

Required fields are shown with yellow backgrounds and asterisks.

Filing 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		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<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)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

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 action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to Amend the By-Laws of FINRA Regulation, Inc. to Align the Grounds for Removal of NAC Members with an Existing Provision in the FINRA By-Laws Related to the Removal of FINRA Governors.

**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 action.

First Name * <input type="text" value="Nicholas"/>	Last Name * <input type="text" value="Vitalo"/>
Title * <input type="text" value="Principal Counsel, Regulatory"/>	
E-mail * <input type="text" value="Nicholas.Vitalo@finra.org"/>	
Telephone * <input type="text" value="(646) 315-8474"/>	Fax <input type="text" value="(202) 728-8264"/>

**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.

(Title \*)

Date <input type="text" value="10/22/2020"/>	<input type="text" value="Vice President &amp; Associate General Counsel"/>
By <input type="text" value="Philip Shaikun"/>	<input type="text" value="Philip Shaikun, Philip.Shaikun@Finra.Org"/>

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 EFFF 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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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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, security-based swap submission, or advance notice 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**

Add Remove View

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 the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the By-Laws of FINRA Regulation, Inc. (“FINRA Regulation”), FINRA’s regulatory subsidiary, to further align the grounds for member removal from the National Adjudicatory Council (“NAC”) with an existing provision in the FINRA By-Laws related to the removal of a FINRA Governor from the FINRA Board of Governors (“FINRA Board”).<sup>2</sup>

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 V NATIONAL ADJUDICATORY COUNCIL**

\* \* \* \* \*

**Removal**

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

<sup>2</sup> In 2008, the FINRA Regulation By-Laws were amended to, among other things, designate the FINRA Board as the body authorized to oversee the NAC and empowered to remove NAC members for refusal, failure, neglect, or inability to discharge duties. See Securities Exchange Act Release No. 58909 (November 6, 2008), 73 FR 68467 (November 18, 2008) (Order Approving File No. SR-FINRA-2008-046). Under the FINRA By-Laws, members of the FINRA Board can be removed under the same grounds, plus an additional ground. See infra note 7.

**Sec. 5.8** Any or all of the members of the National Adjudicatory Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office, or for any cause affecting the best interests of the National Adjudicatory Council the sufficiency of which the FINRA Board shall be the sole judge, by majority vote of the FINRA Board.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The 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.

If the Commission approves the proposed rule change, the effective date of the proposed rule change will be the date of Commission approval.

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

(a) Purpose

FINRA Regulation is the regulatory subsidiary of FINRA and operates according to the Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries (the "Plan").<sup>3</sup> The FINRA Regulation By-Laws authorize the NAC to function on behalf of the FINRA Board in several capacities.<sup>4</sup> For example, the NAC presides over disciplinary matters appealed to or called for review by the NAC; acts on applications in

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<sup>3</sup> See Plan, II. FINRA Regulation, Inc., <https://www.finra.org/rules-guidance/rulebooks/corporate-organization/ii-finra-regulation-inc>.

<sup>4</sup> See Article V, Sec. 5.1 of the FINRA Regulation By-Laws.

statutory disqualification and membership proceedings; exercises exemptive authority; and acts in other proceedings as set forth in the FINRA Rule 9000 Series (Code of Procedure). The FINRA Board may also delegate other powers and duties to the NAC as the FINRA Board deems appropriate and in a manner not inconsistent with the Plan.<sup>5</sup> For most matters that the NAC considers, the NAC prepares proposed written decisions that become final FINRA action if the FINRA Board does not call them for review.

