

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62160; File No. SR-FINRA-2010-027)

May 24, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Restated Certificate of Incorporation of Financial Industry Regulatory Authority, Inc.

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 May 21, 2010, 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. 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 Substance of the Proposed Rule Change

FINRA is proposing to amend the Restated Certificate of Incorporation of FINRA (the “Certificate of Incorporation”) to specify the quorum requirements for a meeting of FINRA members, in anticipation of amendments to the General Corporation Law of the State of Delaware (the “General Corporation Law”). The proposed rule change would serve to maintain the status quo with respect to the quorum requirements for meetings of members.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, on the Commission’s Web site at [www.sec.gov](http://www.sec.gov), at the principal office of FINRA and at the Commission’s Public Reference Room.

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

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

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

The proposed rule change would amend FINRA's Certificate of Incorporation to specify the quorum required at a meeting of FINRA members and where a separate vote by classes or groups is required. FINRA is proposing this rule change in anticipation of amendments to the General Corporation Law, described in detail below, to preserve FINRA's current quorum requirements.

FINRA is a nonstock corporation under the General Corporation Law. Generally, Section 215(c) of the General Corporation Law provides that the certificate of incorporation or bylaws of a nonstock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business.<sup>3</sup> However, in the absence of such specification in the certificate of incorporation or bylaws of a nonstock corporation, one-third of the members of such corporation constitute a quorum at a meeting of such members.<sup>4</sup>

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<sup>3</sup> Del. Code Ann. tit. 8 § 215(c) (2010).

<sup>4</sup> Del. Code Ann. tit. 8 § 215(c)(1) (2010).

Neither FINRA’s Certificate of Incorporation nor its By-Laws specify the quorum required at a meeting of its members. Accordingly, pursuant to Section 215(c)(1) of the General Corporation Law, attendance in person or by proxy of one-third of FINRA members currently constitutes a quorum at a meeting of such members.<sup>5</sup>

On August 1, 2010, the General Corporation Law will be amended to, among other things, clarify the application of the statute to nonstock corporations. As part of the amendments, a new Section 215(c)(4) will define the quorum necessary to take action where a separate vote by a class or group of members is required and the certificate of incorporation or bylaws of the nonstock corporation do not specify the requisite quorum. Specifically, from and after August 1, 2010, if the certificate of incorporation or bylaws of a nonstock corporation do not specify the quorum necessary to transact business at a meeting of its members, (1) one-third of the members shall constitute a quorum at a meeting of members; and (2) “[w]here a separate vote by a class or group or classes or groups is required, a majority of the members of such class or group or classes or groups, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter....”<sup>6</sup>

FINRA is proposing an amendment to its Certificate of Incorporation to maintain the status quo with respect to its current quorum requirements. Accordingly, the proposed rule change would amend Article Ninth of FINRA’s Certificate of Incorporation to specify that, at all meetings of members of FINRA, the presence in person or by proxy of one-third of the members entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum; provided, however, where a separate vote by a class or group or classes or groups is required, the presence

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<sup>5</sup> Del. Code Ann. tit. 8 § 215(c)(1) (2010).

<sup>6</sup> Del. H.B. 341, 145th Gen. Assem. § 19 (2010) (emphasis added).

in person or by proxy of one-third of the members of such class or group or classes or groups shall be necessary and sufficient to constitute a quorum with respect to that vote on that matter.

By specifying the quorum requirements in the Certification of Incorporation, the proposed rule change would maintain the one-third quorum requirement where separate votes of classes or groups of members is required, thus avoiding the new default quorum requirement (i.e., a majority) for such votes as set forth in the new Section 215(c)(4) of the General Corporation Law. Pursuant to the FINRA Certificate of Incorporation and the FINRA By-Laws, members vote as three distinct classes, based upon firm size, to elect the FINRA Board of Governors, i.e., Small Firm Governors, Mid-Size Firm Governors and Large Firm Governors. In this regard, the proposed rule change not only would preserve the status quo, but it also would facilitate the ability of members to conduct business at meetings and exercise their voting rights.

The effective date of the proposed rule change will be the date of approval by the Commission; provided, however, assuming Commission approval of the proposed rule change, the amendment to the Certificate of Incorporation will become effective upon filing with the Secretary of State of the State of Delaware.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> including Section 15A(b)(2) of the Act,<sup>8</sup> in that it will permit FINRA to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by FINRA members and persons associated with members with the Act, the rules and regulations thereunder, and FINRA rules. The proposed rule change will preserve FINRA's current quorum requirements, facilitating the ability of members to conduct business at meetings.

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<sup>7</sup> 15 U.S.C. 78q-3.

<sup>8</sup> 15 U.S.C. 78q-3(b)(2).

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2010-027 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-2010-027. This file number should be included on the subject line if e-mail is used. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. 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-2010-027 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).