

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76082; File No. SR-FINRA-2015-034)

October 6, 2015

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Merge FINRA Dispute Resolution, Inc. into and with FINRA Regulation, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 29, 2015, 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, and II 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 merge its dispute resolution subsidiary, FINRA Dispute Resolution, Inc. (“FINRA Dispute Resolution”) into and with its regulatory subsidiary, FINRA Regulation, Inc. (“FINRA Regulation”). To implement the merger, FINRA would make conforming amendments to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”); amend the By-Laws of FINRA Regulation (“FINRA Regulation By-Laws”) to make relevant conforming amendments and to incorporate substantive provisions from the By-Laws of FINRA Dispute Resolution (“FINRA Dispute Resolution By-Laws”) that apply to the dispute resolution forum only; delete the FINRA Dispute Resolution

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

By-Laws in their entirety; and make conforming amendments to FINRA rules.³ The proposed rule change would also amend the FINRA Regulation By-Laws to increase the total number of directors who could serve on the FINRA Regulation board. FINRA's existing dispute resolution program would continue to operate as a separate department within FINRA Regulation, and would be referred to as the Office of Dispute Resolution.

The text of the proposed rule change is available on FINRA's website 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

³ The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from New York Stock Exchange LLC ("NYSE") ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

FINRA is proposing to merge FINRA Dispute Resolution into FINRA Regulation. To undertake the merger, FINRA would make conforming amendments to the Delegation Plan, amend the FINRA Regulation By-Laws to incorporate substantive and unique provisions from the FINRA Dispute Resolution By-Laws and to make other conforming amendments, delete the FINRA Dispute Resolution By-Laws in their entirety, and make conforming amendments to FINRA rules. The proposed rule change would also amend the FINRA Regulation By-Laws to increase the total number of directors who could serve on the FINRA Regulation board in order to provide additional flexibility to meet the compositional requirements under the FINRA Regulation By-Laws.

I. Background

Prior to 1996, the National Association of Securities Dealers, Inc. (“NASD”) Arbitration Department operated the NASD’s arbitration and mediation programs. In 1996, upon the combined recommendations of two committees (the “Ruder Task Force” and the “Rudman Committee”) formed by the NASD of individuals with significant securities industry and NASD governance experience,⁴ NASD reorganized as a parent corporation with two operating subsidiaries: The Nasdaq Stock Market, Inc. (“Nasdaq”), which was charged with operating the Nasdaq market, and NASD Regulation, Inc. (“NASD Regulation”), focused on regulatory and

⁴ In September 1994, the NASD established the Ruder Task Force to study NASD arbitration and recommend improvements. The Ruder Task Force issued a report recommending, among other things, that the dispute resolution program be housed either in the NASD parent or in NASD Regulation. See The Arbitration Policy Task Force Report – A Report Card at 26, available on FINRA’s website at: <http://www.finra.org/sites/default/files/Industry/p036466.pdf>. Subsequently, [sic] the Rudman Committee recommended that the Arbitration Department be placed in NASD Regulation. See Report of the NASD Select Committee on Structure and Governance to the NASD Board of Governors (“Rudman Report”) at R-8. See also Securities Exchange Act Release No. 41971 (September 30, 1999), 64 FR 55793, 55794 (October 14, 1999) (Order Approving File No. SR-NASD-99-21).

investor protection issues. At the time of the reorganization, the Arbitration Department was placed within NASD Regulation. The name of the Arbitration Department was subsequently changed to the Office of Dispute Resolution (“ODR”) to reflect the broader range of dispute resolution services provided.⁵

In 1999, NASD decided to move ODR into a separate subsidiary, NASD Dispute Resolution, Inc., that would focus solely on administering its dispute resolution program, which it believed would further strengthen the independence and credibility of the arbitration and mediation functions. NASD believed that the new dispute resolution subsidiary would benefit from the perception that it was separate and distinct from other corporate entities.⁶ In 2000, the NASD began a restructuring process to separate Nasdaq from NASD. The separation of Nasdaq from NASD was completed in 2006.⁷

FINRA⁸ believes there is no longer a need to maintain separate subsidiaries to execute its regulatory and dispute resolution functions. The proposed merger would align the corporate legal structure with current public perception and organizational practice. It would also reduce unnecessary administrative burdens required to maintain separate legal entities. Finally, while the proposed rule change would change FINRA Dispute Resolution’s corporate status, it would

⁵ See Securities Exchange Act Release No. 41971 (September 30, 1999), 64 FR 55793, 55794 (October 14, 1999) (Order Approving File No. SR-NASD-99-21).