FINRA periodically reviews its and FINRA Regulation's By-Laws to ensure adherence to effective governance practices. The FINRA Regulation By-Laws currently permit the FINRA Board to remove "any or all members" of the NAC from office at any time for refusal, failure, neglect, or inability to discharge the duties of the office.<sup>6</sup> By comparison, the FINRA By-Laws include those grounds for removal of a Governor from the FINRA Board plus an additional ground allowing for removal for any cause affecting the best interests of FINRA the sufficiency of which the FINRA Board shall be the sole judge.<sup>7</sup> The proposed rule change would amend Article V, Section 5.8 of the FINRA Regulation By-Laws to align the bases for removal of a member of the NAC in the FINRA Regulation By-Laws with those of the FINRA By-Laws for removal of a Governor. Specifically, the proposed rule change would provide that a NAC member could be removed by a majority vote of the FINRA Board for any cause affecting the best interests of the NAC, the sufficiency of which the FINRA Board shall be the sole judge.

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<sup>5</sup> See supra note 4.

<sup>6</sup> See Article V, Section 5.8 of the FINRA Regulation By-Laws.

<sup>7</sup> See Article VII, Section 1(b) of the FINRA By-Laws.

FINRA notes that the voting threshold for removal of a NAC member differs from that of a Governor. The former requires a majority vote of the FINRA Board, while the latter requires a two-thirds vote.<sup>8</sup> The higher voting threshold for removal of a Governor reflects the historical standard that existed at the National Association of Securities Dealers (“NASD”) prior to its 2007 merger with the member regulation, enforcement and arbitration operations of the New York Stock Exchange (“NYSE”) that formed FINRA, and provides an additional safeguard at the FINRA Board level to ensure a diverse, majority non-industry composition, and fair representation of the industry in governance matters.<sup>9</sup>

Given the NAC’s adjudicatory role, the best interests of the NAC are more targeted than the best interests of FINRA. The best interests of the NAC are reflected in conduct and attributes that ensure that the NAC remains an unbiased and competent adjudicatory body that is free of conflicts of interest, that its members conduct themselves with integrity, and that its decisions are rendered fairly and consistently with the law and rules that govern FINRA members and their associated persons. In considering whether

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<sup>8</sup> Both FINRA and FINRA Regulation are corporations organized under Delaware law. The Delaware General Corporation Law provides that, in general, directors may be removed by a majority vote of the shares then entitled to vote at an election of directors. See Del. Code Ann. tit. 8, § 141(k). While the standard for removal of NAC members is not directly subject to the Delaware General Corporation Law, FINRA has adopted a removal threshold for NAC members that is consistent with the removal threshold for directors under the Delaware Corporation Law.

<sup>9</sup> The FINRA Regulation By-Laws addressing the composition of the NAC also provide for a diverse, majority non-industry composition, and for the fair representation of industry. See Article V, Section 5.2(a) of the FINRA Regulation By-Laws; See also Securities Exchange Act Release No. 78094 (June 17, 2016), 81 FR 40932, 40934-35 (June 23, 2016).

to remove a NAC member for a cause affecting the best interests of the NAC, the FINRA Board may consider, among other things, a NAC member's adherence to general standards concerning actual and apparent adjudicator conflicts of interest and bias,<sup>10</sup> and to the NAC's Conflict of Interest and Bias Policy ("Policy"). The Policy sets forth broad-based principles of behavior that are expected from NAC members.<sup>11</sup> Removal of a NAC member from office is a facts and circumstances determination. The additional removal authority provided in the proposed rule change may, depending on the facts and circumstances, overlap in part with the FINRA Board's existing authority to remove a NAC member. However, depending on the facts and circumstances, it may also provide an additional basis for removal for a cause affecting the best interests of the NAC that does not fall within the scope of the FINRA Board's current removal authority.

In order to balance the NAC's ability to perform certain actions on behalf of FINRA<sup>12</sup> with the FINRA Board's authority to review such actions,<sup>13</sup> FINRA believes that it is reasonable and appropriate to amend the FINRA Regulation By-Laws to align the grounds under which members of the NAC and FINRA Board can be removed. In doing so, the proposed rule change will strengthen the FINRA Board's oversight of the

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<sup>10</sup> See, e.g., Article IV, Section 4.14(a) of the FINRA Regulation By-Laws.

<sup>11</sup> The principles outlined in the Policy are Independence, Impartiality, Integrity, Accountability and Transparency; and place upon NAC adjudicators the responsibility for recognizing and reporting actual and apparent conflicts of interest and bias.

