

SECURITIES AND EXCHANGE COMMISSION  
Release No. 34-61575; File No. SR-FINRA-2010-007

February 23, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend the By-Laws of NASD Dispute Resolution

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 Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) on January 22, 2010, the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 By-Laws of NASD Dispute Resolution<sup>3</sup>.

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.

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

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

<sup>3</sup> If this proposed rule change is approved by the Commission, the By-Laws of NASD Dispute Resolution will be redesignated as the “By-Laws of FINRA Dispute Resolution.”

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

Background on FINRA and Its Subsidiaries

On July 30, 2007, NASD and the New York Stock Exchange (“NYSE”) consolidated their member firm regulation and dispute resolution operations into a combined organization, FINRA.<sup>4</sup> As part of the consolidation, the SEC approved amendments to the NASD By-Laws to implement governance and related changes. The resulting FINRA By-Laws included a FINRA Board governance structure that balanced public and industry representation and designated seven governor seats to represent member firms of various sizes based on the criteria of firm size.

On September 8, 2008, FINRA filed a proposal with the SEC to amend the By-Laws of FINRA’s regulatory subsidiary (“FINRA Regulation”) to realign the representation of industry members on the National Adjudicatory Council (“NAC”) to

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<sup>4</sup> 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) (File No. SR-NASD-2007-023).

follow more closely the industry representation on the FINRA Board of Governors (“FINRA Board”), to eliminate the Regional Nominating Committees, to transfer such committees’ responsibilities for NAC industry appointments to the FINRA Nominating Committee (“Nominating Committee”), and to change the name of “NASD Regulation” and “NASD” to “FINRA Regulation ” and “FINRA” respectively.<sup>5</sup> The SEC approved the amendments to FINRA Regulation’s By-Laws on November 6, 2008.<sup>6</sup>

On March 27, 2009, FINRA filed a proposal with the SEC to amend further the By-Laws of FINRA Regulation to modify the FINRA Regulation Board (“FINRA Regulation Board”) composition, to adopt changes to conform the FINRA Regulation By-Laws to the FINRA By-Laws, and to reflect the corporate name change and similar matters.<sup>7</sup> The SEC approved the amendments to FINRA Regulation’s By-Laws on May 21, 2009.<sup>8</sup>

FINRA Dispute Resolution (formerly known as NASD Dispute Resolution) is a subsidiary of FINRA that operates according to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”), as amended,<sup>9</sup> which NASD adopted first in 1996. Pursuant to the Delegation Plan, FINRA’s dispute resolution

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<sup>5</sup> See Securities Exchange Act Rel. No. 58626 (Sept. 23, 2008), 73 FR 56872 (Sept. 30, 2008) (File No. SR-FINRA-2008-046, Notice of Filing and Amendment No. 1).

<sup>6</sup> See Securities Exchange Act Rel. No. 58909 (Nov. 6, 2008), 73 FR 68467 (Nov. 18, 2008).

<sup>7</sup> See Securities Exchange Act Rel. No. 59696 (Apr. 2, 2009), 74 FR 16020 (Apr. 8, 2009) (File No. SR-FINRA-2009-020).

<sup>8</sup> See Securities Exchange Act Rel. No. 59962 (May 21, 2009), 74 FR 25792 (May 29, 2009) (Order Approving SR-FINRA-2009-020).

<sup>9</sup> See Securities Exchange Act Rel. No. 41971 (Sept. 30, 1999), 64 FR 55793 (Oct. 14, 1999) (Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Create a Dispute Resolution Subsidiary).

subsidiary conducts arbitration, mediation and other dispute resolution programs and interprets rules and regulations pertaining to its dispute resolution programs.<sup>10</sup> NASD Dispute Resolution's By-Laws were not amended at the time of the consolidation. Now that the consolidation has been completed and amendments to FINRA Regulation's By-Laws have been approved, FINRA believes NASD Dispute Resolution's By-Laws should be updated.

