for FINRA membership to submit a standardized online Form NMA. FINRA recently revised the standardized online Form NMA to further streamline the new member application process and to organize Form NMA according to the 12 standards for membership enumerated in NASD Rule 1014 (Department Decision). See Securities Exchange Act Release No. 66555 (March 9, 2012), 77 FR 15445 (March 15, 2012) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2012-017 to Amend Online Form NMA, the Standardized Membership Application Form Applicants Must File Pursuant to NASD Rule 1013); see also [Regulatory Notice 12-33](#) (FINRA Amends Electronic Form NMA and Adopts New Electronic Form CMA Filing Requirements).

Attachment A

Attachment A shows 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

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Section 4 – Fees

(a) through (h) No Change.

(i) (1) – (2) No Change.

(3) FINRA shall waive the fee assessed pursuant to paragraph (i)(1) for a continuing membership application where FINRA determines that such application is proposing less significant changes that do not require substantial staff review. For example, a continuing membership application may qualify for a fee waiver under this paragraph (i)(3) where the proposed change:

(A) does not make any day-to-day changes in the applicant’s business activities, management, supervision, assets, or liabilities, and the applicant is only proposing a change in the:

(i) applicant’s legal structure (e.g., changing from a corporation to an LLC);

(ii) equity ownership, partnership capital, or other ownership interest in an applicant held by a corporate legal structure that is due solely to a reorganization of ownership or control of the applicant within the corporate legal structure (e.g., reorganizing only to add a holding company to the corporate legal structure’s ownership or control chain of the applicant); or

(iii) percentage of ownership interest or partnership capital of an applicant’s existing owners or partners resulting in an owner or partner owning or controlling 25 percent or more of the ownership interest or partnership and that owner or partner has no disclosure or disciplinary issues in the preceding five years; or

(B) is filed in connection with a direct or indirect acquisition or transfer of 25 percent or more in the aggregate of the applicant’s assets or any asset, business, or line of operation that generates revenues composing 25 percent or more in the aggregate of the applicant’s earnings, measured on a rolling 36-month basis, where the applicant also is ceasing operations as a broker or dealer (including filing a Form BDW with the SEC); and there are either:

(i) no pending or unpaid settled customer related claims (including, but not limited to, pending or unpaid settled arbitration or litigation actions) against the applicant or any of its associated persons; or

(ii) pending or unpaid settled customer related claims (including, but not limited to, pending or unpaid settled arbitration or litigation actions) against the applicant or its associated persons, but the applicant demonstrates in the continuing membership application its ability to satisfy in full any unpaid customer related claim (e.g., sufficient capital or escrow funds, proof of adequate insurance for customer related claims).

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1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS

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1010. Membership Proceedings

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1013. New Member Application and Interview

(a) Filing of Application

(1) through (4) No Change.

(5) Withdrawal of Application

If an Applicant withdraws an application within 30 days after filing the application, FINRA shall refund the application fee, less \$500, which shall be retained by FINRA as a processing fee. If the Applicant determines to again seek membership, the Applicant shall submit a new application under this Rule and fee pursuant to Schedule A to the FINRA By-Laws.

(b) No Change.

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1017. Application for Approval of Change in Ownership, Control, or Business Operations

(a) through (e) No Change.

(f) Withdrawal of Application

If an Applicant withdraws an application within 30 days after filing the application, FINRA shall refund the application fee, less \$500, which shall be retained by FINRA as a processing fee. If the Applicant determines to again apply for approval of a change in ownership, control, or business operations, the Applicant shall submit a new application under this Rule and fee pursuant to Schedule A to the FINRA By-Laws.

(f) through (k) renumbered as (g) through (l).

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