

Underlying Funds, which have been approved for listing and trading on the Exchange by the Commission.<sup>28</sup>

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>29</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>30</sup> that the proposed rule change (SR-NYSEArca-2011-97) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Kevin M. O'Neill,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66465; File No. SR-FINRA-2012-009]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 4(c) of Schedule A to the FINRA By-Laws To Increase Qualification Examination Fees and Assess a Service Charge for Regulatory Element Continuing Education Sessions Taken Outside the United States

February 24, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 23, 2012, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. The

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to amend Section 4(c) of Schedule A to the FINRA By-Laws to (1) increase qualification examination fees, and (2) assess a service charge for any Regulatory Element sessions taken in a test center located outside the territorial limits of the United States. The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

As discussed in further detail below, the proposed rule change amends Section 4(c) of Schedule A to the FINRA By-Laws to (1) increase qualification examination fees, and (2) assess a service charge for any Regulatory Element session taken in a test center located outside the territorial limits of the United States.

###### Qualification Examination Fees

NASD Rules 1021(a) and 1031(a) require that persons engaged, or to be engaged, in the investment banking or securities business of a FINRA member who are to function as principals or representatives register with FINRA in each category of registration appropriate to their functions as specified in NASD Rules 1022 and 1032.<sup>5</sup> Such individuals must pass an appropriate qualification

examination before their registration can become effective. These mandatory qualification examinations cover a broad range of subjects regarding financial markets and products, individual responsibilities, securities industry rules, and regulatory structure. FINRA develops, maintains, and delivers all qualification examinations for individuals who are registered or seeking registration with FINRA. FINRA also administers and delivers examinations sponsored (*i.e.*, developed) by the Municipal Securities Rulemaking Board ("MSRB"), the North American Securities Administrators Association, the National Futures Association, the Federal Deposit Insurance Corporation, and other self-regulatory organizations.

FINRA currently administers examinations via computer through the PROCTOR<sup>®</sup> system<sup>6</sup> at testing centers operated by vendors under contract with FINRA. FINRA charges an examination fee to candidates for FINRA-sponsored and co-sponsored examinations to cover the development, maintenance, and delivery of these examinations. For qualification examinations sponsored by a FINRA client and administered by FINRA, FINRA charges a delivery fee that represents either a portion of or the entire examination fee for the examination.<sup>7</sup>

FINRA regularly conducts a comprehensive review of the examination fee structure, including an analysis of the costs associated with developing, administering, and delivering examinations. Based on the results of its review, FINRA may propose changes to better align the examination fee structure with the costs associated with the programs. In this regard, the most recent review revealed that certain operational costs have increased and, based on current information, will continue to increase over the next few years. In particular, these costs consist of (1) fees that vendors charge FINRA for delivering qualification examinations, and (2) PROCTOR maintenance and enhancement expenses. FINRA believes that the proposed rule change will help

<sup>28</sup> See *supra* note 6.

<sup>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> See also NASD Rules 1041 and 1050 and FINRA Rule 1230(b)(6) regarding the qualification and registration requirements for Order Processing Assistant Representatives, Research Analysts and Operations Professionals, respectively.

<sup>6</sup> PROCTOR is a computer system that is specifically designed for the administration and delivery of computer-based testing and training.

<sup>7</sup> The delivery fee represents a portion of the entire examination fee when a FINRA client has established an additional fee for an examination that it sponsors. For example, the fee to take the Series 51 (Municipal Fund Securities Limited Principal) examination is currently \$145. Of this amount, \$85 is the FINRA administration and delivery fee, and \$60 is the development fee determined by the FINRA client, the MSRB. See MSRB Rule A-16.

to better align the examination program fees with these costs.

Therefore, FINRA is proposing to amend Section 4(c) of Schedule A to the

FINRA By-Laws to increase the fees for the qualification examinations set forth in Section 4(c), except for the Series 99 Operations Professional examination,

which was implemented in late 2011.<sup>8</sup> The proposed fee changes are as follows:

Series 4	Registered Options Principal	From \$90 to \$100.
Series 6	Investment Company Products/Variable Contracts Representative	From \$85 to \$95.
Series 7	General Securities Representative	From \$265 to \$290.
Series 9	General Securities Sales Supervisor—Options Module	From \$70 to \$75.
Series 10	General Securities Sales Supervisor—General Module	From \$110 to \$120.
Series 11	Assistant Representative—Order Processing	From \$70 to \$75.
Series 14	Compliance Official	From \$320 to \$335.
Series 16	Supervisory Analyst	From \$210 to \$230.
Series 17	Limited Registered Representative	From \$70 to \$75.
Series 22	Direct Participation Programs Representative	From \$85 to \$95.
Series 23	General Securities Principal Sales Supervisor Module	From \$85 to \$95.
Series 24	General Securities Principal	From \$105 to \$115.
Series 26	Investment Company Products/Variable Contracts Principal	From \$85 to \$95.
Series 27	Financial and Operations Principal	From \$105 to \$115.
Series 28	Introducing Broker-Dealer Financial and Operations Principal	From \$85 to \$95.
Series 37	Canada Module of S7 (Options Required)	From \$160 to \$175.
Series 38	Canada Module of S7 (No Options Required)	From \$160 to \$175.
Series 39	Direct Participation Programs Principal	From \$80 to \$90.
Series 42	Registered Options Representative	From \$65 to \$70.
Series 51	Municipal Fund Securities Limited Principal	From \$85 to \$95.
Series 52	Municipal Securities Representative	From \$95 to \$120. <sup>9</sup>
Series 53	Municipal Securities Principal	From \$95 to \$105.
Series 55	Limited Representative—Equity Trader	From \$95 to \$105.
Series 62	Corporate Securities Limited Representative	From \$80 to \$90.
Series 72	Government Securities Representative	From \$95 to \$105.
Series 79	Investment Banking Qualification Examination	From \$265 to \$290.
Series 82	Limited Representative—Private Securities Offering	From \$80 to \$90.
Series 86	Research Analyst—Analysis	From \$160 to \$175.
Series 87	Research Analyst—Regulatory	From \$115 to \$125.
Series 99	Operations Professional	\$125 (No change).