⁶ See supra note 5.

⁷ On November 21, 2006, the SEC approved the separation of Nasdaq from NASD upon the operation of the Nasdaq Exchange as a national securities exchange for non-Nasdaq exchange-listed securities. See Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (Order Approving File No. SR-NASD-2006-104).

⁸ On July 30, 2007, NASD and NYSE consolidated their member firm regulation, enforcement and dispute resolution operations into a combined organization, FINRA. See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (Order Approving File No. SR-NASD-2007-023).

not affect the services and benefits provided by or costs to use the dispute resolution forum, its corporate governance⁹ or oversight.

The proposed merger would align the legal structure with the public's perception of FINRA as well as its operational realities. From the public's perspective, FINRA, Inc., FINRA Regulation and FINRA Dispute Resolution have the appearance of a single organization. FINRA's Annual Report is a consolidated report that includes all FINRA operations, and all press releases and communications are issued by FINRA.

Operationally, the three corporate entities largely function as a single organization. The entities share many administrative and support functions including, for example, Corporate Communications and Government Relations, Corporate Real Estate and Corporate Security, Finance and Purchasing, Human Resources, Internal Audit, Legal, Meetings and Travel, Office of the Corporate Secretary, Office of the Ombudsman and Technology. These integrated functions promote efficient operations and conserve financial resources. In addition, the operational cohesiveness furthers FINRA's mission of protecting investors. FINRA Dispute Resolution staff, for example, works with the Department of Enforcement to identify misconduct by individuals or firms involved in arbitration cases that could justify further action.

There are also significant shared resources across entities in the areas of corporate governance and funding. With respect to governance, members of the FINRA Board's Regulatory Policy Committee currently serve as the directors of the boards of both FINRA

⁹ The proposed rule change would amend the FINRA Regulation corporate governance structure to add two board seats. See discussion under Section II.B., Proposed Rule Change, Amendments to the FINRA Regulation By-Laws, Article IV Board of Directors, Number of Directors, infra pages 44-45 [sic].

Regulation and FINRA Dispute Resolution.¹⁰ Regarding funding, FINRA Dispute Resolution is not self-supporting and fees received from parties who use the arbitration and mediation programs are not sufficient to fund the forum's arbitration and mediation activities. Under the proposed merger, to supplement the fees collected from forum users, FINRA would continue to allocate revenues, as necessary, from the overall FINRA enterprise, which would include revenue derived from member assessments, various fees and charges, and disciplinary fines with some exceptions.

In addition to aligning the corporate structure with operational realities, the proposed merger would reduce the considerable administrative duplication associated with maintaining the three distinct corporate entities. From a regulatory perspective, the three corporate entities have separate reporting requirements and Federal and state taxes, and are, therefore, treated as individual entities.¹¹ By merging FINRA Dispute Resolution into FINRA Regulation, FINRA would eliminate the need to file numerous tax filings each year, including multiple state tax and information returns, sales tax returns (including some monthly and quarterly filings), property tax returns, and many state registrations and annual reports. Moreover, merging the two subsidiaries would eliminate a separate payroll entity, which would remove the need for separate compensation and benefit accounting protocols. Thus, a merger of the subsidiaries would allow FINRA to lower FINRA's expenses and more efficiently use staff resources.

¹⁰ See Securities Exchange Act Release No. 61575 (February 23, 2010), 75 FR 9459, 9460 (March 2, 2010) (Notice of Filing File No. SR-FINRA-2010-007). Both boards consist of a majority of public directors. See By-Laws of FINRA Dispute Resolution, Inc., Article IV, Section 4.3(a) and By-Laws of FINRA Regulation, Inc., Article IV, Section 4.3(a).

¹¹ For example, by maintaining separate entities, FINRA has been required to submit separate payroll, tax, and compliance filings for each corporate entity in many states.

