

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2008 - 046

Amendment No.

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

Initial ☒ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☒ Section 19(b)(3)(A) ☐ Section 19(b)(3)(B) ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐Exhibit 3 Sent As Paper Document ☐**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to amend the By-Laws of FINRA Regulation 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.

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 Last Name
Title
E-mail
Telephone Fax

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 By
(Name)

(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 EDFS 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 realign the representation of industry members on the National Adjudicatory Council (“NAC”) to follow more closely the industry representation on the FINRA Board of Governors (“FINRA Board”), to eliminate the Regional Nominating Committees, to transfer such committees’ responsibilities for NAC industry appointments to the FINRA Nominating Committee (“Nominating Committee”), and to change the name of “NASD Regulation” and “NASD” to “FINRA Regulation ” and “FINRA” respectively.

The text of the proposed rule change is attached as Exhibit 5.²

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on July 17, 2008, the FINRA Board authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing

¹ 15 U.S.C. 78s(b)(1).

² Exhibit 5 reflects proposed changes to the FINRA Regulation By-Laws and, if new numbering resulted from the proposed revisions, the revised section numbers are underlined. Renumbered sections are referred to as “proposed FINRA Regulation By-Laws.” All other sections (that is, sections for which new numbering did not result from the proposed revisions) are referred to as “current FINRA Regulation By-Laws.”

of 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

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 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.

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).

The proposed rule change would modify the FINRA Regulation By-Laws to: restructure the industry representation on the NAC to parallel the firm-size criteria for industry representation on the FINRA Board; modify the nomination process for certain industry member seats on the NAC by using the Nominating Committee and discontinuing the Regional Nominating Committees; and adopt conforming changes to reflect the corporate name change and similar matters.

The National Adjudicatory Council

The NAC is appointed pursuant to the FINRA Regulation By-Laws to review all disciplinary decisions issued by Hearing Panels and presides over disciplinary matters that have been appealed to or called for review by the NAC. The NAC also reviews statutory disqualification matters and considers appeals of membership proceedings and exemption requests.⁴

Under current FINRA Regulation By-Law provisions, the NAC must consist of no fewer than 12 and no more than 14 members.⁵ The number of non-industry members, including at least three public members, must equal or exceed the number of industry

⁴ See current FINRA Regulation By-Laws, Article V, Section 5.1 (Appointment and Authority).

⁵ The 2008 NAC consists of 14 members, and the NAC has had no fewer than 14 members consistently for many years. To reflect past practices, the proposed rule change would eliminate the 12 to 14 member range currently indicated in the FINRA Regulation By-Laws and state instead that the NAC shall consist of 14 members, divided equally between industry and non-industry. The proposal would eliminate the concept of non-industry members exceeding industry members and state simply that non-industry NAC members will equal industry NAC members. Given that the population of the NAC will be 14, its balanced nature can be achieved with an equal industry/non-industry composition.

members.⁶ Since 1999, each of five geographic regions, which had been established by the NASD Board of Governors, has been represented on the NAC. Non-industry members of the NAC and two “at-large” industry members currently are nominated to serve on the NAC by the Nominating Committee and then appointed by the FINRA Regulation Board.⁷ The five industry members of the NAC who are drawn from the five geographic regions are first selected through Regional Nominating Committees (through either an uncontested or a contested nomination process), then nominated by the Nominating Committee, and finally appointed by the FINRA Regulation Board.

Discussion of Changes to the NAC Election Process

The proposed rule change would amend Article I (Definitions), Article V (National Adjudicatory Council), and Article VI (National Adjudicatory Council Regional Nominations for Industry Members) of the FINRA Regulation By-Laws to replace the current regionally based approach for appointing industry representatives to the NAC with a process that is based on firm size and is similar to the FINRA Board’s approach.⁸ The NAC’s regionally based election process is a legacy NASD practice that

⁶ See current FINRA Regulation By-Laws, Article V, Section 5.2 (Number of Members and Qualifications).

⁷ Consistent with Article V of the FINRA Regulation By-Laws, the current 14-member NAC includes seven industry and seven non-industry members. Five of the industry NAC members represent the five geographic regions. The remaining two industry seats are “at-large” seats, which NASD historically used and FINRA currently uses to add balance to the types of firms being represented on the NAC.

⁸ The FINRA Board consists of eleven Public Governors (who are appointed), ten Industry Governors (seven of whom are elected by industry members), the current Chief Executive Officer (“CEO”) of NYSE Regulation, and the current CEO of FINRA. The ten Industry Governors include: (a) three elected Governors who are registered with member firms that employ 500 or more registered persons (Large Firm Governors); (b) one elected Governor who is registered with a member firm

no longer parallels the governance structure of the FINRA Board. The proposed rule change would replace the five regionally based industry members of the NAC with two small firm, one mid-size firm, and two large firm industry representatives. The make-up of the NAC under the proposed rule change would follow more closely the current make-up of the FINRA Board.

The restructured NAC would therefore consist of 14 members, including seven industry members, two of whom are “at large” and five of whom are designated specifically as representatives of large firms, mid-size firms, and small firms, and seven non-industry members, three of whom are public.⁹ The tenure of NAC members is generally three years and the terms of the NAC members are staggered. The proposal would not disrupt the process of approximately one-third of the NAC members completing their service in a particular year and being replaced with newly appointed NAC members. The proposal would result in a Small Firm and a Large Firm NAC Member joining the NAC near the beginning of 2009; a Mid-Sized Firm NAC Member joining in 2010; and a Small Firm and Large Firm NAC Member joining in 2011. The proposed selection process would allow for the service of NAC members with

that employs at least 151 and no more than 499 registered persons (Mid-Size Firm Governor); (c) three elected Governors who are registered with member firms that employ at least one and no more than 150 registered persons (Small Firm Governors); (d) one appointed Governor who is associated with a floor member of the New York Stock Exchange; (e) one appointed Governor who is associated with an independent contractor financial planning member firm or an insurance company affiliate; and (f) one appointed Governor who is associated with an affiliate of an investment company. See FINRA By-Laws, Article VII (Board of Governors).

⁹ A public member of the NAC has no material business relationship with a broker or dealer or a self-regulatory organization registered under the Act.

knowledge, impartiality, and judicial temperament, while maintaining the same level of indirect representation of FINRA's membership.

In conjunction with eliminating the regionally based criteria for identifying industry NAC members, the proposed rule change also would simplify the NAC appointment process for industry representatives and follow more closely the procedures for electing industry members of the FINRA Board. The process proposed would eliminate the five Regional Nominating Committees and have the Nominating Committee perform their functions instead. Rather than relying on Regional Nominating Committees to first identify possible industry candidates before submission of the candidates to the Nominating Committee and the FINRA Regulation Board, the Nominating Committee would identify and solicit candidates for all NAC seats, including the five industry-member positions that are based on firm size.¹⁰ The Nominating Committee would be free to consult with or receive recommendations for industry NAC members from other FINRA committees, such as the District Nominating Committees, before communicating its nominations to the FINRA Board.

The proposed rule change would continue the current process of allowing individuals who seek to serve on the NAC but were not nominated, known as additional candidates, to gather petitions in support of their candidacy and potentially compete in a contested election. Additional candidates would petition to be considered as Small, Mid-Size, or Large Firm NAC Members based on the size of the firm with which they are registered.

¹⁰ See proposed FINRA Regulation By-Laws, Article V, Section 5.3 (Appointments).

Under the proposal, additional candidates would be able to qualify for a contested election by gathering petitions from three percent of the firms in their size category, which is lower than the ten percent requirement additional candidates currently need to gather when they seek to qualify for a regional NAC seat.¹¹ In the event of a contested election, FINRA members would have an opportunity to vote for a NAC candidate based on firm size.¹² Specifically, small, mid-size, or large firms would vote for NAC candidates only if the contested election was for a NAC seat designated for a firm of corresponding size.

The proposed rule change would ensure that the winner of a contested election serves on the NAC. While all NAC members would continue to be recommended initially by the Nominating Committee and appointed by the FINRA Board,¹³ the candidate who receives the most votes in any contested election for a Small, Mid-Size, or Large Firm NAC Member seat would be required under the FINRA Regulation By-Laws to be appointed to the NAC.¹⁴ The current By-Law section that discusses the procedure in the event that the Regional Nominating Committee's nominee is rejected by the National Nominating Committee would accordingly be deleted. The proposal would not

¹¹ Compare current FINRA Regulation By-Laws, Article VI, Section 6.15 (Requirement for Petition Supporting Additional Candidate) with proposed FINRA Regulation By-Laws, Article VI, Section 6.2 (Designation of Additional Candidates).

¹² See proposed FINRA Regulation By-Laws, Article VI, Section 6.3 (List of FINRA Members Eligible to Vote) and Article VI, Section 6.7 (Ballots).

¹³ The seven non-industry members and two at-large industry members would continue to follow the nomination and Board appointment process currently employed for non-industry and at-large industry NAC members.

change the NAC selection process if no additional candidates reach the threshold to qualify for a contested election. As in the past when there are no additional candidates, the industry NAC members selected by the Nominating Committee would not have a contested election and would be recommended for appointment to the NAC.¹⁵

To verify that a NAC nominee or candidate would satisfy the definition of an Industry, Small Firm, Mid-Sized Firm, Large Firm, Non-Industry, or Public Member of the NAC, the proposed rule change would authorize the FINRA Secretary to collect information from candidates as is reasonably necessary to serve as the basis for such a determination.¹⁶

The proposed rule change would modify slightly the provision that restricts NAC members and certain committees from communicating in an official capacity in support of a candidate in a contested election. The current rules, which permit individuals who are Directors or NAC or other committee members to communicate their views regarding a candidate in an individual capacity, would remain the same. The modification would specify the narrow circumstances under which the Nominating Committee may support

¹⁴ See proposed FINRA Regulation By-Laws, Article V, Section 5.3 (Appointments) and 5.5 (Rejection of Nominating Committee Nominee).

¹⁵ The proposed FINRA Regulation By-Laws retain the possibility that the Nominating Committee could propose two or more candidates for a single open small, mid-size, or large firm NAC seat. See proposed FINRA Regulation By-Laws, Article VI, Section 6.5 (Notice of Contested Nomination). In such a case, there would be a contested election. The proposed rule change would clarify that only when the Nominating Committee nominates two or more candidates for the same open seat would the Nominating Committee trigger a contested election.

