

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change Relating to the FINRA Regulation Board Composition and Conforming Changes to the FINRA Regulation By-Laws

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Stacy"/>	Last Name	<input type="text" value="Chittick"/>
Title	<input type="text" value="Associate Vice President and Counsel"/>		
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Telephone	<input type="text" value="(202) 728-8375"/>	Fax	<input type="text" value="(202) 728-8894"/>

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date	<input type="text" value="03/27/2009"/>
By	<input type="text" value="Alan Lawhead"/>
	(Name)
	<input type="text" value="Vice President and Director - Appellate Group"/>
	(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the By-Laws of FINRA’s regulatory subsidiary (“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.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on November 19, 2007, the Executive Committee of the FINRA Board of Governors (“FINRA Board”) authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

¹ 15 U.S.C. 78s(b)(1).

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Background on FINRA and Its Regulatory Subsidiary

On July 30, 2007, NASD and the New York Stock Exchange consolidated their member firm regulation operations into a combined organization, FINRA. As part of the consolidation, the SEC approved amendments to the NASD By-Laws to implement governance and related changes.² The approved changes 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.

FINRA Regulation (formerly known as NASD Regulation) is a subsidiary of FINRA that operates according to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, as amended, which NASD adopted first in 1996 when it formed NASD Regulation. FINRA Regulation's By-Laws were not amended at the time of the consolidation, other than in a few sections where those By-Laws conflicted with the new FINRA By-Laws. On November 6, 2008, the Commission approved a proposed rule change to amend Articles I, II, III, V, VI, VII, IX, X and XIII, Section 4.16 of Article IV, and all of Article VIII except Section 8.7 and all of Article XII except Section 12.3, to realign the representation of industry members on the National Adjudicatory Council to follow more closely the categories of industry representation on the FINRA Board. See

² 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).

SR-FINRA 2008-046, Securities Exchange Act Release No. 58909 (November 6, 2008), 73 FR 68467 (November 18, 2008).

Changes to the FINRA Regulation Board Composition to Parallel the FINRA Board

The proposed rule change would make limited modifications to Article IV of the FINRA Regulation By-Laws to parallel more closely the governance structure of the FINRA Board. To reflect FINRA's current governance structure, the proposed rule change establishes that FINRA Regulation Board members are drawn exclusively from the FINRA Board.³ In accordance with this change, the National Adjudicatory Council (NAC) Chair will no longer be a member of the FINRA Regulation Board.⁴ The rule change also eliminates specific references to representatives of an issuer of investment company shares and an insurance company (or affiliated members) from the required composition of the Board. Because the FINRA Board includes a Floor Member Governor, an Independent Dealer/Insurance Affiliate Governor and an Investment Company Affiliate Governor, any of these Governors may serve on the subsidiary's Board.

The proposed rule change would apply to the FINRA Regulation Board the requirement, which exists in the FINRA By-Laws, that the FINRA Regulation Board

³ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3 (a) (Qualifications). The current provision provides, in part, that "[t]he Board shall include the President and the National Adjudicatory Council Chair, representatives of an issuer of investment company shares or an affiliate of such an issuer, and an insurance company or an affiliated NASD member."

⁴ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3(a) (Qualifications). The NAC Chair's automatic service on the FINRA Board of Governors was eliminated in 2007 as one of the changes to the FINRA By-Laws made during the NASD and NYSE consolidation.

have more Public Directors than Industry Directors.⁵ In furtherance of this change, references throughout Article IV to balancing Industry and Non-Industry Board members have been replaced with references to balancing Industry and Public Board members. The proposal likewise would remove the requirement that the Executive Committee include at least one Public Director and institute the requirement that Public Directors shall exceed Industry Directors on FINRA Regulation's Executive Committee of the Board.⁶

The proposed rule change would continue FINRA's custom of substantial industry participation on the board of its regulatory subsidiary. Currently, selection of the FINRA Board includes a petition process that allows for additional candidates for seven Industry Governor seats to be elected in contested elections. To ensure that the fair representation of industry members on the FINRA Board is similarly reflected on the FINRA Regulation Board, the proposal would establish that the FINRA Regulation Board include 20%, and not less than two, Small, Mid-Size, or Large Firm Governors.⁷

⁵ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3 (a) (Qualifications). The current provision provides, in part, that “[t]he number of Non-Industry Directors shall equal or exceed the number of Industry Directors.”

⁶ See proposed FINRA Regulation By-Laws, Article IV, Section 4.13(f) (Committees). The current provision provides, in part, that “[t]he Executive Committee shall consist of three or four Directors, including at least one Public Director. The President of NASD Regulation shall be a member of the Executive Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members.”

⁷ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3 (Qualifications). The current provision provides, in part, that “[i]f the Board consists of 5–7 Directors, it shall include at least one Public Director. If the Board consists of eight to nine Directors, at least two Directors shall be Public Directors. If the Board consists of ten to twelve Directors, at least three Directors shall be

These provisions would establish a minimum floor of 20% of the FINRA Regulation Board Directors coming from FINRA Governor seats with potential contested elections and would ensure that a minimum of two such Governors would serve on the FINRA Regulation Board.⁸

The proposed rule change would clarify the conditions under which the FINRA Regulation Board can meet. The current FINRA Regulation By-Laws instruct that a Director can 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.⁹ The proposed addition to Section 4.12(c) clarifies 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.

Post-Consolidation Changes to FINRA Board Responsibilities

The proposed rule change would implement minor alterations regarding removing FINRA Regulation Board members, filling a vacant board seat, and selection of the Chair of FINRA Regulation's Board. FINRA Regulation is a stock corporation organized in the state of Delaware. First, the proposal would transfer the authority to remove Directors from a majority vote of the FINRA Board to the stockholder of FINRA

Public Directors, and if the Board consists of thirteen to fifteen Directors, at least four shall be Public Directors.”