#### Service Charge for Foreign Test Center Regulatory Element Sessions

FINRA assesses a service charge of \$15 for any qualification examination that is taken in a foreign test center (*i.e.*, a test center located outside of the territorial limits of the United States) to help offset the higher fees that vendors charge FINRA for delivering qualification examinations in such locations. Vendors also charge FINRA higher fees for the delivery of Regulatory Element sessions in foreign test centers; however, all individuals are currently assessed the same amount for a Regulatory Element session regardless of where they take the session. Therefore, FINRA is proposing to assess a \$15 service charge for any Regulatory Element session taken in a foreign test center to more closely align the fee with the cost of such sessions.

#### Implementation

FINRA has filed the proposed rule change for immediate effectiveness.

FINRA is proposing that the implementation date of the proposed rule change will be April 2, 2012. Specifically, the proposed examination fees would become effective for examination requests made in the CRD system on or after April 2, 2012. In addition, the proposed foreign test center Regulatory Element session service charge would become effective for Regulatory Element sessions completed on or after April 2, 2012.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>10</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

FINRA believes that the proposal constitutes an equitable allocation of

fees as the qualification examination fees will be assessed only on those individuals who take qualification examinations and the service charge for foreign test center Regulatory Element sessions will be assessed only on those individuals who take such a session. In addition, all candidates who register for a particular qualification examination will be charged the same amount, and all individuals who take a Regulatory Element session in a foreign test center will be assessed the \$15 service charge.

FINRA further believes that the proposed qualification examination changes are reasonable because they will more closely align the overall examination program fees with the overall costs associated with the programs. In this regard, FINRA notes that the last time that it increased fees for any of the qualification examinations set forth in Schedule A to the FINRA By-Laws was January 2009.<sup>11</sup> Since that time, vendor fees and the costs associated with the enhancement and

<sup>8</sup> See Securities Exchange Act Release No. 64687 (June 16, 2011), 76 FR 36586 (June 22, 2011) (Order Approving Proposed Rule Change; File No. SR-FINRA-2011-013); Securities Exchange Act Release No. 65221 (August 30, 2011), 76 FR 55441 (September 7, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2011-042).

<sup>9</sup> The \$25 fee increase for the Series 52 examination has two components: (1) \$15 of the fee increase is attributable to the MSRB's increase in the length of the examination in January 2011, see Securities Exchange Act Release No. 63310 (November 12, 2010), 75 FR 70760 (November 18, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-MSRB-

2010-12); and (2) \$10 of the fee increase is attributable to the increase in the costs associated with administering and delivering the examination.

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

<sup>11</sup> See Securities Exchange Act Release No. 59076 (December 10, 2008), 73 FR 76431 (December 16, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-053).

maintenance of the PROCTOR system have increased and, based on current information, will continue to increase over the next few years. Specifically, FINRA has recently completed a significant technological upgrade of the PROCTOR system and is working on considerable enhancements to the software used to deliver examinations at testing centers, which is scheduled for operational release in 2013. These increased costs, coupled with the significant decrease in the number of examinations taken during the past three years,<sup>12</sup> has caused a divergence in the fees and costs associated with the examination programs.

To better align the fees and costs associated with the examination programs, FINRA is proposing a modest increase in examination fees. In this regard, FINRA notes that no examination fee will increase by more than \$25 and the majority of examination fees will increase by only \$10. Furthermore, to help control the overall costs of the qualification examination and Regulatory Element programs and thereby minimize fee increases, FINRA earlier this year instituted a fee for individuals who cancel or reschedule a qualification examination or Regulatory Element session three to 10 business days prior to the appointment date.<sup>13</sup> This cancellation/rescheduling fee has helped to limit the amount of the proposed examination fee increases by allowing FINRA to (1) receive a lower examination delivery rate from one of its vendors, and (2) apply the revenue from the fee to help offset the expenses of the qualification examination programs.

With respect to the proposed service charge for foreign test center Regulatory Element sessions, FINRA believes that the service charge is reasonable because it helps to offset the higher delivery costs associated with such sessions. Specifically, vendors charge FINRA higher fees for delivering Regulatory Element sessions in a foreign test center than they do for delivering such sessions in a U.S. test center.

Accordingly, FINRA believes that the proposed qualification examination fee changes and the service charge for foreign test center Regulatory Element

sessions are equitably allocated and reasonable.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>15</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-21012-009 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2012-009. This file number should be included on the subject line if email is used.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2012-009, and should be submitted on or before March 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-66463; File No. SR-NYSEAMEX-2012-12]**

### **Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending the NYSE Amex Equities Definition of Approved Person To Exclude Foreign Affiliates, Eliminating the Application Process for Approved Persons, and Making Related Technical and Conforming Changes**

February 24, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 14, 2012, NYSE Amex LLC (the

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>12</sup> In 2009, the number of examinations administered and delivered by FINRA decreased by approximately 27 percent. Although examination volumes have increased modestly since that time, they have not returned to 2008 levels.

<sup>13</sup> See Securities Exchange Act Release No. 64961 (July 26, 2011), 76 FR 45883 (August 1, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2011-026).