<sup>12</sup> See supra note 4.

<sup>13</sup> See Plan, I(B). FINRA, Inc., <https://www.finra.org/rules-guidance/rulebooks/corporate-organization/i-finra-inc>.

NAC and benefit the appellate portion of FINRA's disciplinary process, in which the NAC prepares the decision that becomes FINRA's final action in the vast majority of cases.

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, the effective date of the proposed rule change will be the date of 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,<sup>14</sup> 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, which requires, among other things, that FINRA rules be designed to assure a fair representation of FINRA's members in the administration of its affairs.<sup>15</sup> FINRA believes the proposed By-Laws change will strengthen its governance practices by aligning grounds for removal of NAC members with those of the FINRA Governors. The FINRA By-Law provision that allows for the Board's direct ability to remove a Governor for any cause affecting the best interests of FINRA existed in the By-Laws of the NASD prior to its 2007 merger with the NYSE, and was also a part of the By-Laws that were previously found to meet the statutory requirement when the NASD merged with the member regulation, enforcement and

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<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

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



arbitration operations of the NYSE to form FINRA.<sup>16</sup> FINRA believes applying the same standard to removal of NAC members will support a fair and impartial disciplinary process for members and their associated persons. FINRA further believes that the proposed rule change will strengthen investor protection and further the public interest by bolstering the integrity of the NAC and strengthening existing FINRA Regulation By-Laws that foster a framework in which NAC members may perform their duties free from bias or conflicts of interest. In addition, FINRA believes that the proposed rule change furthers FINRA's ability to assure a fair representation of FINRA members on the NAC by enhancing the FINRA Board's ability to remove NAC members for conduct that might hamper the NAC's adjudicatory function.

**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. FINRA has evaluated the potential for economic impacts associated with the proposed rule change and determined that no material costs or benefits were likely to arise. The proposed rule change would not require member firms or other persons appearing before the NAC to incur any direct costs or change their behaviors in any way. All potential actions taken pursuant to the proposed rule change would be taken by the FINRA Board. Further, FINRA's other By-Law provisions remain unchanged, so the proposed rule change will have no material impact on fair process to litigants.

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<sup>16</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) (Order Approving File No. SR-NASD-2007-023).

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.<sup>17</sup>

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

Not applicable.

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

Not applicable.

9. **Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

10. **Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

11. **Exhibits**

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

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<sup>17</sup> 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2020-037)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend the By-Laws of FINRA Regulation, Inc. to Align the Grounds for Member Removal from the NAC with an Existing Provision in the FINRA By-Laws

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend the By-Laws of FINRA Regulation, Inc. (“FINRA Regulation”), FINRA’s regulatory subsidiary, to further align the grounds for member removal from the National Adjudicatory Council (“NAC”) with an existing provision in the FINRA By-Laws related to the removal of a FINRA Governor from the FINRA Board of Governors (“FINRA Board”).<sup>3</sup>

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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> In 2008, the FINRA Regulation By-Laws were amended to, among other things, designate the FINRA Board as the body authorized to oversee the NAC and empowered to remove NAC members for refusal, failure, neglect, or inability to discharge duties. See Securities Exchange Act Release No. 58909 (November 6,

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

\* \* \* \* \*

**BY-LAWS OF FINRA REGULATION, INC.**

\* \* \* \* \*

**ARTICLE V NATIONAL ADJUDICATORY COUNCIL**

\* \* \* \* \*

**Removal**

**Sec. 5.8** Any or all of the members of the National Adjudicatory Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office, or for any cause affecting the best interests of the National Adjudicatory Council the sufficiency of which the FINRA Board shall be the sole judge, by majority vote of the FINRA Board.

\* \* \* \* \*

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.

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2008), 73 FR 68467 (November 18, 2008) (Order Approving File No. SR-FINRA-2008-046). Under the FINRA By-Laws, members of the FINRA Board can be removed under the same grounds, plus an additional ground. See infra note 8.