In July 2007, when NASD and the NYSE consolidated their member firm regulation and dispute resolution operations, FINRA created a Regulation Policy Committee of the Board of Governors, the members of which are 14 Governors from FINRA's Board of Governors.<sup>11</sup> The members of the Regulation Policy Committee also serve as the Directors of the FINRA Regulation and FINRA Dispute Resolution Boards of Directors.<sup>12</sup> The Commission approved the composition of FINRA's committees when it approved amendments to FINRA's By-Laws on July 26, 2007.<sup>13</sup> The Commission also approved the composition of FINRA Regulation's Board of Directors

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<sup>10</sup> See FINRA Manual, Corporate Organization, Plan of Allocation & Delegation of Functions by NASD to Subsidiaries, NASD Dispute Resolution, Section III (A)(1)(a) and (c).

<sup>11</sup> FINRA's Board of Governors consists of 21 members, 11 of whom are public members. See FINRA By-Laws, Article I(ss) and I(tt), definitions of Public Director and Public Governor, respectively. The Regulation Policy Committee is comprised of seven public, five industry, and two neutral members of FINRA's Board of Governors. The two neutral members are the Chief Executive Officers of FINRA and NYSE Regulation, Inc. FINRA's By-Laws require that FINRA's committees consist of a majority public members. See FINRA By-Laws, Article IX (Committees – Appointment), section 1(b).

<sup>12</sup> FINRA's Chair and Chief Executive Officer is an ex-officio, non-voting member of the FINRA Regulation and FINRA Dispute Resolution Boards of Directors.

<sup>13</sup> Supra note 3.

when it approved amendments to FINRA's By-Laws on May 21, 2009.<sup>14</sup> When the FINRA Regulation and FINRA Dispute Resolution Boards of Directors meet, they act in their respective capacities as directors of those subsidiaries. The FINRA Dispute Resolution Board of Directors continues to oversee the management of FINRA Dispute Resolution, establish policies and procedures, and monitor the use of financial resources, among other things.

#### Proposal to Amend NASD Dispute Resolution's By-Laws

FINRA is proposing to amend the NASD Dispute Resolution By-Laws to: (1) modify the composition of the FINRA Dispute Resolution Board; (2) adopt changes to conform the NASD Dispute Resolution By-Laws to the FINRA By-Laws; and (3) implement other conforming changes to reflect the corporate name change and other similar matters. The proposed amendments to NASD Dispute Resolution By-Laws are modeled on those of the FINRA and FINRA Regulation By-Laws (which, as discussed above, were both previously approved by the Commission), with modifications, described below, as appropriate to the particular functions of FINRA Dispute Resolution.

The following discussion addresses the proposed amendments to NASD Dispute Resolution's By-Laws under the article of the By-Laws of NASD Dispute Resolution in which the amendments would first appear.

#### Amendments to Article I - Definitions

Article I of the NASD Dispute Resolution By-Laws contains definitions of terms used in the By-Laws. FINRA is proposing to add to or amend some of these definitions.

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<sup>14</sup> Supra note 7.

### Broker and Dealer

FINRA is proposing to amend the definitions of “broker” and “dealer” in Article I of the By-Laws of NASD Dispute Resolution to conform them to the definitions of “broker” and “dealer” in the Act, as amended by the Gramm-Leach-Bliley Act of 1999.<sup>15</sup> As proposed, FINRA would incorporate by reference the definitions of the terms “broker” and “dealer” as set forth in Sections 3(a)(4) and 3(a)(5), respectively, of the Act.<sup>16</sup> The SEC approved the same change to definitions of the terms “broker” and “dealer” in the then-NASD Regulation’s By-Laws in March 2001.<sup>17</sup> FINRA believes that the proposed changes to the terms “broker” and “dealer” are necessary to ensure that the definitions in the NASD Dispute Resolution By-Laws remain consistent with the definitions of the Act.

### Corporation

FINRA is proposing to add the term “Corporation” to Article I of the By-Laws of NASD Dispute Resolution to reflect the change of the Corporation’s name from “NASD” to “FINRA.”<sup>18</sup> Proposed Article I(e) would define Corporation to mean the National Association of Securities Dealers, Inc., the Financial Industry Regulatory Authority, Inc., or any future name of the entity.

### Electronic Transmission

FINRA is proposing to add the term “electronic transmission” to Article I of the By-Laws of NASD Dispute Resolution to reflect the common usage of electronic

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<sup>15</sup> Pub. L. 106-102, 113 Stat. 1338 (1999).

<sup>16</sup> 15 U.S.C. 78c(a)(4) and (a)(5).

<sup>17</sup> See Securities Exchange Act Rel. No. 44052 (March 8, 2001), 66 FR 15157 (March 15, 2001) (File No. SR-NASD-01-13).