¹⁶ See proposed FINRA Regulation By-Laws, Article V, Section 5.4 (Nomination Process).

its candidate by sending a maximum of two mailings in support of its nominee.¹⁷ The proposal would clarify that this limited support is available during contested NAC elections by referring to support allowed “under these By-Laws,” which includes the support allowed under Article IV, Section 4.16.¹⁸

The proposed rule change would designate the Secretary of FINRA, instead of the FINRA Regulation Secretary, as the person who would send notice to FINRA members announcing a contested NAC election; assist in preparing ballots; prepare a list of FINRA members eligible to vote; arrange for the location for counting of ballots by an independent agent; resolve ballots that were set aside, if necessary; extend a time period regarding elections for good cause; and similar duties.¹⁹ The proposal designates the FINRA Secretary because this office fulfills the same role when FINRA holds elections for the Board of Governors.

As a result of the NAC’s restructuring, FINRA would continue to promote fair representation of its members because seven of the NAC seats will be drawn from members of the industry and the industry candidates for five of those seats will be

¹⁷ See proposed FINRA Regulation By-Laws, Article IV, Section 4.16(b) (Communication of Views Regarding Contested Election or Nomination). Section 4.16(b) would also mirror the language of the FINRA By-Law provision that allows, in contested elections, the appropriate FINRA committee to communicate a responsive message in reply to an additional candidate's communication. See FINRA By-Laws, Article VII, Section 11(b) (Communication of Views).

¹⁸ See proposed FINRA Regulation By-Laws, Article VI, Section 6.6 (Administrative Support).

¹⁹ See proposed FINRA Regulation By-Laws, Article VI, Sections 6.5, 6.7, 6.8, 6.10, 6.11, 6.13, and 6.14.

announced to the membership and are subject to a potential election by member firms of a similar size.

In addition, the rule change would indicate in proposed Article V, Section 5.10 (Filling of Vacancies) that the NAC may continue to function while FINRA fills a vacancy on the NAC. The proposal also would incorporate the concept into Section 5.10 from proposed Section 5.9 (Disqualification), which specifies that a vacancy on the NAC lasting six months or less will not cause a violation of the compositional requirements of current Article V, Section 5.2 (Number of Members and Qualifications).

The proposed rule change would amend the FINRA Regulation By-Law provisions regarding resignation, removal, appointment, and disqualification of NAC members and the NAC's authority to act on FINRA's behalf by designating the FINRA Board as the body authorized to oversee the NAC.²⁰ The FINRA Board has long had explicit authority under Articles XII and XIII of its By-Laws to establish procedures for disciplinary proceedings and to impose sanctions in certain circumstances, and has consistently relied on the NAC to render judgment on disciplinary matters, including imposing sanctions. The proposal would reinforce these roles by simplifying the FINRA Board's relationship with the NAC and establishing directly with the FINRA Board the authority to remove all NAC members (for refusal, failure, neglect, or inability to discharge duties), accept their resignations, appoint them, and declare them disqualified. Moreover, the FINRA Board's direct authority over resignation, removal, appointment, and disqualification would logically extend the FINRA Board's existing authority to

²⁰ See current FINRA Regulation By-Laws, Article V, Sections 5.1 (Appointment and Authority), and proposed Sections 5.7-5.9.

review the substance of the NAC's appellate decisions, which exists through the FINRA Board's discretionary power to call a case for review by the FINRA Board.²¹ FINRA believes that the proposed rule change will benefit the appellate portion of the disciplinary process by extending the FINRA Board's oversight of the NAC's members.

The proposed rule change would amend current Article V, Section 5.2 of the FINRA Regulation By-Laws (Number of Members and Qualifications) to eliminate the reference that the Chair of the NAC shall automatically serve as a Director of the FINRA Regulation Board for a one-year term. As a result of the NASD and NYSE consolidation, the NAC Chair's automatic service on the FINRA Board of Governors was previously eliminated in 2007. Accordingly, the NAC Chair no longer automatically has the prerequisite requirement to be appointed to the FINRA Regulation Board.²²

Conforming Changes Relating to the New FINRA name

The proposed rule change would make certain non-substantive changes to several articles 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."

²¹ See Rule 9351.

²² Additional changes to the FINRA Regulation By-Laws regarding the FINRA Regulation Board and capital stock will be proposed by FINRA in a related proposed rule change that FINRA anticipates filing in the near future.

The proposed rule change would modify the term “Industry Member” in the definitional section of FINRA Regulation’s By-Laws, Article I, by limiting the look-back test that characterizes NAC or committee members as industry if they have served as an officer, director, or employee of a broker or dealer, among other reasons, within the past twelve months. The current provision uses a three year look-back test. This proposed change would make the definition of “Industry Member” for NAC and other committee members consistent with the “Industry Governor” and “Industry committee member” definitions in the FINRA By-Laws.²³

The proposal would also add the term “independent director” to the portion of the definition of “Industry Member” that excludes outside directors of a broker or dealer. Independent director is synonymous with outside director, but would be added to the exclusionary clause to harmonize the FINRA Regulation By-Laws with the FINRA By-Laws’ use of the term “independent director” when defining an Industry Governor. In addition, the definition of “Public Director” and “Public Member,” which refers to NAC or committee members, would be modified to clarify that, for example, a Public Director’s service on FINRA Regulation’s Board or a Public Member’s service on the NAC does not disqualify that person from satisfying the definition of Public Director or Public Member.²⁴

The proposed rule change would reflect that FINRA Regulation’s Delaware registered agent is Corporate Creations Network Inc.

²³ See FINRA By-Laws, Article I(t).

²⁴ See proposed FINRA Regulation By-Laws, Article I(hh) and (ii).

As noted in Item 2 of this filing, 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,²⁵ 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,²⁶ which requires that FINRA rules are 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 requirement, and FINRA believes that the proposed rule change will align the representation of industry members on the NAC to follow more closely the industry representation on the FINRA Board.

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.

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.

²⁵ 15 U.S.C. 78o-3(b)(6).

²⁶ 15 U.S.C. 78o-3(b)(4).

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.²⁷

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.

²⁷ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2008-046)

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

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 realign the representation of industry members on the National Adjudicatory Council (“NAC”) to follow more closely the industry representation on the FINRA Board of Governors (“FINRA Board”), to eliminate the Regional Nominating Committees, to transfer such committees’ responsibilities for NAC industry appointments to the FINRA Nominating Committee (“Nominating Committee”), and to change the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

name of “NASD Regulation” and “NASD” to “FINRA Regulation ” and “FINRA” respectively.

The text of the proposed rule change is attached as Exhibit 5.³

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.⁴ The approved changes included a FINRA Board governance structure that balanced public and industry representation and designated

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seven governor seats to represent member firms of various sizes based on the criteria of firm size.

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The proposed rule change would modify the FINRA Regulation By-Laws to: restructure the industry representation on the NAC to parallel the firm-size criteria for industry representation on the FINRA Board; modify the nomination process for certain industry member seats on the NAC by using the Nominating Committee and discontinuing the Regional Nominating Committees; and adopt conforming changes to reflect the corporate name change and similar matters.

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⁵ See current FINRA Regulation By-Laws, Article V, Section 5.1 (Appointment and Authority).

Under current FINRA Regulation By-Law provisions, the NAC must consist of no fewer than 12 and no more than 14 members.⁶ The number of non-industry members, including at least three public members, must equal or exceed the number of industry members.⁷ Since 1999, each of five geographic regions, which had been established by the NASD Board of Governors, has been represented on the NAC. Non-industry members of the NAC and two “at-large” industry members currently are nominated to serve on the NAC by the Nominating Committee and then appointed by the FINRA Regulation Board.⁸ The five industry members of the NAC who are drawn from the five geographic regions are first selected through Regional Nominating Committees (through either an uncontested or a contested nomination process), then nominated by the Nominating Committee, and finally appointed by the FINRA Regulation Board.

Discussion of Changes to the NAC Election Process

The proposed rule change would amend Article I (Definitions), Article V (National Adjudicatory Council), and Article VI (National Adjudicatory Council

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⁷ See current FINRA Regulation By-Laws, Article V, Section 5.2 (Number of Members and Qualifications).

⁸ Consistent with Article V of the FINRA Regulation By-Laws, the current 14-member NAC includes seven industry and seven non-industry members. Five of the industry NAC members represent the five geographic regions. The remaining two industry seats are “at-large” seats, which NASD historically used and FINRA currently uses to add balance to the types of firms being represented on the NAC.

Regional Nominations for Industry Members) of the FINRA Regulation By-Laws to replace the current regionally based approach for appointing industry representatives to the NAC with a process that is based on firm size and is similar to the FINRA Board's approach.⁹ The NAC's regionally based election process is a legacy NASD practice that no longer parallels the governance structure of the FINRA Board. The proposed rule change would replace the five regionally based industry members of the NAC with two small firm, one mid-size firm, and two large firm industry representatives. The make-up of the NAC under the proposed rule change would follow more closely the current make-up of the FINRA Board.

The restructured NAC would therefore consist of 14 members, including seven industry members, two of whom are "at large" and five of whom are designated specifically as representatives of large firms, mid-size firms, and small firms, and seven non-industry members, three of whom are public.¹⁰ The tenure of NAC members is generally three years and the terms of the NAC members are staggered. The proposal

⁹ The FINRA Board consists of eleven Public Governors (who are appointed), ten Industry Governors (seven of whom are elected by industry members), the current Chief Executive Officer ("CEO") of NYSE Regulation, and the current CEO of FINRA. The ten Industry Governors include: (a) three elected Governors who are registered with member firms that employ 500 or more registered persons (Large Firm Governors); (b) one elected Governor who is registered with a member firm that employs at least 151 and no more than 499 registered persons (Mid-Size Firm Governor); (c) three elected Governors who are registered with member firms that employ at least one and no more than 150 registered persons (Small Firm Governors); (d) one appointed Governor who is associated with a floor member of the New York Stock Exchange; (e) one appointed Governor who is associated with an independent contractor financial planning member firm or an insurance company affiliate; and (f) one appointed Governor who is associated with an affiliate of an investment company. See FINRA By-Laws, Article VII (Board of Governors).

¹⁰ A public member of the NAC has no material business relationship with a broker or dealer or a self-regulatory organization registered under the Act.

would not disrupt the process of approximately one-third of the NAC members completing their service in a particular year and being replaced with newly appointed NAC members. The proposal would result in a Small Firm and a Large Firm NAC Member joining the NAC near the beginning of 2009; a Mid-Sized Firm NAC Member joining in 2010; and a Small Firm and Large Firm NAC Member joining in 2011. The proposed selection process would allow for the service of NAC members with knowledge, impartiality, and judicial temperament, while maintaining the same level of indirect representation of FINRA's membership.

In conjunction with eliminating the regionally based criteria for identifying industry NAC members, the proposed rule change also would simplify the NAC appointment process for industry representatives and follow more closely the procedures for electing industry members of the FINRA Board. The process proposed would eliminate the five Regional Nominating Committees and have the Nominating Committee perform their functions instead. Rather than relying on Regional Nominating Committees to first identify possible industry candidates before submission of the candidates to the Nominating Committee and the FINRA Regulation Board, the Nominating Committee would identify and solicit candidates for all NAC seats, including the five industry-member positions that are based on firm size.¹¹ The Nominating Committee would be free to consult with or receive recommendations for industry NAC members from other FINRA committees, such as the District Nominating Committees, before communicating its nominations to the FINRA Board.

