

Regulatory Notice

10-32

Dispute Resolution By-Laws

SEC Approves Amendments to FINRA Dispute Resolution By-Laws

Effective Date: August 2, 2010

Executive Summary

Effective August 2, 2010, the Board composition and governance structure of FINRA Dispute Resolution, Inc. (a subsidiary of FINRA) will more closely parallel the composition and governance structure of the FINRA, Inc. Board of Governors (FINRA Board).¹ The revisions to the FINRA Dispute Resolution, Inc. By-Laws (By-Laws) also reflect current business and legal practices concerning the administration of FINRA Dispute Resolution. In addition, the revisions make non-substantive or conforming changes to the By-Laws, including updates to reflect the corporate name change. The revised By-Laws are available at www.finra.org/finramanual/drbylaws.

Questions concerning this *Notice* should be directed to Kenneth L. Andrichik, senior vice president, chief counsel and director of Mediation and Strategy, Dispute Resolution, at (212) 858-3915 or ken.andrichik@finra.org.

Background and Discussion

On July 30, 2007, NASD and the New York Stock Exchange consolidated their member regulation, enforcement, and arbitration functions and became FINRA. As part of the consolidation, the Securities and Exchange Commission (SEC) approved amendments to the NASD By-Laws to implement governance and related changes,² including a FINRA Board governance structure that balances public and industry representation. At the time of the consolidation, the By-Laws of FINRA Dispute Resolution, a subsidiary of FINRA, were not amended.

July 2010

Notice Type

- Rule Amendment

Suggested Routing

- Legal
- Senior Management

Key Topics

- By-Laws
- Dispute Resolution

Referenced Rules & Notices

- FINRA Dispute Resolution By-Laws

On May 24, 2010, the SEC approved amendments to the FINRA Dispute Resolution By-Laws that:

- modify the composition of the FINRA Dispute Resolution Board;
- conform the FINRA Dispute Resolution By-Laws to the FINRA By-Laws; and
- reflect the corporate name change and other similar matters.

These changes complete the process of updating the By-Laws to reflect the consolidation and harmonize them with the FINRA By-Laws. The changes are effective August 2, 2010.

Revisions to FINRA Dispute Resolution By-Laws

The FINRA Dispute Resolution By-Laws, as revised, will more closely parallel the composition and governance structure of the FINRA Board, reflect current business and legal practices concerning the administration of FINRA Dispute Resolution and make non-substantive or conforming changes.

For example, FINRA amended the definitions of “broker” and “dealer” in Article I of the By-Laws to conform them to the definitions of “broker” and “dealer” in the Exchange Act, as amended by the Gramm-Leach-Bliley Act of 1999.³ FINRA is incorporating by reference the definitions of the terms “broker” and “dealer” as set forth in Sections 3(a)(4) and 3(a)(5), respectively, of the Exchange Act.⁴

FINRA amended Article IV, Section 4.3(a), of the By-Laws to reflect FINRA’s current governance structure and establish that FINRA Dispute Resolution Board members will be drawn exclusively from the FINRA Board. FINRA also amended Section 4.3(a) to streamline the composition of FINRA Dispute Resolution’s Board and implement a requirement that it contain more public directors⁵ than industry directors.⁶

To that end, FINRA amended Section 4.13 to remove the requirement that an executive committee of the FINRA Dispute Resolution Board include at least one public director, and institute the requirement that public directors must exceed industry directors on a FINRA Dispute Resolution Executive Committee of the Board.⁷

FINRA is also making certain other non-substantive changes to all articles of the FINRA Dispute Resolution By-Laws, including replacing the terms “the NASD” or “NASD” with “FINRA” or “the Corporation,” and changing the name of the dispute resolution subsidiary from “NASD Dispute Resolution” to “FINRA Dispute Resolution, Inc.”

The amendments become effective August 2, 2010.

Endnotes

- 1 See Exchange Act Rel. No. 62156 (May 24, 2010), 75 FR 30453 (June 1, 2010) (SEC Order Approving File No. SR-FINRA-2010-007).
- 2 See Exchange Act Rel. No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007), as amended by Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (File No. SR-NASD-2007-023).
- 3 Pub. L. 106-102, 113 Stat. 1338 (1999).
- 4 15 U.S.C. 78c(a)(4) and (a)(5).
- 5 A public director is a director of the Board who is not an industry director and who otherwise has no material business relationship with a broker or dealer or a self-regulatory organization registered under the Act (other than serving as a public director of such a self-regulatory organization). See FINRA Dispute Resolution By-Laws, Article I, Definitions (x).
- 6 An industry director is a director of the Board (other than the chairman of the FINRA Board and the chief executive officer of FINRA) who: (1) is or has served in the prior year as an officer, director (other than as an independent director), employee or controlling person of a broker or dealer, or (2) has a consulting or employment relationship with or provides professional services to a self-regulatory organization registered under the Act, or has had any such relationship or provided any such services at any time within the prior year. See FINRA Dispute Resolution By-Laws, Article I, Definitions (r).
- 7 See Article IV, §4.12(f) (Executive Committee).