⁸ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3(a) (Qualifications).

⁹ See current FINRA Regulation By-Laws, Article IV, Section 4.12(b) (Notice of Meeting; Waiver of Notice) and Article XII, Section 12.3(b) (Waiver of Notice).

Regulation¹⁰ to accommodate Delaware law, which requires that a stock corporation vest the power to remove directors with the stockholder.¹¹ Second, Directors of FINRA Regulation currently are elected annually at the meeting of FINRA Regulation's stockholder or at a special meeting dedicated to FINRA Regulation Board elections. When the annual election of Directors is not held on the designated date, the By-Laws charge the Directors to "cause such election" to be held.¹² The proposed rule change would confirm that the same process should be used by the FINRA Regulation Board when filling vacancies among its ranks. The proposal would adopt language that the FINRA Board shall "cause the election" of a qualified Director to fill the vacant position.¹³ Third, the proposal would transfer the task of selecting the Chair of the

¹⁰ See proposed FINRA Regulation By-Laws, Article IV, Section 4.6 (Removal). The sole stockholder of the capital stock of FINRA Regulation is FINRA, Inc. See Article XI, Section 11.1 (Sole Stockholder).

¹¹ See Delaware General Corporation Law, § 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 Regulation) 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.

¹² See current FINRA Regulation By-Laws, Article IV, Section 4.4 (Election).

¹³ See proposed FINRA Regulation By-Laws, Article IV, Section 4.8 (Filling of Vacancies). Pursuant to the General Corporation Law, FINRA, as the sole stockholder of FINRA Regulation, 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 Regulation Board will follow the advice of its controlling stockholder and elect the recommended individual. See Delaware General Corporation Law, § 223.

FINRA Regulation Board from the Board members to FINRA Regulation's stockholder.¹⁴ The proposal also would:

- Eliminate the requirement that the Board select a Vice Chair as unnecessary;¹⁵
- Indicate that the stockholder would designate the Chair at the same time that the Directors are elected;¹⁶
- Eliminate as unnecessary the reference to the first meeting of NASD Regulation at which Directors initially were elected;¹⁷
- 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 continue to operate and will not violate any compositional requirements if it does not replace the disqualified Director;¹⁸

¹⁴ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3(b) (Qualifications). See also Delaware General Corporation Law § 142, which allows the sole stockholder to make this selection if expressly provided for in the By-Laws.

¹⁵ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3(b) (Qualifications).

¹⁶ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3(b) (Qualifications). The current provision provides, in part, that the Board shall designate a Chair "as soon as practicable, following the annual election of Directors."

¹⁷ See proposed FINRA Regulation By-Laws, Article IV, Section 4.4 (Election).

¹⁸ See proposed FINRA Regulation By-Laws, Article IV, Section 4.7 (Disqualification).

- Remove the requirement that written notice of resignation by Directors be submitted to the President;¹⁹ and
- Eliminate as unnecessary a cross-reference in the quorum provision and state that, when there is a quorum, a majority vote of the Directors present at a meeting constitutes action of the Board.²⁰

Changes To Reflect Practices Regarding the Capital Stock of FINRA Regulation

The proposed rule change would amend several provisions regarding FINRA Regulation's capital stock. FINRA's approach to the corporate law issue of signing certificates representing shares of FINRA Regulation capital stock is to have these shares signed by FINRA Regulation officers. Because FINRA Regulation does not have an officer as Chair of the Board, the possibility of the Chair signing stock certificates is being deleted.²¹ The proposal would eliminate limitations on when signatures on certificates representing shares of FINRA Regulation's capital stock may be facsimiles

¹⁹ See proposed FINRA Regulation By-Laws, Article IV, Section 4.5. The current provision provides, in part, that "[a]ny Director may resign at any time either upon written notice of resignation to the Chair of the Board, the President, or the Secretary." Under the proposed provision, notice of resignation must be submitted to the Chair of the Board or the Secretary.

²⁰ See proposed FINRA Regulation By-Laws, Article IV, Section 4.9(b) (Quorum and Voting).

²¹ See proposed FINRA Regulation By-Laws, Article XI, Section 11.3(a) (Signatures). Under the current provision, "[c]ertificates for shares of capital stock of FINRA Regulation shall be signed in the name of FINRA Regulation by two officers with one being the Chair of the Board, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board." Under the proposal, certificates for shares of capital stock of FINRA Regulation shall be signed by two officers with one being the President or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board.

and would allow any signature to be a facsimile.²² Given that currently certificates representing capital stock may be sealed with a facsimile of FINRA Regulation's corporate seal, this change would apply the same flexible approach to signatures on the certificates.

Currently, one section of the By-Laws requires that the FINRA Regulation Secretary, or another officer, employee, or agent, keep a record of FINRA Regulation's capital stock ownership and "the number of shares represented by each such certificate."²³ Tracking this language and applying it elsewhere, the proposal would change several phrases that discuss capital stock to "certificates representing shares of capital stock" or similar constructions instead of "certificates for shares of capital stock." This change would make the By-Laws more consistent with the language of the applicable section of the General Corporation Law of the state of Delaware.²⁴ The proposal would delete as imprecise the words "certificates for" in the discussion of potential registration of shares of capital stock.²⁵

Conforming Changes Relating to the New FINRA Name and Other Minor Changes

The proposed rule change would make certain non-substantive changes to Articles IV and XI of the FINRA Regulation By-Laws as follows:

²² See proposed FINRA Regulation By-Laws, Article XI, Section 11.3(b) (Signatures).