¹¹ See proposed FINRA Regulation By-Laws, Article V, Section 5.3 (Appointments).

The proposed rule change would continue the current process of allowing individuals who seek to serve on the NAC but were not nominated, known as additional candidates, to gather petitions in support of their candidacy and potentially compete in a contested election. Additional candidates would petition to be considered as Small, Mid-Size, or Large Firm NAC Members based on the size of the firm with which they are registered.

Under the proposal, additional candidates would be able to qualify for a contested election by gathering petitions from three percent of the firms in their size category, which is lower than the ten percent requirement additional candidates currently need to gather when they seek to qualify for a regional NAC seat.¹² In the event of a contested election, FINRA members would have an opportunity to vote for a NAC candidate based on firm size.¹³ Specifically, small, mid-size, or large firms would vote for NAC candidates only if the contested election was for a NAC seat designated for a firm of corresponding size.

The proposed rule change would ensure that the winner of a contested election serves on the NAC. While all NAC members would continue to be recommended initially by the Nominating Committee and appointed by the FINRA Board,¹⁴ the

¹² Compare current FINRA Regulation By-Laws, Article VI, Section 6.15 (Requirement for Petition Supporting Additional Candidate) with proposed FINRA Regulation By-Laws, Article VI, Section 6.2 (Designation of Additional Candidates).

¹³ See proposed FINRA Regulation By-Laws, Article VI, Section 6.3 (List of FINRA Members Eligible to Vote) and Article VI, Section 6.7 (Ballots).

¹⁴ The seven non-industry members and two at-large industry members would continue to follow the nomination and Board appointment process currently employed for non-industry and at-large industry NAC members.

candidate who receives the most votes in any contested election for a Small, Mid-Size, or Large Firm NAC Member seat would be required under the FINRA Regulation By-Laws to be appointed to the NAC.¹⁵ The current By-Law section that discusses the procedure in the event that the Regional Nominating Committee's nominee is rejected by the National Nominating Committee would accordingly be deleted. The proposal would not change the NAC selection process if no additional candidates reach the threshold to qualify for a contested election. As in the past when there are no additional candidates, the industry NAC members selected by the Nominating Committee would not have a contested election and would be recommended for appointment to the NAC.¹⁶

To verify that a NAC nominee or candidate would satisfy the definition of an Industry, Small Firm, Mid-Sized Firm, Large Firm, Non-Industry, or Public Member of the NAC, the proposed rule change would authorize the FINRA Secretary to collect information from candidates as is reasonably necessary to serve as the basis for such a determination.¹⁷

The proposed rule change would modify slightly the provision that restricts NAC members and certain committees from communicating in an official capacity in support

¹⁵ See proposed FINRA Regulation By-Laws, Article V, Section 5.3 (Appointments) and 5.5 (Rejection of Nominating Committee Nominee).

¹⁶ The proposed FINRA Regulation By-Laws retain the possibility that the Nominating Committee could propose two or more candidates for a single open small, mid-size, or large firm NAC seat. See proposed FINRA Regulation By-Laws, Article VI, Section 6.5 (Notice of Contested Nomination). In such a case, there would be a contested election. The proposed rule change would clarify that only when the Nominating Committee nominates two or more candidates for the same open seat would the Nominating Committee trigger a contested election.

¹⁷ See proposed FINRA Regulation By-Laws, Article V, Section 5.4 (Nomination Process).

of a candidate in a contested election. The current rules, which permit individuals who are Directors or NAC or other committee members to communicate their views regarding a candidate in an individual capacity, would remain the same. The modification would specify the narrow circumstances under which the Nominating Committee may support its candidate by sending a maximum of two mailings in support of its nominee.¹⁸ The proposal would clarify that this limited support is available during contested NAC elections by referring to support allowed “under these By-Laws,” which includes the support allowed under Article IV, Section 4.16.¹⁹

The proposed rule change would designate the Secretary of FINRA, instead of the FINRA Regulation Secretary, as the person who would send notice to FINRA members announcing a contested NAC election; assist in preparing ballots; prepare a list of FINRA members eligible to vote; arrange for the location for counting of ballots by an independent agent; resolve ballots that were set aside, if necessary; extend a time period regarding elections for good cause; and similar duties.²⁰ The proposal designates the FINRA Secretary because this office fulfills the same role when FINRA holds elections for the Board of Governors.

¹⁸ See proposed FINRA Regulation By-Laws, Article IV, Section 4.16(b) (Communication of Views Regarding Contested Election or Nomination). Section 4.16(b) would also mirror the language of the FINRA By-Law provision that allows, in contested elections, the appropriate FINRA committee to communicate a responsive message in reply to an additional candidate's communication. See FINRA By-Laws, Article VII, Section 11(b) (Communication of Views).

¹⁹ See proposed FINRA Regulation By-Laws, Article VI, Section 6.6 (Administrative Support).

²⁰ See proposed FINRA Regulation By-Laws, Article VI, Sections 6.5, 6.7, 6.8, 6.10, 6.11, 6.13, and 6.14.

As a result of the NAC's restructuring, FINRA would continue to promote fair representation of its members because seven of the NAC seats will be drawn from members of the industry and the industry candidates for five of those seats will be announced to the membership and are subject to a potential election by member firms of a similar size.

In addition, the rule change would indicate in proposed Article V, Section 5.10 (Filling of Vacancies) that the NAC may continue to function while FINRA fills a vacancy on the NAC. The proposal also would incorporate the concept into Section 5.10 from proposed Section 5.9 (Disqualification), which specifies that a vacancy on the NAC lasting six months or less will not cause a violation of the compositional requirements of current Article V, Section 5.2 (Number of Members and Qualifications).

The proposed rule change would amend the FINRA Regulation By-Law provisions regarding resignation, removal, appointment, and disqualification of NAC members and the NAC's authority to act on FINRA's behalf by designating the FINRA Board as the body authorized to oversee the NAC.²¹ The FINRA Board has long had explicit authority under Articles XII and XIII of its By-Laws to establish procedures for disciplinary proceedings and to impose sanctions in certain circumstances, and has consistently relied on the NAC to render judgment on disciplinary matters, including imposing sanctions. The proposal would reinforce these roles by simplifying the FINRA Board's relationship with the NAC and establishing directly with the FINRA Board the authority to remove all NAC members (for refusal, failure, neglect, or inability to discharge duties), accept their resignations, appoint them, and declare them disqualified.

²¹ See current FINRA Regulation By-Laws, Article V, Sections 5.1 (Appointment and Authority), and proposed Sections 5.7-5.9.

Moreover, the FINRA Board's direct authority over resignation, removal, appointment, and disqualification would logically extend the FINRA Board's existing authority to review the substance of the NAC's appellate decisions, which exists through the FINRA Board's discretionary power to call a case for review by the FINRA Board.²² FINRA believes that the proposed rule change will benefit the appellate portion of the disciplinary process by extending the FINRA Board's oversight of the NAC's members.

The proposed rule change would amend current Article V, Section 5.2 of the FINRA Regulation By-Laws (Number of Members and Qualifications) to eliminate the reference that the Chair of the NAC shall automatically serve as a Director of the FINRA Regulation Board for a one-year term. As a result of the NASD and NYSE consolidation, the NAC Chair's automatic service on the FINRA Board of Governors was previously eliminated in 2007. Accordingly, the NAC Chair no longer automatically has the prerequisite requirement to be appointed to the FINRA Regulation Board.²³

Conforming Changes Relating to the New FINRA name

The proposed rule change would make certain non-substantive changes to several articles 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

²² See Rule 9351.

²³ Additional changes to the FINRA Regulation By-Laws regarding the FINRA Regulation Board and capital stock will be proposed by FINRA in a related proposed rule change that FINRA anticipates filing in the near future.

- “National Nominating Committee” is replaced with “Nominating Committee.”

The proposed rule change would modify the term “Industry Member” in the definitional section of FINRA Regulation’s By-Laws, Article I, by limiting the look-back test that characterizes NAC or committee members as industry if they have served as an officer, director, or employee of a broker or dealer, among other reasons, within the past twelve months. The current provision uses a three year look-back test. This proposed change would make the definition of “Industry Member” for NAC and other committee members consistent with the “Industry Governor” and “Industry committee member” definitions in the FINRA By-Laws.²⁴

The proposal would also add the term “independent director” to the portion of the definition of “Industry Member” that excludes outside directors of a broker or dealer. Independent director is synonymous with outside director, but would be added to the exclusionary clause to harmonize the FINRA Regulation By-Laws with the FINRA By-Laws’ use of the term “independent director” when defining an Industry Governor. In addition, the definition of “Public Director” and “Public Member,” which refers to NAC or committee members, would be modified to clarify that, for example, a Public Director’s service on FINRA Regulation’s Board or a Public Member’s service on the NAC does not disqualify that person from satisfying the definition of Public Director or Public Member.²⁵

The proposed rule change would reflect that FINRA Regulation’s Delaware registered agent is Corporate Creations Network Inc.

²⁴ See FINRA By-Laws, Article I(t).

²⁵ See proposed FINRA Regulation By-Laws, Article I(hh) and (ii).

As noted in Item 2 of this filing, 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,²⁶ 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,²⁷ which requires that FINRA rules are 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 requirement, and FINRA believes that the proposed rule change will align the representation of industry members on the NAC to follow more closely the industry representation on the FINRA Board.

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.

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

²⁶ 15 U.S.C. 78o-3(b)(6).

²⁷ 15 U.S.C. 78o-3(b)(4).

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 finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2008-046 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-2008-046. 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-2008-046 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.²⁸

Florence Harmon

Acting Secretary

²⁸ 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 [NASD] FINRA REGULATION, INC.