Although a merger between FINRA Dispute Resolution and FINRA Regulation would change FINRA Dispute Resolution's corporate status, it would not affect the services and benefits provided by or the costs to use the dispute resolution forum, its corporate governance or oversight. Over the past 15 years, FINRA, as a single organization, has operated the largest securities dispute resolution forum in the world – through its arbitration and mediation services – to assist in the resolution of monetary and business disputes between and among investors, brokerage firms and individual brokers. FINRA's Dispute Resolution program provides investors and markets with a fair, efficient and economical alternative to costly and complex litigation programs, which are often cost-prohibitive for investors with small claims.

The FINRA Dispute Resolution program has several features that distinguish it from other private arbitration forums and further promote investor protection and market integrity. For example, the forum charges significantly lower arbitration fees for investors, gives investors the choice of an all-public arbitrator panel, uses an investor-friendly discovery guide, and offers 71 hearing locations, including at least one in every state, Puerto Rico and London, United Kingdom. Also, FINRA has the authority to suspend or cancel the membership of firms and suspend registered representatives who fail to pay arbitration awards or agreed-upon settlements.¹² Further, FINRA Dispute Resolution continuously recruits qualified individuals to improve its arbitrator and mediator rosters, while closely monitoring and evaluating the performance of existing arbitrators and mediators. These benefits and services, among others, would not be disrupted by the merger.

Similarly, the merger would not have a practical impact on corporate governance involving FINRA Dispute Resolution. Members of the FINRA Board's Regulatory Policy

¹² See By-Laws of the Corporation, Article VI, Section 3 and Rule 9554.

Committee currently serve as the directors of both the FINRA Regulation and FINRA Dispute Resolution boards.¹³ The FINRA Regulation board would continue to consist of a majority of public board members.¹⁴ In addition, FINRA would maintain the National Arbitration and Mediation Committee (“NAMC”), which is a Board-appointed advisory committee on arbitration matters.¹⁵ Non-industry members would continue to compose at least 50 percent of the NAMC.¹⁶

Moreover, the dispute resolution forum would continue to be subject to the same SEC oversight as other departments of FINRA, which would include the requirement to file all By-Law and rule changes with the SEC. Thus, the arbitration program and services would continue to be governed by the Codes of Arbitration Procedure,¹⁷ and the mediation program and services by the Code of Mediation Procedure.¹⁸ Further, the forum would continue to be subject to inspections by the SEC and by the Government Accountability Office, which performs audits at the request of the United States Congress.

I. [sic] Proposed Rule Change

FINRA is proposing to merge FINRA Dispute Resolution into FINRA Regulation. FINRA would make conforming amendments to the Delegation Plan, amend the FINRA Regulation By-Laws to incorporate substantive and unique provisions from the FINRA Dispute

¹³ See Securities Exchange Act Release No. 61575 (February 23, 2010), 75 FR 9459, 9460 (March 2, 2010) (Notice of Filing File No. SR-FINRA-2010-007).

¹⁴ See By-Laws of FINRA Dispute Resolution, Inc., Article IV, Section 4.3(a) and By-Laws of FINRA Regulation, Inc., Article IV, Section 4.3(a).

¹⁵ See Rules 12102 and 13102. See also Section III(C) of the Delegation Plan. FINRA is proposing to transfer current Section III(C)(1) of the Delegation Plan into Section II(C) of the Delegation Plan.

¹⁶ See supra note 15.

¹⁷ See Rule 12000 and 13000 Series.

¹⁸ See Rule 14000 Series.

Resolution By-Laws and to make other conforming amendments, delete the FINRA Dispute Resolution By-Laws, and make conforming amendments to FINRA rules. The proposed rule change would also amend the FINRA Regulation By-Laws to increase the total number of directors who could serve on the FINRA Regulation board.

A. Conforming Amendments to the Delegation Plan

FINRA is proposing to make conforming amendments throughout the Delegation Plan to remove references to “NASD” and “Rules of the Association” and replace them with references to “FINRA” and “FINRA rules,” respectively.¹⁹ In addition, the proposed rule change would change the word “subsidiaries” or “subsidiary” to “FINRA Regulation” to indicate that FINRA Regulation would remain at the conclusion of the merger. Finally, FINRA is proposing to remove references to Section III, the section of the Delegation Plan that pertains to FINRA Dispute Resolution, as that section will no longer exist following the merger.