²³ See current FINRA Regulation By-Laws, Article XI, Section 11.4(a) (Stock Ledger).

²⁴ See Delaware General Corporation Law § 158.

²⁵ See proposed FINRA Regulation By-Laws, Article XI, Sections 11.4(a) (Stock Ledger) and 11.5(a) (Transfers of Stock).

- “the NASD” or “NASD” is replaced with “FINRA” or “the Corporation;”
- “NASD Regulation” is changed to “FINRA Regulation;”
- “the Rules of the Association” is replaced with “the Rules of the Corporation,” and
- “National Nominating Committee” is replaced with “Nominating Committee.”

The proposed rule change would update sections of the FINRA Regulation By-Laws to acknowledge current practices. Because the President of FINRA Regulation is not designated to be a Governor on the FINRA Board, the proposed rule change would delete several references to the President of FINRA Regulation.²⁶

The proposed rule change would amend and eliminate exceptions to the statement in Section 4.3 that the Chief Executive Officer (“CEO”) of FINRA shall be an ex-officio non-voting member of the FINRA Regulation Board. In particular, the proposed rule change would eliminate the exception regarding the CEO of FINRA also serving as President of FINRA Regulation and retaining the power to vote, among other powers. The FINRA Regulation Board will operate without this exception.

The proposed rule change would revise Article IV, Section 4.12 (Notice of Meeting; Waiver of Notice) and Article XII, Section 12.3 (Waiver of Notice) to reflect

²⁶ See FINRA Regulation 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, § 141(c)(2).

advances in technology and the common usage of electronic transmission as a means of communication. In both these sections, FINRA intends “electronic transmission” to include email, text messages, and related technologies as well as facsimile, radio, cable, wireless, or telegraph. The proposal would make a related change to Article IV, Section 4.15 (Action Without Meeting) to eliminate the requirement that unanimous consent to taking action without a meeting specifically be in writing and filed with the minutes of the meeting. Instead, the consent would need to be “in accordance with” Delaware law, which allows a board to take action pursuant to unanimous consent communicated by electronic transmission.²⁷

Furthermore, the proposed modifications also would delete as unnecessary the provision that allowed the advisory council to attend a FINRA Regulation Board meeting, but not to vote.²⁸

Proposed Schedule A to the FINRA Regulation By-Laws would describe the boundaries for districts one through eleven. These boundaries are not changing. The description of district boundaries is being proposed for deletion as Schedule B from the FINRA By-Laws and is being proposed for addition as Schedule A to the FINRA Regulation By-Laws for administrative convenience because the districts are established in Article VIII, Section 8.1 (Establishment of Districts) of the current FINRA Regulation By-Laws.

²⁷ See Delaware General Corporation Law, § 141(f).

²⁸ See proposed FINRA Regulation By-Laws, Article VIII, Section 8.7(b) (Advisory Council).

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁹ 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,³⁰ which requires that FINRA rules be designed to assure a fair representation of FINRA's members in the administration of its affairs. The composition of the FINRA Board has previously been found to meet the statutory requirements, and FINRA believes that the proposed rule change will allow the representation of industry members, as well as public members, on the FINRA Regulation Board while enabling the FINRA Regulation Board to operate with a close connection to the FINRA Board. The remaining changes either conform to other changes made to the By-Laws or acknowledge current practices.

4. 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.

²⁹ 15 U.S.C. 78o-3(b)(6).

³⁰ 15 U.S.C. 78o-3(b)(4).

5. **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.

6. **Extension of Time Period for Commission Action**

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.³¹

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

³¹ 15 U.S.C. 78s(b)(2)

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-020)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Proposed Rule Change Relating to the FINRA Regulation Board Composition and Conforming Changes to the FINRA Regulation By-Laws

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 , 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”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend the By-Laws of FINRA’s regulatory subsidiary (“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.

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.

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, 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 Regulatory Subsidiary

On July 30, 2007, NASD and the New York Stock Exchange consolidated their member firm regulation operations into a combined organization, FINRA. As part of the consolidation, the SEC approved amendments to the NASD By-Laws to implement governance and related changes.³ The approved changes 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.

FINRA Regulation (formerly known as NASD Regulation) is a subsidiary of FINRA that operates according to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, as amended, which NASD adopted first in 1996 when it formed

³ 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).

NASD Regulation. FINRA Regulation's By-Laws were not amended at the time of the consolidation, other than in a few sections where those By-Laws conflicted with the new FINRA By-Laws. On November 6, 2008, the Commission approved a proposed rule change to amend Articles I, II, III, V, VI, VII, IX, X and XIII, Section 4.16 of Article IV, and all of Article VIII except Section 8.7 and all of Article XII except Section 12.3, to realign the representation of industry members on the National Adjudicatory Council to follow more closely the categories of industry representation on the FINRA Board. See SR-FINRA 2008-046, Securities Exchange Act Release No. 58909 (November 6, 2008), 73 FR 68467 (November 18, 2008).

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⁴ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3 (a) (Qualifications). The current provision provides, in part, that "[t]he Board shall include the President and the National Adjudicatory Council Chair, representatives of an issuer of investment company shares or an affiliate of such an issuer, and an insurance company or an affiliated NASD member."

⁵ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3(a) (Qualifications). The NAC Chair's automatic service on the FINRA Board of Governors was eliminated in 2007 as one of the changes to the FINRA By-Laws made during the NASD and NYSE consolidation.

company shares and an insurance company (or affiliated members) from the required composition of the Board. Because the FINRA Board includes a Floor Member Governor, an Independent Dealer/Insurance Affiliate Governor and an Investment Company Affiliate Governor, any of these Governors may serve on the subsidiary's Board.