ARTICLE I

DEFINITIONS

When used in these By-Laws, unless the context otherwise requires, the term:

- (a) “Act” means the Securities Exchange Act of 1934, as amended;
- (b) “Board” means the Board of Directors of [NASD] FINRA Regulation;
- (c) “broker” shall have the same meaning as in Section 3(a)(4) of the Act;
- (d) “Commission” means the Securities and Exchange Commission;
- (e) “Corporation” means the Financial Industry Regulatory Authority, Inc., the

National Association of Securities Dealers, Inc., or any future name of the entity;

([e]f) “day” means calendar day;

([f]g) “dealer” shall have the same meaning as in Section 3(a)(5) of the Act;

([g]h) “Delaware law” means the General Corporation Law of the State of Delaware;

([h]i) “Delegation Plan” means the “Plan of Allocation and Delegation of Functions by NASD to Subsidiaries” as approved by the Commission, and as amended from time to time;

([i]j) “Director” means a member of the Board;

((j)k) “district” means a district established by the Board pursuant to Article VIII, Section 8.1 of these By-Laws;

((k)l) “District Committee” means a District Committee elected pursuant to Article VIII of these By-Laws;

((l)m) “District Director” means a[n NASD] FINRA Regulation staff member who heads a district office;

((m)n) “District Nominating Committee” means a District Nominating Committee elected pursuant to Article VIII of these By-Laws;

((n)o) “district office” means an office of [NASD] FINRA Regulation located in a district;

((o)p) “Executive Representative” means the executive representative of a[n NASD] FINRA member appointed pursuant to Article IV, Section 3 of the [NASD] FINRA By-Laws;

((r)q) “[NASD] FINRA” means the [National Association of Securities Dealers] Financial Industry Regulatory Authority, Inc.;

((s)r) “[NASD] FINRA Board” means the [NASD] FINRA Board of Governors;

((s) “FINRA Dispute Resolution” means FINRA Dispute Resolution, Inc.;

((u)t) “[NASD] FINRA member” means any broker or dealer admitted to membership in [NASD] FINRA;

((v)u) “[NASD] FINRA Regulation” means [NASD] FINRA Regulation, Inc.;

((v) “Governor” means a member of the FINRA Board;

((p)w) “Independent Agent” means a corporation or entity selected by the Secretary of [NASD] FINRA or FINRA Regulation to assist [NASD] FINRA Regulation

with nomination and election procedures under Articles VI and VIII of these By-Laws and the representatives of such corporation or entity;

(~~[q]~~x) “Industry Director” [or “Industry member”] means a Director (other than the Chair of the FINRA Board [excluding the President of NASD Regulation] and the Chief Executive Officer of [NASD] FINRA) [or a National Adjudicatory Council or committee member] who (1) is or has served in the prior year as an officer, director (other than as a 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;

(y) “Industry Member” means a National Adjudicatory Council or committee member who (1) is or has served in the prior [three] year[s] as an officer, director, [or] employee, or controlling person of a broker or dealer, excluding an independent director, an outside director, or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the [Director or] member or 20 percent or more of the gross

revenues received by the [Director's or] member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the [Director or] member or 20 percent or more of the gross revenues received by the [Director's or] member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to a self regulatory organization registered under the Act, [the NASD, NASD Regulation, NASD Dispute Resolution, or a market for which NASD provides regulation,] or has had any such relationship or provided any such services at any time within the prior [three] year[s];

(z) "Large Firm" means any broker or dealer admitted to membership in the Corporation which, at the time of determination, has 500 or more registered persons;

(aa) "Large Firm NAC Member" or "Large Firm Committee Member" means a National Adjudicatory Council or committee member that must, in order to be eligible to serve, be an Industry Member and, at the time of election or appointment, must be registered with a member which is a Large Firm;

(bb) "Mid-Size Firm" means any broker or dealer admitted to membership in the Corporation which, at the time of determination, has at least 151 and no more than 499 registered persons;

(cc) "Mid-Size Firm NAC Member" or "Mid-Size Firm Committee Member" means a National Adjudicatory Council or committee member that must, in order to be

eligible to serve, be an Industry Member and, at the time of election or appointment, must be registered with a member which is a Mid-Size Firm;

[(t) “NASD Dispute Resolution” means NASD Dispute Resolution, Inc.;

[(w)dd) “National Adjudicatory Council” or “NAC” means a body appointed pursuant to Article V of these By-Laws;

[(x)ee) “[National] Nominating Committee” means the [National] Nominating Committee appointed pursuant to Article VII, Section 9 of the [NASD] FINRA By-Laws;

[(y)ff) [“Non-Industry Director” or] “Non-Industry M[m]ember” means [a Director (excluding the President of NASD Regulation and the Chief Executive Officer of NASD) or] a National Adjudicatory Council or committee member who is (1) a [Public Director or] Public M[m]ember; (2) an officer or employee of an issuer of securities listed on a market for which [NASD] FINRA provides regulation; (3) an officer or employee of an issuer of unlisted securities that are traded in the over-the-counter market; or (4) any other individual who would not be an [Industry Director or] Industry M[m]ember;

[(z)gg) “person associated with a member” or “associated person of a member” means: (1) a natural person who is registered or has applied for registration under the Rules of the Corporation [Association]; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA [the

NASD] under these By-Laws or the Rules of the Corporation [Association]; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member;

(([aa]hh) “Public Director” means a Director 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); [or]

(ii) “Public M[m]ember” means a [Director or] National Adjudicatory Council or committee member who 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 or a public member on a committee of such a self regulatory organization) [the NASD, NASD Regulation, or a market for which NASD provides regulation];

[(bb) “Regional Nominating Committee” means a Regional Nominating Committee that nominates to the National Nominating Committee a candidate for the National Adjudicatory Council to represent a geographical region as provided in Article VI of these By-Laws; and]

[(cc]jj) “Rules of the [Association] Corporation” or “Rules” means the numbered rules set forth in the [NASD] Manual of the Corporation beginning with the Rule 0100 Series, as adopted by the [NASD] FINRA Board pursuant to the [NASD] FINRA By-Laws, as hereafter amended or supplemented[.];

(kk) “Small Firm” means any broker or dealer admitted to membership in the Corporation which, at the time of determination, has at least one and no more than 150 registered persons; and

(ll) “Small Firm NAC Member” or “Small Firm Committee Member” means a National Adjudicatory Council or committee member that must, in order to be eligible to serve, be an Industry Member and, at the time of election or appointment, must be registered with a member which is a Small Firm.

ARTICLE II

OFFICES

Location

Sec. 2.1 The address of the registered office of [NASD] FINRA Regulation in the State of Delaware and the name of the registered agent at such address shall be: [The Corporation Trust Company, 1209 Orange Street] Corporate Creations Network Inc., 1308 Delaware Avenue, Wilmington, Delaware [19801. NASD] 19806. FINRA Regulation also may have offices at such other places both within and without the State of Delaware as the Board may from time to time designate or the business of [NASD] FINRA Regulation may require.

Change of Location

Sec. 2.2 In the manner permitted by law, the Board or the registered agent may change the address of [NASD] FINRA Regulation’s registered office in the State of Delaware and the Board may make, revoke, or change the designation of the registered agent.

ARTICLE III

MEETINGS OF THE STOCKHOLDER

Action by Consent of Stockholder

Sec. 3.1 Any action required or permitted by law to be taken at any meeting of the stockholder of [NASD] FINRA Regulation may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the holder of the outstanding stock.

ARTICLE IV

BOARD OF DIRECTORS

General Powers

Sec. 4.1 through 4.15 No Change.

Communication of Views Regarding Contested Election or Nomination

Sec. 4.16 (a) [NASD] FINRA Regulation, the Board, any committee, the National Adjudicatory Council, and [NASD] FINRA Regulation staff shall not take any position publicly or with a[n NASD] FINRA member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to these By-Laws or the [NASD] FINRA By-Laws. A Director, committee member (other than the Nominating Committee or District Nominating Committee)[,] or National Adjudicatory Council member may communicate his or her views with respect to a candidate if such [individual] Director or committee or National Adjudicatory Council member acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of [NASD] FINRA Regulation, the Board, the National Adjudicatory Council, or any committee (other than the Nominating Committee or District Nominating Committee). [NASD Regulation, the Board, the National Adjudicatory Council, any committee, and the NASD Regulation staff shall not provide any administrative support to any candidate in a

contested election or nomination conducted pursuant to these By-Laws or the NASD By-Laws.] Except as provided herein, any candidate and his or her representatives may communicate support for the candidate to a member or person associated with or employed by a member.

(b) In a contested election, the Nominating Committee or District Nominating Committee may support its nominee by sending to members eligible to vote up to two mailings of materials in support of its nominees in lieu of mailings sent by its candidates pursuant these By-Laws. In addition to such mailings, in the event of mailings or other communications to members by or on behalf of a candidate by petition in a contested election, the Nominating Committee or District Nominating Committee may respond in-kind, but shall not take a position unresponsive to the contesting candidate's communications.

ARTICLE V

NATIONAL ADJUDICATORY COUNCIL

[Appointment and] Authority

Sec. 5.1 [The Board shall appoint a National Adjudicatory Council.] The National Adjudicatory Council may be authorized to act for the FINRA Board in a manner consistent with these By-Laws, the Rules of the Corporation [Association], and the Delegation Plan with respect to an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive authority; and such other proceedings or actions authorized by the Rules of the [Association] Corporation. The National Adjudicatory

Council also shall consider and make recommendations to the FINRA Board on policy and rule changes relating to the business and sales practices of [NASD] FINRA members and associated persons and enforcement policies, including policies with respect to fines and other sanctions. The FINRA Board may delegate such other powers and duties to the National Adjudicatory Council as the FINRA Board deems appropriate in a manner not inconsistent with the Delegation Plan.

Number of Members and Qualifications

Sec. 5.2 (a) The National Adjudicatory Council shall consist of [no fewer than 12 and no more than] 14 members. The number of Non-Industry M[m]embers, including at least three Public Members, shall equal [or exceed] the number of Industry M[m]embers. [In 1999 and thereafter, each geographic region established by the Board under Article VI, Section 6.1 shall be represented by an Industry member.] Industry Members shall include two Small Firm NAC Members, one Mid-Size Firm NAC Member, two Large Firm NAC Members, and two at-large Industry Members. [Those Industry members not representing a geographic region, if any, shall be considered at-large Industry members.] The at-large Industry Members shall be appointed to the NAC without being designated as Small, Mid-Size, or Large Firm NAC Members.

(b) The incumbent National Adjudicatory Council shall elect a Chair and a Vice Chair from among the members serving during the following term. The Chair and Vice Chair shall have such powers and duties as may be determined from time to time by the National Adjudicatory Council. [The Chair also shall serve as a Director of the NASD Regulation Board for a one-year term as provided in the By-Laws and Restated Certificate of Incorporation of the NASD and these By-Laws.] The FINRA Board, by

resolution adopted by a majority of [Directors] Governors then in office [and after notice to the NASD Board], may remove the Chair or Vice Chair from such position at any time for refusal, failure, neglect, or inability to discharge his or her duties.

Appointments

Sec. 5.3 The FINRA Board shall appoint a National Adjudicatory Council and all its members. The at-large Industry and Non-Industry Members of the NAC shall be appointed by the FINRA Board from candidates recommended by the Nominating Committee. The Small Firm, Mid-Size Firm and Large Firm NAC Members also shall be appointed by the FINRA Board from candidates recommended by the Nominating Committee, but in the event of a contested election, the Small Firm, Mid-Size Firm and Large Firm NAC Members shall be elected by the membership by a plurality of the votes of the members entitled to vote for such category in accordance with the provisions of these By-Laws and thereafter appointed by the FINRA Board.