Section I – FINRA, Inc.

Section I of the Delegation Plan provides responsibility for the rules and regulations of the Association and its operation and administration to FINRA, Inc. Under Section I(B), the proposed rule change would remove subsections 5 and 6 because they refer to actions taken between FINRA Regulation and FINRA Dispute Resolution. The remaining subsections would be re-numbered. In re-numbered subsection 5, FINRA is proposing to remove the word “common,” as FINRA Regulation would no longer share overhead and technology with FINRA Dispute Resolution as a separate subsidiary. In re-numbered subsection 6, FINRA is proposing to change the reference to the Office of Internal Review to the Office of Internal Audit to reflect a name change.

¹⁹ “FINRA rules” means the current FINRA rulebook. See supra notes 3 and 8.

In Section I(D), the proposed rule change would replace the reference to “4000A” with “6200,” to reflect the transfer and re-numbering of the rule series governing the Alternative Display Facility into the Consolidated FINRA Rulebook.²⁰

Section II – FINRA Regulation, Inc.

Amendments to Transfer Provisions of Section III into Section II

Section II of the Delegation Plan delegates responsibilities and functions to FINRA Regulation. FINRA is proposing to transfer several provisions from Section III, which pertains to FINRA Dispute Resolution, into Section II.

First, under Section II(A)(1), FINRA is proposing to amend subsection (a) to add “and dispute resolution programs,” so that the function of establishing and interpreting rules and regulations would also apply to dispute resolution programs.

Second, the proposed rule change would amend subsection (b) to add “arbitration, mediation or other resolution of disputes among and between FINRA members, associated persons and customers,” so that FINRA Regulation would have the authority to develop and adopt appropriate and necessary rule changes related to the dispute resolution forum.

Third, FINRA is proposing to amend Section II(A)(1) to add the function that would permit FINRA Regulation to “conduct arbitrations, mediations, and other dispute resolution programs.” The provision would be labeled as subsection (n). The remaining subsections would be re-numbered.

Fourth, the proposed rule change would amend re-numbered subsection (q), which addresses the function of establishing and assessing fees and other charges on FINRA members,

²⁰ See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File Nos. SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028 and SR-FINRA-2008-029).

persons associated with members, and others using the services or facilities of FINRA or FINRA Regulation, to add “which includes the dispute resolution forum.”

Fifth, the proposed rule change would amend re-numbered subsection (r) to explicitly add “dispute resolution” to the list of areas in which FINRA Regulation may manage external relations.

Finally, FINRA is proposing to transfer in its entirety current Section III(C)(1) of the Delegation Plan, which governs the NAMC, into Section II(C) of the Delegation Plan. Currently, Section III(C)(1) of the Delegation Plan delegates authority to the NAMC to advise the FINRA Dispute Resolution board on issues relating to dispute resolution.²¹ Under the Codes of Arbitration Procedure, the NAMC has the authority to recommend rules, regulations, procedures and amendments relating to arbitration, mediation, and other dispute resolution matters to the FINRA Board.²² The NAMC also has the authority and responsibility to establish and maintain rosters of neutrals composed of persons from within and outside of the securities industry.²³ The NAMC’s authority, role and its responsibilities would not change under the proposed rule change.

Other Conforming Amendments to Section II

Under Section II(C)(2)(a)(iii), FINRA is proposing to replace the reference to “Rule 11890” with “the Rule 11000 Series.” The Rule 11000 Series refers to the Uniform Practice

²¹ See Section III(C) of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries.

²² See Rules 12102 and 13102.

²³ See supra note 22.

Code and includes the new Rule 11890 Series governing clearly erroneous transactions that FINRA moved into the Consolidated FINRA Rulebook.²⁴

Section III – NASD Dispute Resolution, Inc.

FINRA is proposing to delete Section III of the Delegation Plan because, as discussed above, the provisions that apply to dispute resolution only would be incorporated into amended Section II of the Delegation Plan.