<sup>18</sup> Supra note 3.

transmission as a means of communication.<sup>19</sup> The term “electronic transmission” would be defined to mean communicating or disseminating information or documents to individuals or entities by telegraph, telefax, cable, radio, wireless or other device or method. FINRA intends “other device or method” to include email, text messages, and related technologies, for example. FINRA believes that the new definition clarifies the current methods FINRA uses to communicate with and disseminate information to individuals and entities, and gives FINRA flexibility to use other devices or methods as advances in technology are made.

#### FINRA Member

FINRA is proposing to add the term “FINRA member” to Article I of the By-Laws of NASD Dispute Resolution.<sup>20</sup> As proposed, the term “FINRA member” would mean “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 Arbitration Procedure for Customer Disputes (“Customer Code”) or the Code of Arbitration Procedure for Industry Disputes (“Industry Code”, and together with the Customer Code, “Codes”) and/or to be treated as members of FINRA for purposes of the Codes , whether or not the membership has been terminated or cancelled.”

FINRA believes the proposed change would clarify the forum’s jurisdiction concerning a FINRA member, and would conform the definition in the By-Laws to that

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<sup>19</sup> The new term “electronic transmission” would be added as proposed Article I(k) of the By-Laws of NASD Dispute Resolution.

<sup>20</sup> The new term “FINRA member” would be added as proposed Article I(o) of the By-Laws of NASD Dispute Resolution.

in the Customer Code and the Industry Code.<sup>21</sup> FINRA believes that the proposed change to add the term “FINRA member” is necessary to ensure that the definitions in the NASD Dispute Resolution By-Laws are consistent with the definitions in the Codes.

Industry Director or Industry Member and Public Director or Public Member

FINRA is proposing to modify the terms “Industry Director” or “Industry member” and “Public Director” or “Public member” in Articles I(k) and I(t), respectively. With regard to the term “Industry Director” or “Industry member”, the proposed rule change would amend the NASD Dispute Resolution’s By-Laws by separating these definitions into two definitions for ease of reference.<sup>22</sup>

FINRA is also proposing to amend the revised terms “Industry Director” and “Industry Member” to limit the look-back test that characterizes committee members as industry if they have served as an officer, director, or employee of a broker or dealer, among other reasons, to the past twelve months. The current provision uses a three-year look-back test. The proposed change would make the definitions of “Industry Director” and “Industry Member” under the NASD Dispute Resolution By-Laws consistent with the definitions of “Industry Director”, “Industry Governor”, and “Industry committee member” in the FINRA By-Laws.<sup>23</sup>

The proposal would also add the term “independent director” to the portion of the

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<sup>21</sup> Rule 12100(o) of the Customer Code (definition of member) and Rule 13100(o) of the Industry Code (definition of member). In July 2007, the SEC approved an amendment to the Codes to clarify the term “member.” See Securities Exchange Act Rel. No. 56029 (July 9, 2007), 72 FR 38641 (July 13, 2007) (File No. SR-NASD-2007-038).

<sup>22</sup> The term “Industry Director” will be defined in proposed Article I(r); “Industry Member” in proposed Article I(s).

<sup>23</sup> See FINRA By-Laws, Article I(s) and I(t).

definitions of “Industry Director” and “Industry Member” that excludes outside directors of a broker or dealer. The term “independent director” is synonymous with outside director, but FINRA is proposing to add it to the exclusionary clause to harmonize the NASD Dispute Resolution By-Laws with the definition of “Industry Governor” in the FINRA By-Laws.<sup>24</sup>

Similarly, FINRA is proposing to modify the term “Public Director” or “Public member” by separating it into two definitions for ease of reference.<sup>25</sup> FINRA would also amend the proposed terms “Public Director” or “Public Member” to clarify that an individual’s service as a public director of a self regulatory organization does not disqualify that person from serving as a Public Director or Public Member under NASD Dispute Resolution’s By-Laws.

FINRA notes that the proposed changes to the definitions of “Industry Director” and “Industry Member” as well as “Public Director” and “Public Member” under the NASD Dispute Resolution By-Laws are generally consistent with similar amendments to the By-Laws of FINRA Regulation,<sup>26</sup> which the SEC approved in November 2008.<sup>27</sup> FINRA believes that the changes to the definitions would eliminate any ambiguity concerning the interpretation of the rules within the Corporation, and would ensure

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<sup>24</sup> See FINRA By-Laws, Article I(t).

