

May 5, 2010

Ms. Elizabeth M. Murphy
Secretary
U. S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: File No. SR-FINRA-2010-007 – Proposed Rule Change to Amend to Amend the By-Laws of FINRA Dispute Resolution

Dear Ms. Murphy:

The Financial Industry Regulatory Authority, Inc. (FINRA) hereby responds to the comment letter received by the Securities and Exchange Commission (SEC) with respect to the above rule filing. In this rule filing, FINRA is proposing to amend the By-Laws of FINRA's dispute resolution subsidiary (FINRA Dispute Resolution) to: modify the composition of the FINRA Dispute Resolution Board (Board); adopt changes to conform the FINRA Dispute Resolution By-Laws to the FINRA By-Laws; and implement other conforming changes to reflect the corporate name change and other similar matters.¹

The SEC received one letter from a commenter who opposes the proposal for three reasons.² First, the commenter believes that the proposed change to Section 4.3 of the Dispute Resolution By-Laws (By-Laws) that permits the Board to select its Chairman will create a bias in favor of the securities industry.

FINRA's business functions and management are controlled by the FINRA Board.³ One such function, the selection of the Chairman of the Board, would be controlled by the FINRA Board, which is comprised of a majority of Public Governors.⁴ Thus, the majority will be able to represent the interests of the investing public regarding the selection of the Chairman. Moreover, as the proposed FINRA Dispute Resolution By-Laws require that the number of Public Directors exceeds the number of Industry Directors,⁵ matters affecting the dispute resolution process also would be controlled by a majority of Public Directors.

¹ See Securities Exchange Act Rel. No. 61575 (February 23, 2010), 75 FR 9459 (March 2, 2010) (File No. SR-FINRA-2010-007).

² The comment letter was submitted by Barry D. Estell, Esq., March 24, 2010 (Estell Letter).

³ See By-Laws of the Corporation, Article VII (Board of Governors), §1(a) (Powers and Authority of Board).

⁴ See By-Laws of the Corporation, Article VII (Board of Governors), §4(a) (Composition and Qualifications of the Board).

⁵ See proposed FINRA Dispute Resolution By-Laws, Article IV (Board of Directors), Qualifications, §4.3(a).

Second, the commenter suggests that the proposed change to Section 4.3 of the By-Laws will provide the Chairman with the authority to prevent matters from being raised at a meeting.⁶

The Chairman cannot prevent an item from being raised at a meeting. Any member of the Board may raise a matter for consideration. The Chairman may influence when the matter is heard, but cannot prevent it from being heard. Indeed, one third of the Directors can convene a special meeting of the Board to consider any particular issue.⁷

Third, the commenter argues that the proposed change to Section 4.6 of the By-Laws, which provides FINRA with the authority to remove a Director with or without cause, will permit FINRA to shield its members from accountability by manipulating the composition of the Board.⁸

Under proposed Section 4.6 of the By-Laws, the stockholder of FINRA Dispute Resolution may remove any or all of the Directors with or without cause.⁹ As stated in the proposed rule change, Delaware law requires that the stockholder have the power to remove Directors.¹⁰ FINRA is the stockholder of FINRA Dispute Resolution;¹¹ thus, the removal of a Director from FINRA Dispute Resolution's Board is also a function that is controlled by FINRA's Board.¹² Since the FINRA Board is comprised of a majority of Public Governors, that majority would consider the public interests and market implications in determining whether to remove a Director from FINRA Dispute Resolution's Board.

For these reasons stated above, FINRA does not intend to amend the proposal at this time.

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If you have any questions, please contact me on (202) 728-8151 or at mignon.mclemore@finra.org.

⁶ Estell Letter.

⁷ See proposed FINRA Dispute Resolution By-Laws, Article IV (Board of Directors), Meetings, §4.11(c).

⁸ Estell Letter.

⁹ See proposed FINRA Dispute Resolution By-Laws, Article IV (Board of Directors), Removal, §4.6.

¹⁰ See *supra* note 1, p. 9462.

¹¹ See proposed FINRA Dispute Resolution By-Laws, Article VIII (Capital Stock), Sole Stockholder, §8.1.

¹² See *supra* note 3.

Ms. Elizabeth M. Murphy
May 5, 2010
Page 3

Very truly yours,

Mignon McLemore
Assistant Chief Counsel
FINRA Dispute Resolution