B. Amendments to the FINRA Regulation By-Laws

FINRA is proposing to amend the FINRA Regulation By-Laws to incorporate substantive and unique provisions from the FINRA Dispute Resolution By-Laws. Where differences exist in the FINRA Dispute Resolution By-Laws that would not be incorporated into the FINRA Regulation By-Laws under the proposed rule change, such differences are non-substantive in nature or would not otherwise affect the governance or operation of the dispute resolution program.²⁵ FINRA would also make other conforming amendments to the FINRA Regulation By-Laws.

²⁴ See Securities Exchange Act Release No. 61080 (December 1, 2009), 74 FR 64117 (December 7, 2009) (Order Approving File No. SR-FINRA-2009-068).

²⁵ For example, although minor differences exist between Sections 4.13(f) of the FINRA Regulation By-Laws and Dispute Regulation By-Laws, the proposed rule change would retain the FINRA Regulation By-Laws' section relating to the composition of an Executive Committee. See By-Laws of FINRA Regulation, Inc., Article 4, Section 4.13(f). This provision of the FINRA Regulation By-Laws clarifies that Executive Committee members must be directors and is consistent with FINRA's practice and intent. See Securities Exchange Act Release No. 62156 (May 24, 2010), 75 FR 30453, 30456 (June 1, 2010) (Order Approving File No. SR-FINRA-2010-007).

Article I Definitions

Electronic Transmission

FINRA is proposing to add the term “electronic transmission” to Article I of the By-Laws of FINRA Regulation in light of the common usage of electronic transmission as a means of communication and references to such term in the By-Laws of FINRA Regulation.²⁶ The proposed rule change would relocate the definition of the term, without change, from current Section 8.19(a) of the By-Laws of FINRA Regulation. Accordingly, the term “electronic transmission” would mean any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.²⁷

FINRA Member and Public Member

FINRA is proposing to expand the term “FINRA member” in Article I(s) of the By-Laws of FINRA Regulation to incorporate a definition that applies to the dispute resolution forum. Specifically, the added language would further define a “FINRA member” as “any broker or dealer admitted to membership in FINRA, whether or not the membership has been terminated or cancelled; and any broker or dealer admitted to membership in a self-regulatory organization that, with FINRA consent, has required its members to arbitrate pursuant to the Code of

²⁶ The term “electronic transmission” would be added as proposed Article I(o). Article I(p) through (r) would be re-numbered. See also Sections 4.12, 8.5, 8.19 and 12.3 of the By-Laws of FINRA Regulation for references to the term “electronic transmission.”

²⁷ The FINRA Dispute Resolution By-Laws contain a slightly different definition of “electronic transmission”; however, because the difference does not have a meaningful impact on the application of the term for purposes of the FINRA Regulation By-Laws, FINRA proposes to retain the definition currently used in the FINRA Regulation By-Laws. See By-Laws of FINRA Dispute Resolution Inc., Article I(k).

Arbitration Procedure for Customer Disputes or the Code of Arbitration Procedure for Industry Disputes and/or to be treated as members of FINRA for purposes of the Codes of Arbitration Procedure, whether or not the membership has been terminated or cancelled.” The SEC approved a similar definition that was added to the By-Laws of FINRA Dispute Resolution in 2010.²⁸ Under the proposed rule change, the expanded definition of FINRA member would apply only to the Codes of Arbitration Procedure.²⁹

The proposed rule change would also amend the definitions of Industry Member³⁰ and Public Member³¹ under the FINRA Regulation By-Laws to reflect unique provisions in the Dispute Resolution By-Laws. In 2012, the SEC approved amendments to the FINRA Dispute Resolution By-Laws to clarify that services provided by mediators, when acting in such capacity and not representing parties in mediation, should not cause the individuals to be classified as Industry Members under the By-Laws.³² The purpose of the amendments was to allow mediators, who are otherwise qualified, to be eligible to become Public Members of the NAMC. The proposed rule change would incorporate these amendments into two parts of the definition of Industry Member.³³ First, Article I(x)(4) of the FINRA Regulation By-Laws defines an Industry Member as a National Adjudicatory Council (“NAC”) or committee member who provides professional services to brokers or dealers, and such services constitute 20 percent or

²⁸ See Securities Exchange Act Release No. 62156 (May 24, 2010), 75 FR 30453, 30454 (June 1, 2010) (Order Approving File No. SR-FINRA-2010-007).