<sup>25</sup> The term “Public Director” will be defined in proposed Article I(w); “Public Member” in proposed Article I(x).

<sup>26</sup> Under the FINRA Regulation’s By-Laws, the definitions of Industry Member and Public Member contain a reference to a NAC or committee member. See FINRA Regulation By-Laws, Articles I(y) and I(ii). The NAC is appointed and governed pursuant to FINRA Regulation By-Laws; FINRA Dispute Resolution does not use this committee, and thus, references thereto do not appear in NASD Dispute Resolution By-Laws.

<sup>27</sup> Supra note 5.

uniform application of the rules.

Person Associated With a Member or Associated Person of a Member

On June 5, 2009, FINRA filed a proposed rule change to amend Rules 12100(r), 12506(a), and 12902(a) of the Customer Code and Rule 13100(r) of the Industry Code to amend the definition of “associated person,” streamline a case administration procedure, and clarify that customers could be assessed hearing session fees based on their own claims for relief in connection with an industry claim.<sup>28</sup> The Commission approved the proposal on October 26, 2009.<sup>29</sup>

Under that proposal, FINRA amended the definition of associated person under the Codes<sup>30</sup> to match the definition in FINRA’s By-Laws.<sup>31</sup> The proposal amended the

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<sup>28</sup> See Securities Exchange Act Rel. No. 60159 (June 22, 2009), 74 FR 31779 (July 2, 2009) (File No. SR-FINRA-2009-041).

<sup>29</sup> See Securities Exchange Act Rel. No. 60878, 74 FR 56679 (Nov. 2, 2009) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of SR-2009-041, as Modified by Amendment No. 1).

<sup>30</sup> Rule 12100(r) of the Customer Code and Rule 13100(r) of the Industry Code define “person associated with a member” to mean: (1) A natural person registered under the Rules of FINRA; or (2) A sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under the By-Laws or the Rules of FINRA. For purposes of the Code, a person formerly associated with a member is a person associated with a member.

<sup>31</sup> FINRA’s By-Laws define “person associated with a member or associated person of a member” as (1) a natural person who is registered or has applied for registration under the Rules of the Corporation; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the Corporation under these By-Laws or the Rules of the Corporation; and (3) for purposes of Rule 8210, any

definition of “person associated with a member” in the Codes in two ways: (1) by inserting the word “other” before the second reference to “natural person” to clarify that the definition does not include corporate entities; and (2) by inserting the criterion that a natural person includes someone who has applied for registration.

FINRA is proposing to implement the same changes to the definition of associated person of a member in the NASD Dispute Resolution By-Laws, as have been approved recently by the Commission to same definitions under the Codes, to ensure uniform application of the definition.

#### Amendments to Article IV – Board of Directors

FINRA is proposing to make limited conforming changes to Article IV of the NASD Dispute Resolution By-Laws to parallel more closely the governance structure of the FINRA Board.

##### Section 4.3 - Qualifications

The proposed rule change would amend Article IV, section 4.3(a) to reflect FINRA’s current governance structure by establishing that NASD Dispute Resolution Board members would be drawn exclusively from the FINRA Board. The proposed rule change would also amend section 4.3(a) to streamline the composition of NASD Dispute Resolution’s Board and implement a requirement that it contain more Public Directors than Industry Directors. Thus, section 4.3(a) would be amended to state that “the number of Public Directors shall exceed the number of Industry Directors.” FINRA’s By-Laws

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other person listed in Schedule A of Form BD of a member. See By-Laws of the Corporation, Article I, Definitions (rr).

contain a similar requirement.<sup>32</sup>

The proposal would make other changes to Article IV, section 4.3 as follows:

- re-structure the Board to remove the President of NASD Dispute Resolution. The President would not be deemed a Director, and therefore, the proposed rule change would delete several references to the President of NASD Dispute Resolution;<sup>33</sup>
- clarify that the Chair of the FINRA Board and the Chief Executive Officer of FINRA shall be ex-officio non-voting members of the Board;
- transfer the task of selecting the Chair of the NASD Dispute Resolution Board from the Board members to NASD Dispute Resolution's stockholder;<sup>34</sup>
- eliminate the requirement that the Board select a Vice Chair; and
- state that the stockholder will designate the Chair at the same time that the Directors are elected.