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

1. Purpose

FINRA Regulation is the regulatory subsidiary of FINRA and operates according to the Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries (the “Plan”).<sup>4</sup> The FINRA Regulation By-Laws authorize the NAC to function on behalf of the FINRA Board in several capacities.<sup>5</sup> For example, the NAC presides over disciplinary matters appealed to or called for review by the NAC; acts on applications in statutory disqualification and membership proceedings; exercises exemptive authority; and acts in other proceedings as set forth in the FINRA Rule 9000 Series (Code of Procedure). The FINRA Board may also delegate other powers and duties to the NAC as the FINRA Board deems appropriate and in a manner not inconsistent with the Plan.<sup>6</sup> For most matters that the NAC considers, the NAC prepares proposed written decisions that become final FINRA action if the FINRA Board does not call them for review.

FINRA periodically reviews its and FINRA Regulation’s By-Laws to ensure adherence to effective governance practices. The FINRA Regulation By-Laws currently permit the FINRA Board to remove “any or all members” of the NAC from office at any time for refusal, failure, neglect, or inability to discharge the duties of the office.<sup>7</sup> By comparison, the FINRA By-Laws include those grounds for removal of a Governor from

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<sup>4</sup> See Plan, II. FINRA Regulation, Inc., <https://www.finra.org/rules-guidance/rulebooks/corporate-organization/ii-finra-regulation-inc>.

<sup>5</sup> See Article V, Sec. 5.1 of the FINRA Regulation By-Laws.

<sup>6</sup> See supra note 5.

<sup>7</sup> See Article V, Section 5.8 of the FINRA Regulation By-Laws.

the FINRA Board plus an additional ground allowing for removal for any cause affecting the best interests of FINRA the sufficiency of which the FINRA Board shall be the sole judge.<sup>8</sup> The proposed rule change would amend Article V, Section 5.8 of the FINRA Regulation By-Laws to align the bases for removal of a member of the NAC in the FINRA Regulation By-Laws with those of the FINRA By-Laws for removal of a Governor. Specifically, the proposed rule change would provide that a NAC member could be removed by a majority vote of the FINRA Board for any cause affecting the best interests of the NAC, the sufficiency of which the FINRA Board shall be the sole judge.

FINRA notes that the voting threshold for removal of a NAC member differs from that of a Governor. The former requires a majority vote of the FINRA Board, while the latter requires a two-thirds vote.<sup>9</sup> The higher voting threshold for removal of a Governor reflects the historical standard that existed at the National Association of Securities Dealers (“NASD”) prior to its 2007 merger with the member regulation, enforcement and arbitration operations of the New York Stock Exchange (“NYSE”) that formed FINRA, and provides an additional safeguard at the FINRA Board level to ensure

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<sup>8</sup> See Article VII, Section 1(b) of the FINRA By-Laws.

<sup>9</sup> Both FINRA and FINRA Regulation are corporations organized under Delaware law. The Delaware General Corporation Law provides that, in general, directors may be removed by a majority vote of the shares then entitled to vote at an election of directors. See Del. Code Ann. tit. 8, § 141(k). While the standard for removal of NAC members is not directly subject to the Delaware General Corporation Law, FINRA has adopted a removal threshold for NAC members that is consistent with the removal threshold for directors under the Delaware Corporation Law.

a diverse, majority non-industry composition, and fair representation of the industry in governance matters.<sup>10</sup>

Given the NAC's adjudicatory role, the best interests of the NAC are more targeted than the best interests of FINRA. The best interests of the NAC are reflected in conduct and attributes that ensure that the NAC remains an unbiased and competent adjudicatory body that is free of conflicts of interest, that its members conduct themselves with integrity, and that its decisions are rendered fairly and consistently with the law and rules that govern FINRA members and their associated persons. In considering whether to remove a NAC member for a cause affecting the best interests of the NAC, the FINRA Board may consider, among other things, a NAC member's adherence to general standards concerning actual and apparent adjudicator conflicts of interest and bias,<sup>11</sup> and to the NAC's Conflict of Interest and Bias Policy ("Policy"). The Policy sets forth broad-based principles of behavior that are expected from NAC members.<sup>12</sup> Removal of a NAC member from office is a facts and circumstances determination. The additional removal authority provided in the proposed rule change may, depending on the facts and circumstances, overlap in part with the FINRA Board's existing authority to remove a