The proposed rule change would apply to the FINRA Regulation Board the requirement, which exists in the FINRA By-Laws, that the FINRA Regulation Board have more Public Directors than Industry Directors.⁶ In furtherance of this change, references throughout Article IV to balancing Industry and Non-Industry Board members have been replaced with references to balancing Industry and Public Board members. The proposal likewise would remove the requirement that the Executive Committee include at least one Public Director and institute the requirement that Public Directors shall exceed Industry Directors on FINRA Regulation's Executive Committee of the Board.⁷

The proposed rule change would continue FINRA's custom of substantial industry participation on the board of its regulatory subsidiary. Currently, selection of the FINRA Board includes a petition process that allows for additional candidates for

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⁷ See proposed FINRA Regulation By-Laws, Article IV, Section 4.13(f) (Committees). The current provision provides, in part, that "[t]he Executive Committee shall consist of three or four Directors, including at least one Public Director. The President of NASD Regulation shall be a member of the Executive Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members."

seven Industry Governor seats to be elected in contested elections. To ensure that the fair representation of industry members on the FINRA Board is similarly reflected on the FINRA Regulation Board, the proposal would establish that the FINRA Regulation Board include 20%, and not less than two, Small, Mid-Size, or Large Firm Governors.⁸ These provisions would establish a minimum floor of 20% of the FINRA Regulation Board Directors coming from FINRA Governor seats with potential contested elections and would ensure that a minimum of two such Governors would serve on the FINRA Regulation Board.⁹

The proposed rule change would clarify the conditions under which the FINRA Regulation Board can meet. The current FINRA Regulation By-Laws instruct that a Director can 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.¹⁰ The proposed addition to Section 4.12(c) clarifies 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.

Post-Consolidation Changes to FINRA Board Responsibilities

⁸ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3 (Qualifications). The current provision provides, in part, that “[i]f the Board consists of 5–7 Directors, it shall include at least one Public Director. If the Board consists of eight to nine Directors, at least two Directors shall be Public Directors. If the Board consists of ten to twelve Directors, at least three Directors shall be Public Directors, and if the Board consists of thirteen to fifteen Directors, at least four shall be Public Directors.”

⁹ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3(a) (Qualifications).

¹⁰ See current FINRA Regulation By-Laws, Article IV, Section 4.12(b) (Notice of Meeting; Waiver of Notice) and Article XII, Section 12.3(b) (Waiver of Notice).

The proposed rule change would implement minor alterations regarding removing FINRA Regulation Board members, filling a vacant board seat, and selection of the Chair of FINRA Regulation's Board. FINRA Regulation is a stock corporation organized in the state of Delaware. First, the proposal would transfer the authority to remove Directors from a majority vote of the FINRA Board to the stockholder of FINRA Regulation¹¹ to accommodate Delaware law, which requires that a stock corporation vest the power to remove directors with the stockholder.¹² Second, Directors of FINRA Regulation currently are elected annually at the meeting of FINRA Regulation's stockholder or at a special meeting dedicated to FINRA Regulation Board elections. When the annual election of Directors is not held on the designated date, the By-Laws charge the Directors to "cause such election" to be held.¹³ The proposed rule change would confirm that the same process should be used by the FINRA Regulation Board when filling vacancies among its ranks. The proposal would adopt language that the FINRA Board shall "cause the election" of a qualified Director to fill the vacant

¹¹ See proposed FINRA Regulation By-Laws, Article IV, Section 4.6 (Removal). The sole stockholder of the capital stock of FINRA Regulation is FINRA, Inc. See Article XI, Section 11.1 (Sole Stockholder).

¹² See Delaware General Corporation Law, § 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 Regulation) 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.

¹³ See current FINRA Regulation By-Laws, Article IV, Section 4.4 (Election).

position.¹⁴ Third, the proposal would transfer the task of selecting the Chair of the FINRA Regulation Board from the Board members to FINRA Regulation's stockholder.¹⁵ The proposal also would:

- Eliminate the requirement that the Board select a Vice Chair as unnecessary;¹⁶
- Indicate that the stockholder would designate the Chair at the same time that the Directors are elected;¹⁷
- Eliminate as unnecessary the reference to the first meeting of NASD Regulation at which Directors initially were elected;¹⁸
- 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

¹⁴ See proposed FINRA Regulation By-Laws, Article IV, Section 4.8 (Filling of Vacancies). Pursuant to the General Corporation Law, FINRA, as the sole stockholder of FINRA Regulation, 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 Regulation Board will follow the advice of its controlling stockholder and elect the recommended individual. See Delaware General Corporation Law, § 223.

¹⁵ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3(b) (Qualifications). See also Delaware General Corporation Law § 142, which allows the sole stockholder to make this selection if expressly provided for in the By-Laws.

¹⁶ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3(b) (Qualifications).

¹⁷ See proposed FINRA Regulation By-Laws, Article IV, Section 4.3(b) (Qualifications). The current provision provides, in part, that the Board shall designate a Chair "as soon as practicable, following the annual election of Directors."

¹⁸ See proposed FINRA Regulation By-Laws, Article IV, Section 4.4 (Election).

continue to operate and will not violate any compositional requirements if it does not replace the disqualified Director;¹⁹

- Remove the requirement that written notice of resignation by Directors be submitted to the President;²⁰ and
- Eliminate as unnecessary a cross-reference in the quorum provision and state that, when there is a quorum, a majority vote of the Directors present at a meeting constitutes action of the Board.²¹

Changes To Reflect Practices Regarding the Capital Stock of FINRA Regulation

The proposed rule change would amend several provisions regarding FINRA Regulation's capital stock. FINRA's approach to the corporate law issue of signing certificates representing shares of FINRA Regulation capital stock is to have these shares signed by FINRA Regulation officers. Because FINRA Regulation does not have an officer as Chair of the Board, the possibility of the Chair signing stock certificates is being deleted.²² The proposal would eliminate limitations on when signatures on

¹⁹ See proposed FINRA Regulation By-Laws, Article IV, Section 4.7 (Disqualification).