²⁹ See Rule 12000 and 13000 Series.

³⁰ See By-Laws of FINRA Regulation, Inc., Article I(x).

³¹ See By-Laws of FINRA Regulation, Inc., Article I(hh).

³² See Securities Exchange Act Release No. 68142 (November 2, 2012), 77 FR 67038 (November 8, 2012) (Order Approving File No. SR-FINRA-2012-040).

³³ The By-Laws define an Industry Member using six criteria. The proposal would amend two of them, subsections (4) and (5). See supra note 30.

more of the professional revenues received by the member or 20 percent or more of the gross revenues received by the member's firm or partnership. The proposed rule change would amend the definition to clarify that, for purposes of determining membership on the NAMC, any services provided in the capacity as a mediator of disputes involving a broker or dealer and not representing any party in such mediations would not be considered professional services provided to brokers or dealers.

Second, Article I(x)(5) of the By-Laws defines an Industry Member as a NAC or committee member who provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the member or 20 percent or more of the gross revenues received by the member's firm or partnership. Similar to the change in Article I(x)(4) described in the paragraph above, FINRA proposes to amend the definition to clarify that, for purposes of determining membership on the NAMC, services provided in the capacity as a mediator of disputes involving a director, officer, or employee as described in this definition and not representing any party in such mediations would not be considered professional services provided to such individuals.

The proposed rule change would also amend the definition of Public Member. The FINRA Regulation By-Laws define a Public Member as a NAC or committee member who has no material business relationship with a broker or dealer or a self-regulatory organization registered under the Act (other than serving as a public director or public member on a committee of such a self-regulatory organization). The proposed rule change would amend the definition by adding language to the parenthetical to clarify that, for the purposes of determining

membership on the NAMC, acting in the capacity as a mediator of disputes involving a broker or dealer and not representing any party in such mediations is not considered a material business relationship with a broker or dealer.

Other Conforming Changes

The proposed rule change would amend the definitions of Industry Director and Public Director in Article I(w) and Article I(gg), respectively, to clarify that a director is a member of the board of directors of FINRA Regulation. The proposed rule change would also delete Article I(r) to eliminate the reference to FINRA Dispute Resolution, Inc.

Article II Offices

The proposed rule change would amend the FINRA Regulation By-Laws to reflect a change in the address of FINRA Regulation's registered office and its registered agent from Corporate Creations Network Inc., 3411 Silverside Road, Rodney Building #104, Wilmington, Delaware 19810, to Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808. The FINRA Board approved this change at its February 2015 meeting.

Article IV Board of Directors

Number of Directors

With respect to governance, as noted above, members of the FINRA Board's Regulatory Policy Committee currently serve as the directors of the board of FINRA Regulation.³⁴ Accordingly, in appointing governors of the FINRA Board to the Regulatory Policy Committee, FINRA must adhere to the compositional requirements for the Board of Directors of FINRA Regulation. In this regard, Section 4.3(a) of the FINRA Regulation By-Laws provides, among

³⁴ See supra note 10.

other things, that the FINRA Regulation board must consist of at least two and not less than 20 percent of directors who are Small Firm, Mid-Size Firm or Large Firm Governors. In addition, public directors must comprise a majority of the FINRA Regulation board.³⁵

Currently, the number of FINRA Regulation directors may not exceed 15.³⁶ FINRA is proposing to amend Section 4.2 of the FINRA Regulation By-Laws to increase the total number of directors who could serve on the FINRA Regulation board from 15 to 17. FINRA believes that increasing the maximum number of FINRA Regulation board seats would provide it with additional flexibility to manage its board committee assignments and meet the compositional requirements under the FINRA Regulation By-Laws. For example, when the FINRA Regulation board is at its current maximum limit of 15 directors, if FINRA were to add a new industry director to the FINRA Regulation board, it would need to remove an existing industry director to maintain a majority of public directors on the board. In this example, increasing the maximum number of board seats to 17 would enable FINRA to add a public director to the FINRA Regulation board rather than remove an existing industry director, and thus maintain the required composition of FINRA Regulation board members.

