

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56146; File No. SR-NASD-2007-053)

July 26, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Restated Certificate of Incorporation of National Association of Securities Dealers, 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 July 24, 2007, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change to amend the Restated Certificate of Incorporation of NASD (“Certificate”) as described in Items I and II below, which Items have been substantially prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal on an accelerated basis.

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

NASD proposes to amend its Certificate to reflect the governance and related changes proposed by NASD to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. and to conform the Certificate to the amended NASD By-Laws. The proposed amendments to the Certificate also reflect NASD’s change in corporate name to Financial Industry Regulatory Authority, Inc. (“FINRA”) as of the closing of the Transaction (defined below). The text of the proposed rule change, including the Certificate, is available at NASD, the Commission’s Public Reference Room, and <http://nasd.complinet.com>.

¹ 15 U.S.C. 78s(b)(1).

² 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, NASD 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 III below. NASD 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

On November 28, 2006, NASD and the NYSE Group, Inc. ("NYSE Group") announced a plan to consolidate their member regulation operations into a combined organization ("Transaction") that will be the sole U.S. private-sector provider of member firm regulation for securities firms that conduct business with the public. This consolidation will streamline the broker-dealer regulatory system, combine technologies, permit the establishment of a single set of rules and group examiners with complementary areas of expertise in a single organization—all of which will serve to enhance oversight of U.S. securities firms and help ensure investor protection. Moreover, NASD notes that the new organization will be committed to reducing regulatory costs and burdens for firms of all sizes through greater regulatory efficiency.

On January 19, 2007, NASD held a special meeting of the members of NASD eligible to vote on amendments to the NASD By-Laws. A quorum of members entitled to vote on the matter was present, in person or by proxy, at such meeting, and a majority of the quorum approved the amendments to the NASD's By-Laws. On March 19, 2007, NASD filed with the Commission a proposed rule change to amend the NASD By-Laws to implement the governance

and related changes to accommodate the consolidation of the member regulatory functions of NASD and NYSE Regulation, Inc.³

The purpose of this proposed rule change is to make the necessary amendments to the Certificate to reflect the governance and related changes in connection with the Transaction, the related changes to the NASD By-Laws, and NASD's change in corporate name to FINRA as of the date of closing of the Transaction.⁴

The effective date of the proposed rule change will be the closing of the Transaction. The proposed rule change will not become effective if the Transaction does not close.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁵ including Section 15A(b)(2) of the Act,⁶ 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

³ See Securities Exchange Act Release No. 55495 (March 20, 2007), 72 FR 14149 (March 26, 2007) (SR-NASD-2007-023). Today, the Commission approved the amendments to NASD's By-Laws proposed in connection with the Transaction. See Securities Exchange Act Release No. 56145 (July 26, 2007) ("Release No. 34-56145").

⁴ Article XXII, Section 3 of the NASD By-Laws, as amended in Release 34-56145, supra note 3, addresses the term of office of Governors for a transitional period commencing on the date of closing of the Transaction and ending on the third anniversary of the date of closing. Among other things, Article XXII, Section 3 provides that ". . . in the event the remaining term of office of any Large Firm, Mid Size Firm or Small Firm Governor position that becomes vacant is for more than 12 months, nominations shall be made as set forth above in this paragraph, but such vacancy shall be filled by the members entitled to vote thereon at a meeting thereof convened to vote thereon (emphasis added)." Article Eleventh of the Certificate does not reiterate the applicable nomination process in such instances, insofar as the text solely restates those persons entitled to make nominations as reflected elsewhere in Article Eleventh. In short, in filling any such vacancies, NASD represents that the nominations will be made in accordance with the provisions of Article XXII, Section 3 of the amended NASD By-Laws.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(2).

members, and persons associated with FINRA members, with the Act, the rules and regulations thereunder, and FINRA rules.

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

NASD 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. 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-NASD-2007-053 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASD-2007-053. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of NASD. 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-NASD-2007-053 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.⁷ Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(2) of the Act⁸ in that it will permit FINRA to be so organized 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. Further, the Commission finds that the proposed rule change is consistent with Section

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3(b)(2).

15A(b)(6) of the Act⁹ in that it is 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.

The proposed rule change amends the Certificate to conform to the changes in the NASD By-Laws that the Commission is approving today, and to reflect the NASD's new name, FINRA.¹⁰ Specifically, the amended Certificate incorporates the governance structure in FINRA's By-Laws, as approved today, including with respect to the three-year transitional period and thereafter. The proposed revisions to the Certificate do not make changes to the governance of FINRA not already contemplated by the proposed changes to FINRA's By-Laws, which were published for comment and approved by the Commission.¹¹ The Commission believes that the proposed changes to the Certificate are consistent with the Act.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the proposal was published for comment in the Federal Register. This approval allows the proposed rule change to take effect without delay. The proposed revisions to the Certificate do not make changes to the governance of FINRA not already contemplated by the proposed changes to FINRA's By-Laws, which were published for comment and approved by the Commission.¹² Therefore, interested persons were provided the opportunity to submit comments on essentially identical changes. For this reason, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to grant accelerated approval to the proposed changes to the Certificate.

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ See Release No. 34-56145, supra note 3.

¹¹ Id.

¹² Id.

The Commission finds good cause, consistent with Section 19(b)(2) of the Act, to grant accelerated approval to the proposed change of the NASD's name to FINRA because it is technical and does not impact members or other market participants.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASD-2007-053) is hereby approved on an accelerated basis.¹³

By the Commission.

Nancy M. Morris
Secretary

¹³ 15 U.S.C. 78s(b)(2).