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<sup>32</sup> See By-Laws of the Corporation, Article VII (Board of Governors), section 4(a).

<sup>33</sup> See NASD Dispute Resolution By-Laws, Article IV, Sections 4.3(a) (Qualifications), 4.5 (Resignation), 4.11(c) (Meetings), 4.13(f) (Executive Committee), and 4.13(g) (Finance Committee). Section 141(c)(2) of the General Corporation Law of the State of Delaware provides that “[t]he board of directors may designate 1 or more committees, each committee to consist of 1 or more directors of the corporation.” (Emphasis added). Committees of the board, therefore, may be comprised exclusively of board members. In addition, any committee of the board that is delegated any power and authority of the board, such as the Executive Committee, must be comprised exclusively of board members. See Delaware General Corporation Law, section 141(c)(2).

<sup>34</sup> See Delaware General Corporation Law section 142, which allows the sole stockholder to make this selection if expressly provided for in the By-Laws.

#### Section 4.4 - Election

The proposed rule change would eliminate as unnecessary the reference to the first meeting of NASD Regulation at which Directors initially were elected.

#### Section 4.5 - Resignation

The proposal would remove the requirement that Directors submit written notice of resignation to the President. Under the proposal, such notice would be submitted to the Chair of the Board, instead of the President.

#### Section 4.6 - Removal

The proposed rule change would transfer the authority to remove Directors from a majority vote of the FINRA Board to the stockholder of FINRA Regulation.<sup>35</sup> The proposed amendment would reflect Delaware law, which requires that a stock corporation vest the power to remove directors with the stockholder.<sup>36</sup>

#### Section 4.7 - Disqualification

In connection with the proposed change to section 4.3(a), which would require the number of Public Directors to exceed the number of Industry Directors, the proposal would also amend section 4.7 to clarify that when a Director is disqualified from Board service and the Director's remaining term is not more than six months, the Board may

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<sup>35</sup> The sole stockholder of the capital stock of FINRA Dispute Resolution, Inc. is FINRA, Inc. See Article VIII, section 8.1 (Sole Stockholder).

<sup>36</sup> See Delaware General Corporation Law, section 141(k). As a practical matter, the FINRA Board generally would be asked to pass a resolution authorizing an officer of FINRA to execute a sole stockholder consent on behalf of FINRA (who is the sole stockholder of FINRA Dispute Resolution) before such a consent is executed. As such, the FINRA Board would have a voice in the matter, but as a matter of Delaware law, the consent authorizing the removal must be executed by a duly authorized officer of FINRA in FINRA's capacity as sole stockholder.

continue to operate and will not violate any compositional requirements if it does not replace the disqualified Director.

#### Section 4.8 – Filling of Vacancies

Currently, Directors of FINRA Dispute Resolution are elected annually at the meeting of FINRA Dispute Resolution’s stockholder meeting or at a special meeting dedicated to Board elections.<sup>37</sup> When the annual election of Directors is not held on the designated date, the NASD Dispute Resolution By-Laws charge the Directors to “cause such election” to be held.<sup>38</sup> The proposed rule change would confirm that the same process should be used by the FINRA Dispute Resolution Board when filling vacancies among its ranks. Thus, the proposal would amend section 4.8 to provide that the FINRA Board shall “cause the election” of a qualified Director to fill the vacant position.<sup>39</sup>

#### Section 4.9 – Quorum and Voting

The proposed rule change would remove a cross-reference to section 4.14(b) in the quorum provision, and also amend the provision to clarify that, when there is a quorum, a majority vote of the Directors present at a meeting constitutes action of the Board.

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<sup>37</sup> See current NASD Dispute Resolution By-Laws, Article IV, section 4.4 (Election).

<sup>38</sup> Id.

<sup>39</sup> Pursuant to Delaware law, FINRA, as the sole stockholder of FINRA Dispute Resolution, has the authority to execute a stockholder consent electing an individual to fill the vacancy pursuant to directions of the FINRA Board. Alternatively, the FINRA Board may pass a resolution making it known who they would like appointed to fill the vacancy. Under this scenario, it is likely that the remaining members of the FINRA Dispute Resolution Board will follow the advice of its controlling stockholder and elect the recommended individual. See Delaware General Corporation Law, section 223.