Regulation

FINRA would amend Section 4.10 of the FINRA Regulation By-Laws to insert a reference to the Delegation Plan as another governing document with which the board must comply when adopting rules, regulations, and requirements for the conduct of the business and management of FINRA Regulation. This change would conform the language in this section to that of Section 4.10 of the FINRA Dispute Resolution By-Laws.

Conflicts of Interest; Contracts and Transactions Involving Directors

³⁵ See Article IV, Section 4.3(a) of the FINRA Regulation By-Laws.

³⁶ See Article IV, Section 4.2 of the FINRA Regulation By-Laws.

Under the proposed rule change, FINRA would amend Section 4.14(b) to remove a reference to FINRA Dispute Resolution.

Article XI Capital Stock

FINRA is proposing to amend Section 11.3(b) to insert the word “stock” in the sentence to clarify the type of certificate to which the section refers. This change would conform the language in this section of the FINRA Regulation By-Laws to that of Section 8.3(b) of the FINRA Dispute Resolution By-Laws.

C. Deletion of FINRA Dispute Resolution By-Laws

As discussed under Section II(B), amendments to the FINRA Regulation By-Laws, above, FINRA would incorporate substantive and unique provisions of the FINRA Dispute Resolution By-Laws into the FINRA Regulation By-Laws. As discussed above, where differences exist in the FINRA Dispute Resolution By-Laws that would not be incorporated into the FINRA Regulation By-Laws under the proposed rule change, such differences are non-substantive in nature or would not otherwise affect the governance or operation of the dispute resolution program.³⁷ The FINRA Dispute Resolution By-Laws would be deleted in their entirety.

D. Conforming Amendments to the FINRA Rules

FINRA is also proposing to amend several FINRA rules to reflect the proposed merger. The proposed rule change would amend Rules 0160 (Definitions) and 0170 (Delegation, Authority and Access) to delete references to FINRA Dispute Resolution. In addition, the proposed rule change would amend Rule 0160 to add paragraphs (b)(7) and (b)(11) to define “FINRA Regulation” and “Office of Dispute Resolution,” respectively, and re-number

³⁷ See supra note 25.

subparagraphs accordingly. The term “Office of Dispute Resolution” would mean the office within FINRA Regulation that assumes the responsibilities and functions relating to dispute resolution programs including, but not limited to, the arbitration, mediation, or other resolution of disputes among and between members, associated persons and customers. Thus, if the proposed rule change is approved, FINRA’s existing dispute resolution programs would continue to operate as a separate department within FINRA Regulation, under the name of the Office of Dispute Resolution.

The proposed rule change would also amend Rules 0170 (Delegation, Authority and Access), 6250 (Quote and Order Access Requirements), 6740 (Termination of TRACE Service), 7180 (Termination of Access), 7280A (Termination of Access), 7280B (Termination of Access), 7380 (Termination of Access), 7530 (Other Services), 9710 (Purpose), 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) and 11893 (Clearly Erroneous Transactions in OTC Equity Securities) to change references to “subsidiaries” or “subsidiary” to “FINRA Regulation.”

In addition, the proposed rule change would amend Rules 12102 (National Arbitration and Mediation Committee), 13102 (National Arbitration and Mediation Committee) and 14102 (National Arbitration and Mediation Committee) to remove references to the section of the Delegation Plan that pertains to FINRA Dispute Resolution and to change the language to reference FINRA Regulation.

Because the position of President of FINRA Dispute Resolution would no longer exist upon completion of the merger, FINRA is proposing to delete references to the President of FINRA Dispute Resolution in Rules 10312 (Disclosures Required of Arbitrators and Director’s Authority to Disqualify), 12103 (Director of Dispute Resolution), 12104 (Effect of Arbitration on FINRA Regulatory Activities; Arbitrator Referral During or at Conclusion of Case), 12203

(Denial of FINRA Forum), 12407 (Removal of Arbitrator by Director), 13103 (Director of Dispute Resolution), 13104 (Effect of Arbitration on FINRA Regulatory Activities; Arbitrator Referral During or at Conclusion of Case), 13203 (Denial of FINRA Forum) and 13410 (Removal of Arbitrator by Director). Any authority formerly granted by those rules to the President of FINRA Dispute Resolution would be granted to the Director of the Office of Dispute Resolution in light of that position's responsibility for overseeing the dispute resolution programs, except that in amended Rules 12103 (Director of Dispute Resolution) and 13103 (Director of Dispute Resolution), as proposed, the authority to appoint an interim Director if the Director is unable to perform his or her duties would be granted to the President of FINRA Regulation.