Nomination Process

Sec. [5.3]5.4 [(a) Pursuant to Article VII, Section 9 of the NASD By-Laws, the National Nominating Committee shall nominate all candidates for the National Adjudicatory Council for subsequent appointment by the Board. Each Regional Nominating Committee shall nominate an Industry member candidate for consideration by the National Nominating Committee as provided in Article VI of these By-Laws. Candidates for at-large Industry member positions on the National Adjudicatory Council shall not be subject to regional nominating procedures.]

[(b)] The Secretary of [NASD Regulation] the Corporation shall collect from each nominee for the office of member of the National Adjudicatory Council such

information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Small Firm, Mid-Size Firm, Large Firm, Non-Industry, or Public Member, and the Secretary shall certify to the [National] Nominating Committee each nominee's classification. After appointment to the National Adjudicatory Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such classification.

Rejection of Nominating Committee Nominee

Sec. 5.5 If the FINRA Board rejects the nominee of the Nominating Committee, the Nominating Committee shall repeat the nomination procedures in Sections 5.2 through 5.4. The FINRA Board may not reject Small Firm, Mid-Size Firm and Large Firm NAC Members elected in accordance with the provisions of Article VI.

Term of Office

Sec. [5.4]5.6 (a) No Change.

(b) The NAC shall be divided into three classes, with terms of office that commence and expire on a staggered, annual basis. Beginning in January 200[2]9, [the National Adjudicatory Council shall be divided into three classes. The term of office of those of the first class shall expire in January 2003, the term of office of those of the second class shall expire in January 2004, and the term of office of those of the third class shall expire in January 2005. Beginning in January 2003, members shall be appointed for term of three years to replace those whose terms expire.] outgoing Industry Members appointed pursuant to the superseded, regional nomination process will be replaced with Industry Members appointed pursuant to the firm size classification (Small Firm NAC

Member, Mid-Size Firm NAC Member, and Large Firm NAC Member) established in Section 5.2 of this Article. The first open, regionally nominated Industry Member seat will be replaced with a Small Firm NAC Member. The second open, regionally nominated Industry Member seat will be replaced with a Large Firm NAC Member. Thereafter, open, regionally nominated Industry Member seats will be replaced first by one Mid-Size Firm NAC Member, followed by one Small Firm NAC Member and then one Large Firm NAC Member until the National Adjudicatory Council comprises seven Industry Members as follows: two at-large Industry Members, two Small Firm NAC Members, one Mid-Size Firm NAC Member, and two Large Firm NAC Members. Thereafter, open Industry Member seats will be filled by individuals who meet the classification for the classification of the open seat.

(c) [Beginning in 2002, n]No member may serve consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve a single three year term following the expiration of such member's initial term.

Resignation

Sec. [5.5]5.7 A member of the National Adjudicatory Council may resign at any time upon written notice of resignation to the FINRA Board. 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. [5.6]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 by majority vote of the FINRA Board.

Disqualification

Sec. [5.7]5.9 Notwithstanding Section 5.[4]6, the term of office of a National Adjudicatory Council member shall terminate immediately upon a determination by the FINRA Board, by a majority vote, that: (a) the member no longer satisfies the classification (Industry, Non-Industry, or Public Member) for which the member was appointed or elected; and (b) the member's continued service as such would violate the compositional requirements of the National Adjudicatory Council set forth in Section 5.2. If the term of office of a National Adjudicatory Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the National Adjudicatory Council shall not be deemed to be in violation of the compositional requirements of Section 5.2 by virtue of such vacancy.

Filling of Vacancies

Sec. [5.8]5.10 If a position on the National Adjudicatory Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the [National] Nominating Committee shall nominate, and the FINRA Board shall appoint a person satisfying the classification (Industry, Non-Industry, or Public) [Member)] for the position as provided in Section 5.2(a) to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required and no violation of the compositional requirements of Section 5.2 shall be

deemed to have occurred. For any vacancy of a seat on the National Adjudicatory Council for which the remaining term of office is more than six months, such vacancy shall be filled in accordance with Articles V and VI of these By-Laws, and, during this process, no violation of the compositional requirements of Section 5.2 shall be deemed to have occurred.

Quorum and Voting

Sec. [5.9]5.11 No Change.

Meetings

Sec. [5.10]5.12 No Change.

Review Subcommittee

Sec. [5.11]5.13 The National Adjudicatory Council shall appoint a Review Subcommittee to determine whether disciplinary and membership proceedings decisions should be called for review by the National Adjudicatory Council under the Rules of the [Association] Corporation and to perform any other function authorized by the Rules of the [Association] Corporation. The Review Subcommittee shall be composed of no fewer than two and no more than four members of the National Adjudicatory Council. The number of Non-Industry M[m]embers shall equal or exceed the number of Industry M[m]embers. At all meetings of the Review Subcommittee, a quorum for the transaction of business shall consist of not less than 50 percent of the members of the Review Subcommittee, including not less than 50 percent of the Non-Industry M[m]embers.

ARTICLE VI

**[NATIONAL ADJUDICATORY COUNCIL REGIONAL NOMINATIONS FOR]
SELECTION OF SMALL FIRM, MID-SIZE FIRM AND LARGE FIRM
INDUSTRY MEMBERS OF THE NATIONAL ADJUDICATORY COUNCIL**

[Establishment of Regions]

[**Sec. 6.1** The Board shall establish boundaries for geographical regions within the United States for the purpose of nominating candidates for regional Industry member positions on the National Adjudicatory Council to the National Nominating Committee. The Board may make changes from time to time in the number or boundaries of the regions as the Board deems necessary or appropriate in accordance with Article V, Section 5.2(a). The Board shall prescribe such policies and procedures as are necessary or appropriate to address the implementation of a new region configuration in the event of a change in the number or boundaries of the regions.]

[Composition]

[**Sec. 6.2** (a) A Regional Nominating Committee shall be elected for each region designated by the Board under Section 6.1. Each District Nominating Committee for a district located in the region shall elect two District Committee members from the district to serve on the Regional Nominating Committee. If a region shall consist of one district, the District Nominating Committee for the district shall elect four District Committee members from the district to serve on the Regional Nominating Committee.]

[(b) In the event of the refusal, failure, neglect, or inability of a member of a Regional Nominating Committee to discharge his or her duties, the Regional Nominating Committee may remove the member by the affirmative vote of two-thirds of the members

of the Regional Nominating Committee then in office and declare the member's position vacant. The Regional Nominating Committee shall notify the Regional Nominating Committee member of his or her removal within seven days after the vote. The member's position shall be filled pursuant to Section 6.4. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified in writing of the removal. The Board may affirm, reverse, or modify the determination of the Regional Nominating Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the Regional Nominating Committee.]

[Term of Office]

[Sec. 6.3 Each regularly elected member of a Regional Nominating Committee shall hold office for a term of two years, or until a successor is elected and qualified, or until death, resignation, or removal. A member of a Regional Nominating Committee may not serve more than three consecutive terms.]

[Filling of Vacancies]

[Sec. 6.4 In the event of a vacancy on a Regional Nominating Committee caused by the departure of a member prior to the expiration of the member's term of office, the District Nominating Committee that elected the member shall appoint by majority vote another member of the District Committee to fill the vacancy. The appointment shall be effective until the next regularly scheduled election occurs pursuant to this Article.]

[Meetings]

[Sec. 6.5 Meetings of a Regional Nominating Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as each

Regional Nominating Committee in its discretion may determine. A quorum of a Regional Nominating Committee shall consist of a majority of its members, and any action taken by a majority vote at any meeting at which a quorum is present, except as otherwise provided in these By-Laws, shall constitute the action of the Committee. Action by a Regional Nominating Committee may be taken by mail, telephonic, or telegraphic vote, in which case any action taken by a majority of the Committee shall constitute the action of the Committee. Action taken by telephonic vote shall be confirmed in writing at a regular meeting of the Regional Nominating Committee.]

[Election of Officers]

[Sec. 6.6 Following the annual election of members of the Regional Nominating Committees pursuant to this Article, each Regional Nominating Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws.]

[Expenses]

[Sec. 6.7 Funds to meet the regular expenses of each Regional Nominating Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.]

[Notice to Chair]

[Sec. 6.8 On or before August 1, 1999, and annually thereafter, the Secretary of NASD Regulation shall send a written notice to the chair of a Regional Nominating Committee if the term of office of the National Adjudicatory council member representing the region shall expire in the next calendar year. The notice shall describe the nomination procedures for filling the office.]

[Solicitation of Candidates]

[Sec. 6.9 NASD Regulation staff shall provide the Regional Nominating Committee with a description of the NASD membership in the region. The Regional Nominating Committee shall identify and solicit candidates to nominate to the National Nominating Committee for the office of National Adjudicatory Council member. The Regional Nominating Committee Chair shall send a written notice of the upcoming nomination to the Executive Representative and each branch office of the NASD members in the region and request that such NASD members submit names of candidates to the Regional Nominating Committee or the Secretary of NASD Regulation for consideration.]

[Secretary's Notice to NASD Members]

[Sec. 6.10 The Secretary of NASD Regulation shall send a written notice to NASD members in the region describing the nomination procedures.]

[Regional Nominating Committee] Identification of Candidates

Sec. [6.11]6.1 The [Regional] Nominating Committee shall [review the background of the candidates and the description of the NASD membership provided by NASD Regulation staff and shall propose] nominate one or more candidates for appointment by the FINRA Board for any open Small Firm, Mid-Size Firm and Large Firm Industry seats on the National Adjudicatory Council. [nomination to the National Nominating Committee. In proposing a candidate for nomination, the Regional Nominating Committee shall endeavor to secure appropriate and fair representation of the region.]

[Notice of Regional Nominating Committee Candidate]

[Sec. 6.12 The Regional Nominating Committee shall send to the Executive Representatives and branch offices of the NASD members in the region a written notice of the name of the candidate or candidates the Regional Nominating Committee proposes for nomination to the National Nominating Committee.]