#### Section 4.12 – Notice of Meetings; Waiver of Notice

The proposal would clarify the conditions under which the NASD Dispute Resolution Board may meet. The current NASD Dispute Resolution By-Laws instruct that a Director may waive notice of a Board meeting by being present at the meeting, so long as the Director did not attend the meeting solely to object to the meeting taking place.<sup>40</sup> FINRA is proposing to amend section 4.12(c) to clarify that a Board meeting is a legal meeting if all Directors are present and no Director is present solely for the purpose of objecting to the meeting taking place.

The proposed rule change also would amend section 4.12(a) and (b) to replace the phrase “telegraph, telefax, cable, radio, or wireless” with the new term “electronic transmission.”<sup>41</sup> For an explanation of the term “electronic transmission,” see the discussion under “Amendments to Article I – Definitions” above.

#### Section 4.13 – Committees

As explained under the discussion of section 4.3(a), the proposal would implement a requirement that the FINRA Dispute Resolution Board contain more Public Directors than Industry Directors.<sup>42</sup> In furtherance of this change, references throughout Article IV to balancing “Industry” and “Non-Industry” Board members would be replaced with

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<sup>40</sup> See current NASD Dispute Resolution By-Laws, Article IV, section 4.12(b) (Notice of Meeting; Waiver of Notice) and Article IX, section 9.3(b) (Waiver of Notice).

<sup>41</sup> FINRA proposed similar changes to Article IV, Section 4.12 (Notice of Meeting; Waiver of Notice) and Article XII, Section 12.3 (Waiver of Notice) of the FINRA Regulation By-Laws. See Securities Exchange Act Rel. No. 59696 (April 2, 2009), 74 FR 16020 (April 8, 2009) (File No. SR-FINRA-2009-020).

<sup>42</sup> See also proposed Article I(r) (Industry Director); proposed Article I(s) (Industry Member); proposed Article I(w) (Public Director); and proposed Article I(x) (Public Member).

references to balancing “Industry” and “Public” Board members. Similarly, the proposal would remove the requirement that the Executive Committee include at least one Non-Industry Member and institute the requirement that Public Directors shall exceed Industry Directors on FINRA Dispute Resolution’s Executive Committee of the Board.<sup>43</sup>

#### Section 4.15 – Action Without Meeting

The proposal would make a related change to section 4.15 to eliminate the requirement that unanimous consent for taking action without a meeting specifically be in writing and filed with the minutes of the meeting. Instead, the proposal would require the consent to be “in accordance with applicable law,” which in the instance of FINRA Dispute Resolution, would be Delaware law.

FINRA believes that the proposed amendments to Article IV would align FINRA Dispute Resolution’s Board structure with that of FINRA and its other subsidiary, and conform FINRA Dispute Resolution’s corporate practices to Delaware law.

#### Amendment to Article V – Officers, Agents, and Employees

##### Section 5.1 – Officers

As explained under the discussion of Article IV, section 4.3, the proposed rule change would re-structure the Board to remove the President of FINRA Dispute Resolution as a Director of the Board.<sup>44</sup> In connection with this change, the proposal would remove a reference to the President from section 5.1, so that the amended language would state, in relevant part, that none of the officers need to be Directors of FINRA Dispute Resolution.

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<sup>43</sup> See Article IV, section 4.12(f) (Executive Committee).

<sup>44</sup> Supra note 32.

## Amendments to Article VIII – Capital Stock

### Section 8.3 - Signatures

The proposed rule change would amend several provisions regarding FINRA Dispute Resolution's capital stock. Currently, under section 8.3(a), FINRA's approach to the corporate law issue of signing certificates representing shares of FINRA Dispute Resolution capital stock is to have these shares signed by FINRA Dispute Resolution officers. Under the proposed re-structuring of the Board, FINRA Dispute Resolution would not have an officer as Chair of the Board. Thus, FINRA is proposing to remove the provision that permits the Chair of the Board to sign stock certificates, and limit the authority to sign such certificates to the President, Vice President, Secretary or Treasurer of FINRA Dispute Resolution.