²⁰ See proposed FINRA Regulation By-Laws, Article IV, Section 4.5. The current provision provides, in part, that "[a]ny Director may resign at any time either upon written notice of resignation to the Chair of the Board, the President, or the Secretary." Under the proposed provision, notice of resignation must be submitted to the Chair of the Board or the Secretary.

²¹ See proposed FINRA Regulation By-Laws, Article IV, Section 4.9(b) (Quorum and Voting).

²² See proposed FINRA Regulation By-Laws, Article XI, Section 11.3(a) (Signatures). Under the current provision, "[c]ertificates for shares of capital stock of FINRA Regulation shall be signed in the name of FINRA Regulation by two officers with one being the Chair of the Board, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer

certificates representing shares of FINRA Regulation's capital stock may be facsimiles and would allow any signature to be a facsimile.²³ Given that currently certificates representing capital stock may be sealed with a facsimile of FINRA Regulation's corporate seal, this change would apply the same flexible approach to signatures on the certificates.

Currently, one section of the By-Laws requires that the FINRA Regulation Secretary, or another officer, employee, or agent, keep a record of FINRA Regulation's capital stock ownership and "the number of shares represented by each such certificate."²⁴ Tracking this language and applying it elsewhere, the proposal would change several phrases that discuss capital stock to "certificates representing shares of capital stock" or similar constructions instead of "certificates for shares of capital stock." This change would make the By-Laws more consistent with the language of the applicable section of the General Corporation Law of the state of Delaware.²⁵ The proposal would delete as imprecise the words "certificates for" in the discussion of potential registration of shares of capital stock.²⁶

that may be authorized by the Board." Under the proposal, certificates for shares of capital stock of FINRA Regulation shall be signed by two officers with one being the President or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board.

²³ See proposed FINRA Regulation By-Laws, Article XI, Section 11.3(b) (Signatures).

²⁴ See current FINRA Regulation By-Laws, Article XI, Section 11.4(a) (Stock Ledger).

²⁵ See Delaware General Corporation Law § 158.

²⁶ See proposed FINRA Regulation By-Laws, Article XI, Sections 11.4(a) (Stock Ledger) and 11.5(a) (Transfers of Stock).

Conforming Changes Relating to the New FINRA Name and Other Minor Changes

The proposed rule change would make certain non-substantive changes to Articles IV and XI of the FINRA Regulation By-Laws as follows:

- “the NASD” or “NASD” is replaced with “FINRA” or “the Corporation;”
- “NASD Regulation” is changed to “FINRA Regulation;”
- “the Rules of the Association” is replaced with “the Rules of the Corporation,” and
- “National Nominating Committee” is replaced with “Nominating Committee.”

The proposed rule change would update sections of the FINRA Regulation By-Laws to acknowledge current practices. Because the President of FINRA Regulation is not designated to be a Governor on the FINRA Board, the proposed rule change would delete several references to the President of FINRA Regulation.²⁷

The proposed rule change would amend and eliminate exceptions to the statement in Section 4.3 that the Chief Executive Officer (“CEO”) of FINRA shall be an ex-officio non-voting member of the FINRA Regulation Board. In particular, the proposed rule change would eliminate the exception regarding the CEO of FINRA also serving as

²⁷ See FINRA Regulation 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, § 141(c)(2).

President of FINRA Regulation and retaining the power to vote, among other powers. The FINRA Regulation Board will operate without this exception.

The proposed rule change would revise Article IV, Section 4.12 (Notice of Meeting; Waiver of Notice) and Article XII, Section 12.3 (Waiver of Notice) to reflect advances in technology and the common usage of electronic transmission as a means of communication. In both these sections, FINRA intends “electronic transmission” to include email, text messages, and related technologies as well as facsimile, radio, cable, wireless, or telegraph. The proposal would make a related change to Article IV, Section 4.15 (Action Without Meeting) to eliminate the requirement that unanimous consent to taking action without a meeting specifically be in writing and filed with the minutes of the meeting. Instead, the consent would need to be “in accordance with” Delaware law, which allows a board to take action pursuant to unanimous consent communicated by electronic transmission.²⁸

Furthermore, the proposed modifications also would delete as unnecessary the provision that allowed the advisory council to attend a FINRA Regulation Board meeting, but not to vote.²⁹

Proposed Schedule A to the FINRA Regulation By-Laws would describe the boundaries for districts one through eleven. These boundaries are not changing. The description of district boundaries is being proposed for deletion as Schedule B from the FINRA By-Laws and is being proposed for addition as Schedule A to the FINRA

²⁸ See Delaware General Corporation Law, § 141(f).

²⁹ See proposed FINRA Regulation By-Laws, Article VIII, Section 8.7(b) (Advisory Council).

Regulation By-Laws for administrative convenience because the districts are established in Article VIII, Section 8.1 (Establishment of Districts) of the current FINRA Regulation By-Laws.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing 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,³⁰ 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,³¹ which requires that FINRA rules be designed to assure a fair representation of FINRA's members in the administration of its affairs. The composition of the FINRA Board has previously been found to meet the statutory requirements, and FINRA believes that the proposed rule change will allow the representation of industry members, as well as public members, on the FINRA Regulation Board while enabling the FINRA Regulation Board to operate with a close connection to the FINRA Board. The remaining changes either conform to other changes made to the By-Laws or acknowledge current practices.