Designation of Additional Candidates

Sec. [6.13]6.2 [If an officer, director, or employee of an NASD member in the region is not proposed for nomination by the Regional Nominating Committee and] The Corporation shall notify the members of the names of each nominee selected by the Nominating Committee for open National Adjudicatory Council seats that are Small Firm, Mid-Size Firm, and Large Firm seats, the qualifications of the nominee, and such other information regarding each nominee as the Nominating Committee deems pertinent. A person who has not been so nominated may be included on a ballot for an election to fill an open Small Firm, Mid-Size Firm or Large Firm seat on the National Adjudicatory Council if: (a) within 45 days after the date of such notice, such person presents to the Secretary of the Corporation (i) in the case of petitions solely in support of such person, petitions in support of his or her nomination duly executed by three percent of the members entitled to vote (based on firm size classification) for such nominee's election, and no such member shall endorse more than one such nominee, or (ii) in the case of petitions in support of more than one person, petitions in support of the nominations of such persons duly executed by ten percent of the members entitled to vote (based on firm size classification) for such nominees' election; and (b) the Secretary certifies that (i) the petitions are duly executed by the Executive Representatives of the requisite number of members entitled to vote for such nominee's/nominees' election, and

(ii) the person(s) satisfies/satisfy the classification (Large Firm, Mid-Size Firm or Small Firm) of the National Adjudicatory Council seat to be filled, based on such information provided by the person(s) as is reasonably necessary to make the certification. Only an Executive Representative may sign a petition on behalf of a FINRA member. The Secretary shall not unreasonably withhold or delay the certification. Upon certification, the election shall be deemed a contested election with respect to the NAC seat for which the nomination relates. [wants to seek the nomination, he or she shall send a written notice to the Regional Nominating Committee Chair or the Secretary of NASD Regulation within 14 calendar days after the mailing date of the Regional Nominating Committee's notice under Section 6.12. The Regional Nominating Committee Chair or the Secretary of NASD Regulation shall make a written record of the time and date of the receipt of the officer's, director's, or employee's notice. The officer, director, or employee shall be designated as an "additional candidate."]

List of [NASD] FINRA Members Eligible to Vote

Sec. [6.14]6.3 (a) The Secretary of [NASD Regulation] the Corporation shall mail a list of all [NASD] FINRA members eligible to vote [in the region] based on the firm size classifications (Small Firm, Mid-Size Firm, or Large Firm) defined in these By-Laws and the names of their Executive Representatives to the additional candidate immediately following receipt of the additional candidate's notice by the [Regional Nominating Committee Chair or the] Secretary of [NASD Regulation] the Corporation.

(b) A[n NASD] FINRA member that meets the firm size classification (Small Firm, Mid-Size Firm, or Large Firm) of the open seat on the NAC [has its principal office, one or more registered branch offices, or a principal office and one or more

registered branch offices in the region] shall be eligible to cast one vote on the nomination through the [NASD] FINRA member's Executive Representative.

[Requirement for Petition Supporting Additional Candidate]

[Sec. 6.15] An additional candidate shall be proposed for nomination if a petition signed by at least ten percent of the NASD members eligible to vote in the region is filed with the Regional Nominating Committee within 30 calendar days after the date of mailing of the list to the additional candidate pursuant to Section 6.14. Only an Executive Representative may sign a petition on behalf of an NASD member.]

Uncontested Nomination

Sec. [6.16]6.4 If the [Regional] Nominating Committee proposes one candidate for nomination and no additional candidate is proposed for nomination pursuant to Section 6.[15]2, the [Regional] Nominating Committee shall nominate its candidate to the [National Nominating Committee] FINRA Board.

Notice of Contested Nomination

Sec. [6.17]6.5 If the [Regional] Nominating Committee proposes more than one candidate for nomination for an open Industry Member seat, or if an additional candidate is proposed for nomination pursuant to Section 6.[15]2, the [Regional Nominating Committee] Secretary of the Corporation shall send a written notice to the Executive Representatives of the [NASD] FINRA members eligible to vote [in the region] based on the firm size classifications (Small Firm, Mid-Size Firm, or Large Firm) defined in these By-Laws announcing the names of the candidates and describing contested nomination procedures.

Administrative Support

Sec. [6.18]6.6 The Secretary of [NASD Regulation] the Corporation shall [designate a district office in the region to] provide administrative support to all candidates by sending to [NASD] FINRA members eligible to vote based on the firm size classifications (Small Firm, Mid-Size Firm, or Large Firm) defined in these By-Laws [in the region] up to two mailings of materials prepared by the candidates. [NASD Regulation] The Corporation shall pay the postage for the mailings. If a candidate wants such mailings sent, the candidate shall prepare such material on the candidate's personal stationery. The material shall state that it represents the opinion of the candidate. The candidate shall provide a copy of such material for each member eligible to vote in the size classification of the open seat on the NAC [of the NASD in the region]. A candidate proposed for nomination by the [Regional] Nominating Committee may identify himself or herself as such in his or her materials. Any candidate may send additional mailings to [NASD] FINRA members at the candidate's own expense. Except as provided in [this Article, NASD] these By-Laws, FINRA Regulation, the Board, the [Regional] Nominating Committee, any other committee, the National Adjudicatory Council, and [NASD] FINRA Regulation staff shall not provide any other administrative support to a candidate for the nomination under this Article or any candidate in a contested election conducted under Article VII of the [NASD] FINRA By-Laws.

Ballots

Sec. [6.19]6.7 With the assistance of the Secretary of [NASD Regulation] the Corporation and an Independent Agent, the [Regional] Nominating Committee shall prepare a ballot with the name or names of its candidate and any additional candidates proposed for nomination pursuant to Section 6.[15]2. The ballot shall list the candidates

in alphabetical order and shall identify the candidate or candidates proposed for nomination by the [Regional] Nominating Committee. The [Regional Nominating Committee] Secretary of the Corporation shall send a ballot to the Executive Representative of each [NASD] FINRA member eligible to vote based on the firm size classifications (Small Firm, Mid-Size Firm, or Large Firm) defined in these By-Laws [in the region]. Instructions on the ballot shall direct the Executive Representative to return the ballot to the Independent Agent and state that the ballot envelope must be postmarked on or before the return date specified on the ballot. The return date specified on the ballot shall be no fewer than 30 and no more than 45 days after the date of mailing of the ballot.

Vote Qualification List

Sec. [6.20]6.8 Eligibility to vote on a [regional] nomination shall be based on [the NASD] FINRA's membership records as of a date designated by the Secretary of [NASD Regulation] the Corporation that is not more than 30 days before the date of mailing of the ballot. The Secretary of [NASD Regulation] the Corporation shall prepare a list of [NASD] FINRA members eligible to vote in the [region] election and the names of their Executive Representatives, which shall be used for vote qualification purposes, and shall provide the list to the candidates.

Ballots Returned As Undelivered

Sec. [6.21]6.9 The Independent Agent shall open any ballot envelope returned undelivered and shall determine whether it was sent to the [NASD] FINRA member's address of record. If incorrectly addressed, the Independent Agent shall send a new ballot to the [NASD] FINRA member's address of record.

General Procedures for Qualification and Accounting of Ballots

Sec. [6.22]6.10 After the voting period, on a date or dates designated by the Secretary of [NASD Regulation] the Corporation, the qualification and accounting of ballots shall take place. The date or dates designated shall be not later than 14 calendar days after the return date specified on the ballot pursuant to Section 6.[19]7. Candidates and their representatives shall be allowed to observe the qualification and accounting of ballots. Representation for each candidate shall be limited to two individuals. The Independent Agent shall bring to a specified [district] office of the Corporation [in the region] all ballots timely received. Under the direction of the Secretary of [NASD Regulation] the Corporation or the Secretary's designee, the Independent Agent shall open and count the ballots. For ballot qualification purposes, the Independent Agent shall identify to the candidates the [NASD] FINRA members that timely returned ballots and inform the candidates of the Independent Agent's determination of whether or not a ballot is qualified for voting purposes. The determination shall be based on a comparison of ballots received against the list of [NASD] FINRA members eligible to vote based on the firm size classifications (Small Firm, Mid-Size Firm, or Large Firm) defined in these By-Laws [in the region] and their Executive Representatives as prepared by the Secretary of [NASD Regulation] the Corporation under Section 6.[20]8. The Secretary of [NASD Regulation] the Corporation or the Secretary's designee shall make the final determination of the qualification of a ballot. Upon the qualification of a ballot, the Independent Agent shall record the vote indicated on the ballot. The candidates and their representatives shall not be allowed to see the vote of any [NASD] FINRA member.

Ballots Set Aside

Sec. [6.23]6.11 The Independent Agent shall set aside a ballot if: (a) the ballot is received from a[n NASD] FINRA member eligible to vote based on the firm size classifications (Small Firm, Mid-Size Firm, or Large Firm) defined in these By-Laws [in the region] and the ballot is signed by a person who is not the Executive Representative listed on the vote qualification list prepared under Section 6.[20]8, and the Secretary of the [NASD] Corporation has not received proper notice of a change in Executive Representative pursuant to the [NASD] FINRA By-Laws; or (b) two or more properly executed ballots are received from a[n NASD] FINRA member eligible to vote based on the firm size classifications (Small Firm, Mid-Size Firm, or Large Firm) defined in these By-Laws [in the region]. If the Independent Agent determines that the ballots set aside are material to the outcome of the nomination, the Secretary of [NASD Regulation] the Corporation and the Independent Agent shall make reasonable efforts to resolve each ballot set aside. With respect to a ballot not signed by an Executive Representative of record, the Secretary of [NASD Regulation] the Corporation shall contact the [NASD] FINRA member to request that the [NASD] FINRA member send proper written notice of any change in Executive Representative by facsimile so that the ballot may be counted. With respect to multiple ballots from any [NASD] FINRA member, the Independent Agent shall contact the Executive Representative of the [NASD] FINRA member to obtain the [NASD] FINRA member's vote. The Secretary of [NASD Regulation] the Corporation shall keep a list of [NASD] FINRA members that reported their ballot was lost or not received and that were provided with a duplicate ballot. The Secretary of [NASD Regulation] the Corporation shall provide the list to the Independent Agent and, upon request, to the candidates.

Invalid Ballots

Sec. [6.24]6.12 The Independent Agent shall declare a ballot invalid if one or more of the following conditions exists:

- (a) the ballot is not signed by the Executive Representative (unless Section 6.[23]11 applies);
- (b) a vote is not indicated on the ballot; or
- (c) a vote for more than one candidate is indicated on the ballot.

Certification of Nomination

Sec. [6.25]6.13 Under the direction of the Secretary of [NASD Regulation] the Corporation or the Secretary's designee, the Independent Agent shall count the votes received for each candidate. The candidate receiving the largest number of votes cast by FINRA members eligible to vote based on the firm size classifications (Small Firm, Mid-Size Firm, or Large Firm) defined in these By-Laws [in the region] shall be declared the nominee [from the region] and the [Regional] Nominating Committee shall nominate such candidate to the [National Nominating Committee] FINRA Board. In the event of a tie, there shall be a run-off vote for the nomination. The [Regional] Nominating Committee shall send a written certification of the nomination results to the [National Nominating Committee] FINRA Board. The certification shall state the number of votes received by each candidate and the number of ballots set aside.

[Rejection of Regional Nominating Committee Nominee]

[Sec. 6.26 If the National Nominating Committee rejects the nominee of the Regional Nominating Committee, the Regional Nominating Committee shall repeat the nomination procedures in Sections 6.9 through Section 6.25.]