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<sup>10</sup> The FINRA Regulation By-Laws addressing the composition of the NAC also provide for a diverse, majority non-industry composition, and for the fair representation of industry. See Article V, Section 5.2(a) of the FINRA Regulation By-Laws; See also Securities Exchange Act Release No. 78094 (June 17, 2016), 81 FR 40932, 40934-35 (June 23, 2016).

<sup>11</sup> See, e.g., Article IV, Section 4.14(a) of the FINRA Regulation By-Laws.

<sup>12</sup> The principles outlined in the Policy are Independence, Impartiality, Integrity, Accountability and Transparency; and place upon NAC adjudicators the responsibility for recognizing and reporting actual and apparent conflicts of interest and bias.

NAC member. However, depending on the facts and circumstances, it may also provide an additional basis for removal for a cause affecting the best interests of the NAC that does not fall within the scope of the FINRA Board's current removal authority.

In order to balance the NAC's ability to perform certain actions on behalf of FINRA<sup>13</sup> with the FINRA Board's authority to review such actions,<sup>14</sup> FINRA believes that it is reasonable and appropriate to amend the FINRA Regulation By-Laws to align the grounds under which members of the NAC and FINRA Board can be removed. In doing so, the proposed rule change will strengthen the FINRA Board's oversight of the NAC and benefit the appellate portion of FINRA's disciplinary process, in which the NAC prepares the decision that becomes FINRA's final action in the vast majority of cases.

If the Commission approves the proposed rule change, the effective date of the proposed rule change will be the date of 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,<sup>15</sup> 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, which requires, among other things, that

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<sup>13</sup> See supra note 5.

<sup>14</sup> See Plan, I(B). FINRA, Inc., <https://www.finra.org/rules-guidance/rulebooks/corporate-organization/i-finra-inc>.

<sup>15</sup> 15 U.S.C. 78q-3(b)(6).



FINRA rules be designed to assure a fair representation of FINRA's members in the administration of its affairs.<sup>16</sup> FINRA believes the proposed By-Laws change will strengthen its governance practices by aligning grounds for removal of NAC members with those of the FINRA Governors. The FINRA By-Law provision that allows for the Board's direct ability to remove a Governor for any cause affecting the best interests of FINRA existed in the By-Laws of the NASD prior to its 2007 merger with the NYSE, and was also a part of the By-Laws that were previously found to meet the statutory requirement when the NASD merged with the member regulation, enforcement and arbitration operations of the NYSE to form FINRA.<sup>17</sup> FINRA believes applying the same standard to removal of NAC members will support a fair and impartial disciplinary process for members and their associated persons. FINRA further believes that the proposed rule change will strengthen investor protection and further the public interest by bolstering the integrity of the NAC and strengthening existing FINRA Regulation By-Laws that foster a framework in which NAC members may perform their duties free from bias or conflicts of interest. In addition, FINRA believes that the proposed rule change furthers FINRA's ability to assure a fair representation of FINRA members on the NAC by enhancing the FINRA Board's ability to remove NAC members for conduct that might hamper the NAC's adjudicatory function.

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<sup>16</sup> 15 U.S.C. 78o-3(b)(4).

<sup>17</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) (Order Approving File No. SR-NASD-2007-023).

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA has evaluated the potential for economic impacts associated with the proposed rule change and determined that no material costs or benefits were likely to arise. The proposed rule change would not require member firms or other persons appearing before the NAC to incur any direct costs or change their behaviors in any way. All potential actions taken pursuant to the proposed rule change would be taken by the FINRA Board. Further, FINRA's other By-Law provisions remain unchanged, so the proposed rule change will have no material impact on fair process to litigants.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2020-037 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2020-037. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2020-037 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>18</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).