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

³⁰ 15 U.S.C. 78o-3(b)(6).

³¹ 15 U.S.C. 78o-3(b)(4).

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it find such longer period to be appropriate and published 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. Please include File Number SR-FINRA-2009-020 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-020. 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 a.m. and 3 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-2009-020 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.³²

Florence E. Harmon
Deputy Secretary

³² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

BY-LAWS OF FINRA REGULATION, INC.

* * * * *

ARTICLE IV

BOARD OF DIRECTORS

General Powers

Sec. 4.1 The property, business, and affairs of [NASD] FINRA Regulation shall be managed by or under the direction of the Board. The Board may exercise all such powers of [NASD] FINRA Regulation and have the authority to perform all such lawful acts as are permitted by law, the Restated Certificate of Incorporation, these By-Laws, or the Delegation Plan to assist [the NASD] FINRA in fulfilling its self-regulatory responsibilities as set forth in Section 15A of the Act, and to support such other initiatives as the Board may deem appropriate. To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.13 or to [NASD] FINRA Regulation staff in a manner not inconsistent with the Delegation Plan.

Number of Directors

Sec. 4.2 The Board shall consist of no fewer than five and no more than fifteen Directors, the exact number [to] of Board members will be determined by resolution adopted by the stockholder of [NASD] FINRA Regulation from time to time. Any new

Director position created as a result of an increase in the size of the Board shall be filled pursuant to Section 4.4.

Qualifications

Sec. 4.3 (a) [Directors need not be stockholders of NASD Regulation.] The Board shall consist exclusively of members of the FINRA Board. The number of [Non-Industry] Public Directors shall [equal or] exceed the number of Industry Directors. [The Board shall include the President] The Chairman of the FINRA Board and the [National Adjudicatory Council Chair, representatives of an issuer of investment company shares or an affiliate of such an issuer, and an insurance company or an affiliated NASD member. If the Board consists of 5–7 Directors, it shall include at least one Public Director. If the Board consists of eight to nine Directors, at least two Directors shall be Public Directors. If the Board consists of ten to twelve Directors, at least three Directors shall be Public Directors, and if the Board consists of thirteen to fifteen Directors, at least four shall be Public Directors. The] Chief Executive Officer of [the NASD] FINRA shall be [an] ex-officio non-voting members of the Board[, except where the person also serves as President of NASD Regulation, in which case the person shall have all powers, including voting powers, granted to all other Directors pursuant to applicable law, the Restated Certificate of Incorporation, the Delegation Plan and these By-Laws]. At least two, and not less than 20 %, of the Directors shall be Small Firm, Mid-Size Firm, or Large Firm Governors. The terms “Small Firm Governor,” “Mid-Size Firm Governor,” and “Large Firm Governor” are defined as specified in the FINRA By-Laws. Ex-officio non-voting members of the Board shall not be counted as Board members for purposes of this section.

(b) [As soon as practicable, following] Contemporaneous with the annual election of Directors, the [Board] stockholder of FINRA Regulation shall [elect] designate from [its members] the elected Directors a Chair and [a Vice Chair and] such other persons having such titles as it shall deem necessary or advisable to serve until the next annual election or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

Election

Sec. 4.4 Except as otherwise provided by law, these By-Laws, or the Delegation Plan, [after the first meeting of NASD Regulation at which] Directors [are elected, Directors] of [NASD] FINRA Regulation shall be elected each year at the annual meeting of the stockholder, or at a special meeting called for such purpose in lieu of the annual meeting. If the annual election of Directors is not held on the date designated therefor, the Directors shall cause such election to be held as soon thereafter as convenient.

Resignation

Sec. 4.5 Any Director may resign at any time either upon written notice of resignation to the Chair of the Board[, the President,] or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

Sec. 4.6 Any or all of the Directors may be removed from office at any time, with or without cause by the stockholder of FINRA Regulation[, only by a majority vote of the NASD Board].

Disqualification

Sec. 4.7 The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies the classification for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of the provisions of Section 4.3 requiring that the number of Public Directors exceed the number of Industry Directors by virtue of such vacancy and no violation of the provisions of Section 4.3 regarding the number of Small Firm, Mid-Size Firm, and Large Firm Governors shall be deemed to have occurred.

Filling of Vacancies

Sec. 4.8 If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the [National] Nominating Committee shall nominate, and the [NASD] FINRA Board shall [elect], by majority vote, cause the election of a person satisfying the [classification (Industry, Non-Industry, or Public Director)] qualifications for the directorship as provided in Section 4.3 to fill such

vacancy, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

Quorum and Voting

Sec. 4.9 (a) At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a quorum for the transaction of business shall consist of a majority of the Board, including not less than 50 percent of the [Non-Industry] Public Directors. In the absence of a quorum, a majority of the Directors present may adjourn the meeting until a quorum is present.

(b) [Except as provided in Section 4.14(b), t]The vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

Regulation

Sec. 4.10 The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of [NASD] FINRA Regulation not inconsistent with the law, the Restated Certificate of Incorporation, these By-Laws, the Rules of the [Association] Corporation, or the By-Laws of [the NASD] FINRA, as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected in relying in good faith upon the books of account or reports made to [NASD] FINRA Regulation by any of its officers, by an independent certified public accountant, by an appraiser selected with reasonable care by the Board or any committee of the Board or by any agent of [NASD] FINRA Regulation, or in relying in good faith upon other records of [NASD] FINRA Regulation.

Meetings

Sec. 4.11 (a) through (b) No Change.

(c) Special meetings of the Board may be called by the Chair of the Board[, by the President,] or by at least one-third of the Directors then in office. Notice of any special meeting of the Board shall be given to each Director in accordance with Section 4.12.