Extension of Time and Additional Procedures

Sec. [6.27]6.14 The Secretary of [NASD Regulation] the Corporation may extend a time period under this Article for good cause shown. In extraordinary circumstances, the Secretary of the Corporation [NASD Regulation], with the approval of the Executive Committee or the FINRA Board, may adopt additional procedures for nominations under this Article.

ARTICLE VII

OFFICERS, AGENTS, AND EMPLOYEES

Officers

Sec. 7.1 The Board shall elect the officers of [NASD] FINRA Regulation, which shall include a President, a Secretary, and such other executive or administrative officers as it shall deem necessary or advisable, including, but not limited to: Executive Vice President, Senior Vice President, Vice President, General Counsel, and Treasurer of [NASD] FINRA Regulation. All such officers shall have such titles, powers, and duties, and shall be entitled to such compensation, as shall be determined from time to time by the Board. The terms of office of such officers shall be at the pleasure of the Board, which by affirmative vote of a majority of the Board, may remove any such officer at any time. One person may hold the offices and perform the duties of any two or more of said offices, except the offices and duties of President and Vice President or of President and Secretary. None of the officers, except the President, need be Directors of [NASD] FINRA Regulation.

Absence of the President

Sec. 7.2 In the case of the absence or inability to act of the President of [NASD] FINRA Regulation, or in the case of a vacancy in such office, the Board may appoint its Chair or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the President.

Agents and Employees

Sec. 7.3 In addition to the officers, [NASD] FINRA Regulation may employ such agents and employees as the Board may deem necessary or advisable, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board, the President, or any officer designated by the Board may from time to time determine. Agents and employees of [NASD] FINRA Regulation shall be under the supervision and control of the officers of [the NASD] FINRA Regulation, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.

Delegation of Duties of Officers

Sec. 7.4 The Board may delegate the duties and powers of any officer of [NASD] FINRA Regulation to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

Resignation and Removal of Officers

Sec. 7.5 (a) No Change.

(b) Any officer of [NASD] FINRA Regulation may be removed, with or without cause, by resolution adopted by a majority of the Directors then in office at any regular or special meeting of the Board or by a written consent signed by all of the Directors then in

office. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with [NASD] FINRA Regulation.

Bond

Sec. 7.6 [NASD] FINRA Regulation may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

ARTICLE VIII

DISTRICT COMMITTEES AND DISTRICT NOMINATING COMMITTEES

Establishment of Districts

Sec. 8.1 The Board shall establish boundaries for districts within the United States to assist [NASD] FINRA Regulation in administering its affairs in a manner that is consistent with applicable law, the Restated Certificate of Incorporation, these By-Laws, the Delegation Plan, and the Rules of the [Association] Corporation. The Board may make changes from time to time in the number or boundaries of the districts as it deems necessary or appropriate. The Board shall prescribe such policies and procedures as are necessary or appropriate to address the implementation of a new district configuration in the event of a change in the number or boundaries of the districts.

Composition of District Committees

Sec. 8.2 (a) A district created under Section 8.1 shall elect a District Committee pursuant to this Article. A District Committee shall consist of no fewer than five and no more than 20 members, unless otherwise provided by resolution of the Board. Subject to the limitation set forth in the immediately preceding sentence, the authorized number of members of a District Committee shall be determined from time to time by the Board; provided, however, that no decrease in the authorized number of members of a District

Committee shall shorten the term of office of any member thereof. Each District Committee member shall: (1) be registered with a[n NASD] FINRA member eligible to vote in the district for District Committee elections, and (2) work primarily from such [NASD] FINRA member's principal office or a branch office that is located within the district where the member serves on a District Committee. Members of the District Committees shall serve as panelists in disciplinary proceedings in accordance with the Rules of the [Association] Corporation. The District Committees shall consider and recommend policies and rule changes to the Board. The District Committees shall endeavor to educate [NASD] FINRA members and other brokers and dealers in their respective districts as to the objects, purposes, and work of [the NASD] FINRA and [NASD] FINRA Regulation in order to foster [NASD] FINRA members' interest and cooperation.

(b) No Change.

(c) In the event of the refusal, failure, neglect, or inability of a member of a District Committee to discharge his or her duties, or for any cause affecting the best interests of [NASD] FINRA Regulation, the sufficiency of which shall be decided by the District Committee, the District Committee may remove the member by the affirmative vote of two-thirds of the members of the District Committee then in office and declare the member's position vacant. The District Committee shall notify the District Committee member of his or her removal within seven days after the vote. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified of the removal. The Board may affirm, reverse, or modify the determination of the District Committee. A vote of a majority of the

Directors then in office shall be required to reverse or modify the action of the District Committee.

(d) No Change.

Term of Office of District Committee Members

Sec. 8.3 No Change.

Filling of Vacancies on District Committees

Sec. 8.4 In the event of a vacancy on a District Committee prior to the expiration of the member's term of office, and where the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) determines, pursuant to Section 8.2(d), that such vacancy should be filled, or in the event of a newly created membership on a District Committee by virtue of an increase in the authorized number of members thereof, the District Committee shall appoint by majority vote a representative of a[n NASD] FINRA member eligible pursuant to Section 8.2(a) to fill the vacancy or newly created membership. The appointment by the District Committee shall be effective until the next regularly scheduled election, and until such member's successor is elected and qualified. Following the next regularly scheduled election, in the event of a vacancy, the newly elected Committee member shall serve only the duration of the departed Committee member's term, and in the event of a newly created membership, the newly elected Committee member shall serve only the duration of the term for such class of membership.

Meetings of District Committees

Sec. 8.5 through 8.8 No Change.

Composition of District Nominating Committees

Sec. 8.9 (a) Each district created under Section 8.1 shall elect a District Nominating Committee pursuant to this Article. A District Nominating Committee shall consist of five members, unless the Board by resolution increases a District Nominating Committee to a larger number. Each District Nominating Committee member shall: (1) be registered with a[n NASD] FINRA member eligible to vote in the district for District Committee elections, and (2) work primarily from such [NASD] FINRA member's principal office or a branch office that is located within the district where the member serves on a District Nominating Committee, but shall not be a member of the District Committee. A majority of the members of the District Nominating Committee shall include persons who previously have served on a District Committee or who are current or former Directors or current or former Governors of the [NASD] FINRA Board, or its predecessors.

(b) No Change.

(c) In the event of the refusal, failure, neglect, or inability of a member of a District Nominating Committee to discharge his or her duties, or for any cause affecting the best interests of [NASD] FINRA Regulation, the sufficiency of which shall be decided by the District Nominating Committee, the District Nominating Committee may remove the member by the affirmative vote of two-thirds of the members of the District Nominating Committee then in office and declare the member's position vacant. The District Nominating Committee shall notify the District Nominating Committee member of his or her removal within seven days after the vote. A member who is removed may

submit a written appeal of the removal to the Board within 30 days after the date he or she is notified in writing of the removal. The Board may affirm, reverse, or modify the determination of the District Nominating Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the District Nominating Committee.

(d) No Change.

Term of Office of District Nominating Committee Members

Sec. 8.10 No Change.

Filling of Vacancies for District Nominating Committees

Sec. 8.11 In the event of a vacancy on a District Nominating Committee prior to the expiration of the member's term of office, and where the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) determines, pursuant to Section 8.9(d), that such vacancy should be filled, or in the event of a newly created membership on a District Nominating Committee by virtue of an increase in the authorized number of members thereof, the District Nominating Committee shall appoint by majority vote a representative of a[n NASD] FINRA member eligible pursuant to Section 8.9(a) to fill the vacancy or newly created membership. The appointment shall be effective until the next regularly scheduled election pursuant to this Article, and until such member's successor is elected and qualified.

Meetings of District Nominating Committees

Sec. 8.12 through 8.14 No Change.

Notice to District Nominating Committee

Sec. 8.15 On or before June 1 of each year, the Secretary of [NASD] FINRA Regulation shall give a Notice to each District Nominating Committee member and each District Director identifying the members of the District Nominating Committee and the District Committee whose terms of office shall expire in the next calendar year. The Notice shall describe election procedures for filling the offices.

Solicitation of Candidates and Secretary's Notice to [NASD] FINRA Members

Sec. 8.16 The Secretary of [NASD] FINRA Regulation shall give a Notice of the upcoming election to [NASD] FINRA members and the Executive Representatives of [NASD] FINRA members describing the election procedures and stating that [NASD] FINRA members may submit names of candidates for consideration to the District Director. [NASD] FINRA Regulation staff shall provide the District Nominating Committee with a description of the [NASD] FINRA membership in the district. The District Nominating Committee shall identify and solicit candidates to nominate for election to the District Committee and the District Nominating Committee.

District Nominating Committee Slate

Sec. 8.17 (a) The District Nominating Committee shall review the background of proposed candidates and the description of the [NASD] FINRA membership provided by [NASD] FINRA Regulation staff and shall nominate a slate of candidates for the election. The slate shall include one candidate for each open position on the District Committee and the District Nominating Committee subject to election at the next annual election. The District Nominating Committee may also nominate one alternate candidate for the District Committee and one alternate candidate for the District Nominating Committee. In the event of an uncontested election pursuant to Section 8.19, the alternate candidate

would replace any member of the nominated slate of candidates who withdrew or was determined to be ineligible. In nominating candidates for the office of member of the District Committee and the office of member of the District Nominating Committee, the District Nominating Committee shall endeavor to secure appropriate and fair representation on the District Committee and on the District Nominating Committee of the various sections of the district and various classes and types of [NASD] FINRA members engaged in the investment banking or securities business within the district. In nominating candidates for the office of member of the District Nominating Committee, a District Nominating Committee shall assure that the composition of the District Nominating Committee meets the standards in Section 8.9(a).

(b) No Change.

Notification of Nomination

Sec. 8.18 The District Director, acting on behalf of the District Nominating Committee, shall give a Notice to the Secretary of [NASD] FINRA Regulation of each candidate nominated by the District Nominating Committee and the office to which the candidate is nominated. If the District Nominating Committee chooses, in its discretion, to nominate an alternate candidate for either the District Committee or the District Nominating Committee, or an alternate candidate for each such Committee, the District Director shall give Notice to the Secretary of [NASD] FINRA Regulation of each alternate candidate nominated by the District Nominating Committee and the office to which each alternate candidate is nominated. On or before October 1 of each year, the Secretary of [NASD] FINRA Regulation shall give a Notice of the nominated candidates

and any alternate candidate(s) to the Executive Representatives of [NASD] FINRA members and the District Committee.

Uncontested Election

Sec. 8.19 No Change.