FINRA is proposing to amend section 8.3(b) to remove the limitations on the type of signatures required on certificates of capital stock. The current provision states, in relevant part, that "if any such certificates are countersigned by a transfer agent other than NASD Dispute Resolution or its employee, or by a registrar other than NASD Dispute Resolution or its employee, any other signature on the certificate may be a facsimile." The proposed amendment would eliminate limitations on when signatures on certificates representing shares of FINRA Dispute Resolution's capital stock may be facsimiles and permit any signature to be a facsimile. Thus, under the proposal, the provision would be amended to state that "any signature on the stock certificate may be a facsimile." FINRA believes this change would be consistent with current practice that permits its certificates representing capital stock to be sealed with a facsimile of FINRA Dispute Resolution's corporate seal.

### Section 8.4 – Stock Ledger

Currently, section 8.4(a) of the NASD Dispute Resolution By-Laws requires that the FINRA Dispute Resolution Secretary, or another officer, employee, or agent, keep a record of FINRA Dispute Resolution’s capital stock ownership and “the number of shares represented by each such certificate.” FINRA is proposing to change several references to “capital stock” to “certificates representing shares of capital stock” or similar constructions, instead of “certificates for shares of capital stock.”<sup>45</sup> This change would make NASD Dispute Resolution’s By-Laws more consistent with the language of the applicable section of the General Corporation Law of the state of Delaware.<sup>46</sup>

### Amendments to Article IX – Miscellaneous Provisions

#### Section 9.3 – Waiver of Notice

FINRA is proposing to amend section 9.3(a) of the NASD Dispute Resolution By-Laws to replace the phrase “telegraph, telefax, cable, radio, or wireless” with the new term “electronic transmission.”<sup>47</sup>

### Conforming Changes Relating to the New FINRA name and Other Technical Changes

FINRA is proposing to implement certain other non-substantive changes to all articles of the NASD Dispute Resolution By-Laws. The proposed rule change would

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<sup>45</sup> The proposal would delete as imprecise the words “certificates for” in the discussion of potential registration of shares of capital stock. See proposed NASD Dispute Resolution By-Laws, Article VIII, section 8.4(b) (Stock Ledger), 8.5 (Transfers of Stock), 8.6 (Cancellation), and 8.7 (Lost, Stolen, Destroyed, and Mutilated Certificates).

<sup>46</sup> See Delaware General Corporation Law section 158.

<sup>47</sup> See supra note 40, and the explanation of the term “electronic transmission” under “Amendments to Article I - Definitions.”

make certain non-substantive changes to the NASD Dispute Resolution By-Laws as follows:

- “the NASD” or “NASD” would be replaced with “FINRA” or “the Corporation;”
- “NASD Dispute Resolution” would be changed to “FINRA Dispute Resolution;”
- “the Rules of the Association” would be replaced with “the Rules of the Corporation;”
- “National Nominating Committee” would be replaced with “Nominating Committee;”
- a reference to “FINRA Regulation” would be added; and
- “Association” would be replaced with “Corporation.”

FINRA is also proposing to amend Article II, section 2.1 to change the name and address of the registered agent from The Corporation Trust Company, 1209 Orange Street, Wilmington, DE, 19801 to Corporation Creations Network Inc., 1308 Delaware Avenue, Wilmington, DE, 19806.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(2) of the Act,<sup>48</sup> in that it provides for the organization of FINRA and FINRA Dispute Resolution in a manner that will permit FINRA to carry out the purposes of the Act, to comply with the Act, and to enforce

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<sup>48</sup> 15 U.S.C. 78o-3(b)(2).

compliance by FINRA members and persons associated with FINRA members with the Act, the rules and regulations thereunder, FINRA and NASD rules and the federal securities laws. FINRA further believes that the proposed rule change is consistent with Section 15A(b)(4) of the Act,<sup>49</sup> which requires, among other things, that FINRA's rules assure a fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of FINRA, broker or dealer. FINRA believes that the proposed composition of its Dispute Resolution Board would fairly and effectively represent users of the dispute resolution forum, and would help resolve dispute resolution issues in a manner that will redound to the benefit of investors.

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, as amended.

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 by FINRA.

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

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<sup>49</sup> 15 U.S.C. 78o-3(b)(4).

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-2010-007 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-2010-007. 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. 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 the File Number SR-FINRA-2010-007 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>50</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>50</sup> 17 CFR 200.30-3(a)(12).