Similarly, FINRA is proposing to amend Rule 10103 (Director of Arbitration) to provide that the President of FINRA Regulation would have the authority to appoint an interim Director of Arbitration if the Director becomes incapacitated, resigned, is removed, or if the Director becomes permanently or indefinitely incapable of performing the duties and responsibilities of the Director. References to the President or Executive Vice President of FINRA Dispute Resolution would be removed from the Rule.

FINRA is proposing to rename FINRA Dispute Resolution as the Office of Dispute Resolution. The Office of Dispute Resolution would become a separate department within FINRA Regulation that would continue to administer independently FINRA's existing dispute resolution programs. Accordingly, the proposed rule change would amend Rules 10314 (Initiation of Proceedings), 12100(k) (Definitions), 12103 (Director of Dispute Resolution), 12701 (Settlement), 13100(k) (Definitions), 13103 (Director of Dispute Resolution), 13701 (Settlement) and 14100(c) (Definitions) to replace any remaining references to "Dispute

Resolution” with “Office of Dispute Resolution.”

Finally, FINRA is proposing to amend Rules 10102 (National Arbitration and Mediation Committee), 12100(c) (Definitions), 13100(c) (Definitions), 14100(a) and (f) (Definitions) to replace references to “Dispute Resolution” with “Regulation.”

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA anticipates the effective date will be December 20, 2015. FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 30 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³⁸ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest; and Section 15A(b)(4) of the Act,³⁹ which requires that FINRA rules be designed to assure a fair representation of FINRA’s members in the selection of its directors and administration of its affairs.

FINRA believes that the proposed reorganization would align FINRA’s corporate organizational structure with its current organizational practice, and, in the process, would make the organization and its departments more efficient. The efficient use of resources enables FINRA to focus on its mission of investor protection.

FINRA emphasizes that the proposed rule change would not affect the benefits and services provided to public investors by the dispute resolution forum or the costs of any party to

³⁸ 15 U.S.C. § 78o-3(b)(6).

³⁹ 15 U.S.C. § 78o-3(b)(4).

use the dispute resolution forum. FINRA believes that the proposed rule change reflects its continued commitment to providing an effective forum for the resolution of disputes, claims, and controversies arising out of or in connection with the business of FINRA members, or arising out of the employment or termination of employment of associated persons with any member. In addition, FINRA believes that increasing the maximum number of FINRA Regulation board seats from 15 to 17 would provide it with additional flexibility to manage its board committee assignments and meet the compositional requirements under the FINRA Regulation By-Laws, continuing to assure fair representation of FINRA's members and maintaining the numerical dominance of public directors. Thus, FINRA believes that the reorganization and its continued commitment to dispute resolution would ensure that FINRA continues to protect investors and the public interest in an efficient manner.

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. FINRA believes that the proposed merger of its two subsidiaries would align FINRA's corporate organizational structure with its current organizational practice. The proposed rule change would allow FINRA to eliminate duplicative tax and regulatory filings, which, in turn, would reduce its administrative costs and the resources spent generating and submitting these filings. Moreover, the proposed rule change would allow FINRA to streamline its procedures and re-allocate staff and financial resources to other areas, thereby enhancing the efficient operation of the corporation.

While the proposed rule change would alter FINRA Dispute Resolution's corporate status, it would not affect the dispute resolution program in any substantive way. As discussed

above, it would not affect the services and benefits provided by or the costs to use the dispute resolution forum. FINRA believes that the proposed rule change demonstrates its commitment to providing a dispute resolution forum that remains accessible to investors, because the benefits and services provided by the dispute resolution forum would continue unabated.

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 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove 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. Please include File Number SR-FINRA-2015-034 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-034. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2015-034, 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.⁴⁰

Robert W. Errett
Deputy Secretary

⁴⁰ 17 CFR 200.30-3(a)(12).