(d) No Change.

Notice of Meetings; Waiver of Notice

Sec. 4.12 (a) Notice of any meeting of the Board shall be deemed to be duly given to a Director if: (i) mailed to the address last made known in writing to [NASD] FINRA Regulation by such Director as the address to which such notices are to be sent, at least seven days before the day on which such meeting is to be held; (ii) sent to the Director at such address by [telegraph, telefax, cable, radio, or wireless,] electronic transmission not later than the day before the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day before the day on which such meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board need not be given to any Director if waived by that Director in writing [(]or by [telegram, telefax, cable, radio, or wireless and subsequently confirmed in writing)] electronic transmission whether before or after the holding of such meeting, or if such Director is present at such meeting, subject to Article XII, Section 12.3(b).

(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present thereat, subject to Article XII, Section 12.3(b) of these By-Laws.

Committees

Sec. 4.13 (a) No Change.

(b) The Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to [NASD] FINRA Regulation by [the NASD] FINRA under the Delegation Plan. Such delegations shall be in conformance with applicable law, the Restated Certificate of Incorporation, these By-Laws, and the Delegation Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the Board. In all other matters, the Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of [NASD] FINRA Regulation to the extent permitted by law and not inconsistent with the Delegation Plan. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee, may authorize the seal of [NASD] FINRA Regulation to be affixed to all papers that may require it.

(c) Except as otherwise permitted by applicable law, no committee shall have the power or authority of the Board with regard to: amending the Restated Certificate of Incorporation or the By-Laws of [NASD] FINRA Regulation; adopting an agreement of merger or consolidation; recommending to the stockholder the sale, lease, or exchange of

all or substantially all [NASD] FINRA Regulation's property and assets; or recommending to the stockholder a dissolution of [NASD] FINRA Regulation or a revocation of a dissolution. Unless the resolution of the Board expressly so provides, no committee shall have the power or authority to authorize the issuance of stock.

(d) through (e) No Change.

(f) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of [NASD] FINRA Regulation between meetings of the Board, and which may authorize the seal of [NASD] FINRA Regulation to be affixed to all papers that may require it. The Executive Committee shall consist of three or four Directors[, including at least one Public Director]. [The President of NASD Regulation shall be a member of the Executive Committee.] The number of [Non-Industry committee] Public [members] Directors shall [equal or] exceed the number of Industry [committee members] Directors. An Executive Committee member shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including not less than 50 percent of the [Non-Industry committee] Public [members] Directors. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

(g) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of [NASD] FINRA Regulation, including recommendations for [NASD] FINRA

Regulation's annual operating and capital budgets and proposed changes to the rates and fees charged by [NASD] FINRA Regulation. The Finance Committee shall consist of three or four Directors. [The President of NASD Regulation shall serve as a member of the Committee.] A Finance Committee member shall hold office for a term of one year.

(h) Upon request of the Secretary of [NASD] FINRA Regulation, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry[,], or Public [committee m]Member. The Secretary of [NASD] FINRA Regulation shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this Section at least annually and upon request of the Secretary of [NASD] FINRA Regulation, and shall report immediately to the Secretary any change in such classification.

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. 4.14 (a) A Director or a National Adjudicatory Council or committee member shall not directly or indirectly participate in any adjudication of the interests of any party if that Director or National Adjudicatory Council or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or National Adjudicatory Council or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the [Association] Corporation.

(b) No contract or transaction between [NASD] FINRA Regulation and one or more of its Directors or officers, or between [NASD] FINRA Regulation and any other

corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between [NASD] FINRA Regulation and [the NASD] FINRA or [NASD] FINRA Dispute Resolution.

Action Without Meeting

Sec. 4.15 Any action required or permitted to be taken at a meeting of the Board or of a committee may be taken without a meeting if all Directors or all members of such committee, as the case may be, consent thereto in [writing, and the writing or writings are filed] accordance with [the minutes of proceedings of the Board or the committee] applicable law.

Communication of Views Regarding Contested Election or Nomination

Sec. 4.16 No Change.

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ARTICLE VIII

DISTRICT COMMITTEES AND DISTRICT NOMINATING COMMITTEES

Sec. 8.1 through **Sec. 8.6** No Change.

Advisory Council

Sec. 8.7 [(a)] The Chairs of the District Committees, elected pursuant to Section 8.6, together with the Chair of the Market Regulation Committee shall constitute an Advisory Council to the Board.

[(b) The Advisory Council shall be advised of and entitled to attend such meetings of the Board as the Board may designate for such Advisory Council's attendance, and the Board shall designate at least one such meeting annually. The Advisory Council shall not be entitled to vote at meetings of the Board.]

Sec. 8.8 through **Sec. 8.33** No Change.

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ARTICLE XI

CAPITAL STOCK

Sole Stockholder

Sec. 11.1 [The NASD] FINRA shall be the sole stockholder of the capital stock of [NASD] FINRA Regulation.

Certificates

Sec. 11.2 The stockholder shall be entitled to a certificate or certificates in such form as shall be approved by the Board, certifying the number of shares of capital stock in [NASD] FINRA Regulation owned by the stockholder.

Signatures

Sec. 11.3 (a) Certificates [for] representing shares of capital stock of [NASD] FINRA Regulation shall be signed in the name of [NASD] FINRA Regulation by two officers with one being the [Chair of the Board, the] President[,], or a Vice President, and the other being the Secretary[,], or the Treasurer[,], or such other officer that may be authorized by the Board]. Such certificates may be sealed with the corporate seal of [NASD] FINRA Regulation or a facsimile thereof.

(b) [If any such certificates are countersigned by a transfer agent other than NASD Regulation or its employee, or by a registrar other than NASD Regulation or its employee, any other] Any signature on the certificate may be a facsimile. In the event that any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a stock certificate shall cease to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by [NASD] FINRA Regulation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Stock Ledger

Sec. 11.4 (a) A record of all certificates [for] representing capital stock issued by [NASD] FINRA Regulation shall be kept by the Secretary or any other officer, employee, or agent designated by the Board. Such record shall show the name and address of the

person, firm, or corporation in which certificates [for] representing capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates that have been canceled, the date of cancellation thereof.

(b) [NASD] FINRA Regulation shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. Except as otherwise required by applicable law, [NASD] FINRA Regulation shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not [NASD] FINRA Regulation shall have express or other notice thereof.

Transfers of Stock

Sec. 11.5 (a) The Board may make such rules and regulations as it may deem expedient, not inconsistent with law, the Restated Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of [certificates for] shares of capital stock of [NASD] FINRA Regulation. The Board may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates [for] representing capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of [NASD] FINRA Regulation only upon delivery to [NASD] FINRA Regulation or its transfer agent of: (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing; (ii) the certificate [for] representing the shares of

capital stock being transferred; and (iii) a written assignment of the shares of capital stock evidenced thereby.

Cancellation

Sec. 11.6 Each certificate [for] representing capital stock surrendered to [NASD] FINRA Regulation for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to Section 11.7 until such existing certificate shall have been canceled.

Lost, Stolen, Destroyed, and Mutilated Certificates

Sec. 11.7 In the event that any certificate [for] representing shares of capital stock of [NASD] FINRA Regulation shall be mutilated, [NASD] FINRA Regulation shall issue a new certificate in place of such mutilated certificate. In the event that any such certificate shall be lost, stolen, or destroyed [NASD] FINRA Regulation may, in the discretion of the Board or a committee appointed thereby with power so to act, issue a new certificate [for] representing shares of capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or such owner's representatives, to furnish to [NASD] FINRA Regulation a bond with an acceptable surety or sureties and in such sum as shall be sufficient to indemnify [NASD] FINRA Regulation against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the

issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board, it is proper to do so.

Fixing of Record Date

Sec. 11.8 No Change.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Sec. 12.1 through **Sec. 12.2** No Change.

Waiver of Notice

Sec. 12.3 (a) Whenever notice is required to be given by law, the Restated Certificate of Incorporation, or these By-Laws, a written waiver thereof, signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholder, Directors, or members of a committee of Directors need be specified in any written waiver of notice.

(b) No Change.

Sec. 12.4 through **Sec. 12.5** No Change.

SCHEDULE A TO THE FINRA REGULATION BY-LAWS

The number and territorial boundaries of the several districts established as provided in Article VIII, Section 8.1 are as follows:

District No. 1 State of Hawaii; in the State of California, the Counties of Monterey, San Benito, Fresno and Inyo, and the remainder of the State North or West of

such Counties; and in the State of Nevada, the Counties of Esmeralda and Nye, and the remainder of the State North or West of such Counties.

District No. 2 In the State of California, that part of the State South or East of the Counties of Monterey, San Benito, Fresno and Inyo; and, in the State of Nevada, that part of the State South or East of the Counties of Esmeralda and Nye, and all Pacific possessions and territories of the United States.

District No. 3 States of Alaska, Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington and Wyoming.

District No. 4 States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota.

District No. 5 States of Alabama, Arkansas, Louisiana, Mississippi, Oklahoma and Tennessee.

District No. 6 State of Texas.

District No. 7 States of Florida, Georgia, North Carolina, and South Carolina, Puerto Rico, Canal Zone and the Virgin Islands.

District No. 8 States of Illinois, Indiana, Kentucky, Michigan, Ohio and Wisconsin.

District No. 9 The District of Columbia, and the States of Delaware, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia, and New York (except for the five Boroughs of New York City and the Counties of Nassau and Suffolk).

District No. 10 In the State of New York, the five Boroughs of New York City and the Counties of Nassau and Suffolk.

District No. 11 States of Connecticut, Maine, Massachusetts, New Hampshire,
Rhode Island, and Vermont.

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BY-LAWS OF FINRA, INC.

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[SCHEDULE B TO THE FINRA REGULATION BY-LAWS

The number and territorial boundaries of the several districts established as provided in Article VIII, Section 8.1 are as follows:

District No. 1 State of Hawaii; in the State of California, the Counties of Monterey, San Benito, Fresno and Inyo, and the remainder of the State North or West of such Counties; and in the State of Nevada, the Counties of Esmeralda and Nye, and the remainder of the State North or West of such Counties.

District No. 2 In the State of California, that part of the State South or East of the Counties of Monterey, San Benito, Fresno and Inyo; and, in the State of Nevada, that part of the State South or East of the Counties of Esmeralda and Nye, and all Pacific possessions and territories of the United States.

District No. 3 States of Alaska, Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington and Wyoming.

District No. 4 States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota.

District No. 5 States of Alabama, Arkansas, Louisiana, Mississippi, Oklahoma and Tennessee.

District No. 6 State of Texas.

District No. 7 States of Florida, Georgia, North Carolina, and South Carolina, Puerto Rico, Canal Zone and the Virgin Islands.

District No. 8 States of Illinois, Indiana, Kentucky, Michigan, Ohio and Wisconsin.

District No. 9 The District of Columbia, and the States of Delaware, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia, and New York (except for the five Boroughs of New York City and the Counties of Nassau and Suffolk).

District No. 10 In the State of New York, the five Boroughs of New York City and the Counties of Nassau and Suffolk.

District No. 11 States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.]

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