Designation of Additional Candidates

Sec. 8.20 If an officer or director of, or individual who is registered with, a[n NASD] FINRA member who meets the qualifications of Section 8.2 or 8.9, as applicable, is not nominated by the District Nominating Committee as a candidate or an alternate and wants to be considered for election to the District Committee or the District Nominating Committee, he or she shall deliver a written notice to the District Director within 14 calendar days after the Secretary of [NASD] FINRA Regulation gives the Notice of nominated candidates pursuant to Section 8.18. The District Director shall make a written record of the time and date of the receipt of the officer's, director's, or registered person's notice. The officer, director, or registered person shall be designated as an "additional candidate."

List of [NASD] FINRA Members Eligible to Vote

Sec. 8.21 (a) The Secretary of [NASD] FINRA Regulation shall provide a list of all [NASD] FINRA members eligible to vote in the district, their mailing addresses, and their Executive Representatives to the additional candidate promptly following receipt of the additional candidate's timely notice by the District Director.

(b) A[n NASD] FINRA member that has its principal office and/or one or more registered branch offices in the district shall be eligible to cast one vote through the

[NASD] FINRA member's Executive Representative for each position on the District Committee and the District Nominating Committee to be filled in the election.

Requirement for Petition Supporting Additional Candidate

Sec. 8.22 An additional candidate shall be nominated if a petition signed by at least ten percent of the [NASD] FINRA members eligible to vote in the district is filed with the District Nominating Committee within 30 calendar days after the date of mailing of the list to the additional candidate pursuant to Section 8.21. Only an Executive Representative may sign a petition on behalf of a[n NASD] FINRA member.

Notice of Contested Election

Sec. 8.23 If an additional candidate is nominated pursuant to Section 8.22, the election shall be considered a contested election. The Secretary of [NASD] FINRA Regulation shall give a Notice to the Executive Representatives of the [NASD] FINRA members eligible to vote in the district announcing the names of the candidates and the office to which each candidate is nominated and describing contested election procedures.

Administrative Support

Sec. 8.24 The District Office shall provide administrative support to all candidates by sending, by electronic transmission, to [NASD] FINRA members eligible to vote in the district up to two distributions of materials prepared by the candidates. If a candidate wants such distributions sent, the candidate shall prepare such material on the candidate's personal stationery and make the material available to [NASD] FINRA Regulation in electronic format. The material shall state that it represents the opinion of the candidate. Candidates nominated by the District Nominating Committee may identify

themselves as such in their materials. Any candidate may also send mailings at the candidate's own expense. Except as provided in this Article, [NASD] FINRA Regulation, the Board, [the Regional Nominating Committee,] any [other] committee, and [NASD] FINRA Regulation staff shall not provide any other administrative support to a candidate in the election.

Ballots

Sec. 8.25 With the assistance of the Secretary of [NASD] FINRA Regulation and an Independent Agent, the District Nominating Committee shall prepare a ballot with the names of the District Nominating Committee's candidates and any additional candidate nominated pursuant to Section 8.22 and the office to which each candidate is nominated. The ballot shall list separately, in alphabetical order, the candidates nominated by the District Nominating Committee and the additional candidates nominated pursuant to Section 8.22. The Secretary of [NASD] FINRA Regulation shall send a ballot to the Executive Representative of each [NASD] FINRA member eligible to vote in the district. Instructions on the ballot shall direct the Executive Representative to return the ballot to the Independent Agent and state that the ballot envelope must be postmarked on or before the return date specified on the ballot. The return date specified on the ballot shall be no fewer than 20 and no more than 30 days after the date of mailing of the ballot.

Vote Qualification List

Sec. 8.26 Eligibility to vote in a district election shall be based on [the NASD's] FINRA's membership records as of a date selected by the Secretary of [NASD] FINRA Regulation that is not more than 30 days before the date of mailing of the ballot. The Secretary of [NASD] FINRA Regulation shall prepare a list of [NASD] FINRA members

eligible to vote in the district, their mailing addresses, and their Executive Representatives, which shall be used for vote qualification purposes, and shall provide the list to the candidates.

Ballots Returned As Undelivered

Sec. 8.27 The Independent Agent shall open any ballot envelope returned undelivered and shall determine whether it was sent to the [NASD] FINRA member's address of record. If incorrectly addressed, the Independent Agent shall send a new ballot to the address of record.

General Procedures for Qualification and Accounting of Ballots

Sec. 8.28 After the voting period, on a date or dates designated by the Secretary of [NASD] FINRA Regulation, the qualification and accounting of ballots shall take place. The date or dates designated shall be not later than 14 calendar days after the return date specified on the ballot pursuant to Section 8.25. Candidates and their representatives shall be allowed to observe the qualification and accounting of ballots. Representation for each candidate shall be limited to two individuals. The Independent Agent shall bring to a location within the district agreed to between the Independent Agent and the Secretary of [NASD] FINRA Regulation all ballots timely received. Under the direction of the Secretary of [NASD] FINRA Regulation or the Secretary's designee, the Independent Agent shall open and count the ballots. For ballot qualification purposes, the Independent Agent shall identify to the candidates the [NASD] FINRA members that timely returned ballots and inform the candidates of the Independent Agent's determination of whether or not a ballot is qualified for voting purposes. The determination shall be based on a comparison of ballots received against the list of

[NASD] FINRA members eligible to vote in the district and their Executive Representatives as prepared by the Secretary of [NASD] FINRA Regulation pursuant to Section 8.26. The Secretary of [NASD] FINRA Regulation or the Secretary's designee shall make the final determination of the qualification of a ballot. Upon the qualification of a ballot, the Independent Agent shall record the vote indicated on the ballot. The candidates and their representatives shall not be allowed to see the vote of a[n NASD] FINRA member.

Ballots Set Aside

Sec. 8.29 The Independent Agent shall set aside a ballot if: (a) the ballot is received from a[n NASD] FINRA member eligible to vote in the district and the ballot is signed by a person who is not the Executive Representative listed on the vote qualification list prepared under Section 8.26, and the Secretary of [the NASD] FINRA has not received proper notice of a change in Executive Representative pursuant to the [NASD] FINRA By-Laws; or (b) if two or more properly executed ballots are received from a[n NASD] FINRA member eligible to vote in the district. If the Independent Agent determines that the ballots set aside are material to the outcome of the election, the Secretary of [NASD] FINRA Regulation and the Independent Agent shall make reasonable efforts to resolve each ballot set aside. With respect to a ballot not signed by an Executive Representative of record, the Secretary of [NASD] FINRA Regulation shall contact the [NASD] FINRA member to request that the [NASD] FINRA member send written notice of any change in Executive Representative by facsimile so that the ballot may be counted. With respect to multiple ballots from a[n NASD] FINRA member, the Independent Agent shall contact the Executive Representative of the [NASD] FINRA

member to obtain the [NASD] FINRA member's vote. The Secretary of [NASD] FINRA Regulation shall keep a list of [NASD] FINRA members that reported their ballot was lost or not received and that were provided with a duplicate ballot. The Secretary of [NASD] FINRA Regulation shall provide the list to the Independent Agent and, upon request, to the candidates.

Invalid Ballots

Sec. 8.30 No Change.

Election Results

Sec. 8.31 Under the direction of the Secretary of [NASD] FINRA Regulation or the Secretary's designee, the Independent Agent shall count the votes received for each candidate in a district. The candidates for the office of member of the District Committee or District Nominating Committee receiving the largest number of votes cast in the district for the office shall be declared elected such that the number of candidates declared elected equals the number of positions on the District Committee or District Nominating Committee subject to election in the election. In the event of a tie, there shall be a run-off election. The Secretary of [NASD] FINRA Regulation shall notify the Board of the election results. The notification shall state the number of votes received by each candidate and the number of ballots set aside.

Extensions of Time and Additional Procedures

Sec. 8.32 The Secretary of [NASD] FINRA Regulation may extend a time period under this Article for good cause shown. In extraordinary circumstances, the Secretary of [NASD] FINRA Regulation, with the approval of the Executive Committee or the Board, may adopt additional procedures for elections under this Article.

Definitions

Sec. 8.33 (a) No Change.

(b) For purposes of this Article VIII, any notice by [NASD] FINRA Regulation, the Secretary of [NASD] FINRA Regulation, or the District Director given by electronic transmission shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the person entitled to notice has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the person entitled to notice has consented to receive notice; (3) if by a posting on an electronic network when the person entitled to notice has consented to receive notice in this manner, together with separate notice to the person entitled to notice of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (4) if by any other form of electronic transmission when the person entitled to notice has consented to receive notice in this manner, when directed to the person entitled to notice. For purposes of this Article VIII, if mailed, any such notice by [NASD] FINRA Regulation, the Secretary of [NASD] FINRA Regulation, or the District Director shall be deemed given when deposited in the United States mail, postage prepaid, directed to the person entitled to notice at such person's address as it appears on the records of [NASD] FINRA Regulation.

ARTICLE IX

COMPENSATION

Compensation of Board, Council, and Committee Members

Sec. 9.1 The Board may provide for reasonable compensation of the Chair of the Board, the Directors, National Adjudicatory Council members, and the members of any

committee of the Board or any District Committee. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of [NASD] FINRA Regulation.

ARTICLE X

INDEMNIFICATION

Indemnification of Directors, Officers, Employees, Agents, National Adjudicatory Council and Committee Members

Sec. 10.1 (a) [NASD] FINRA Regulation shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of [NASD] FINRA Regulation or a National Adjudicatory Council or committee member, or is or was a Director, officer, or employee of [NASD] FINRA Regulation who is or was serving at the request of [NASD] FINRA Regulation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of [NASD] FINRA Regulation) against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) any threatened, pending, or completed action or suit by or in the right of [NASD] FINRA Regulation to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) [NASD] FINRA Regulation shall advance expenses (including attorneys' fees and disbursements) to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(c) [NASD] FINRA Regulation may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of [NASD] FINRA Regulation or is or was an agent of [NASD] FINRA Regulation who is or was serving at the request of [NASD] FINRA Regulation as a director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).

(d) [NASD] FINRA Regulation may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of

the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by [NASD] FINRA Regulation to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) the person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of [NASD] FINRA Regulation; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to [NASD] FINRA Regulation.

(f) No Change.

(g) Notwithstanding the foregoing, but subject to subsection (j), [NASD] FINRA Regulation shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

(h) [NASD] FINRA Regulation's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) No Change.

(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by [NASD] FINRA Regulation, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, [NASD] FINRA Regulation shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

Indemnification Insurance

Sec. 10.2 [NASD] FINRA Regulation shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, National Adjudicatory Council or committee member, employee, or agent of [NASD] FINRA Regulation, or is or was serving at the request of [NASD] FINRA Regulation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as

such, whether or not [NASD] FINRA Regulation would have the power to indemnify such person against such liability hereunder.

ARTICLE XI

CAPITAL STOCK

Sole Stockholder

Sec. 11.1 through **11.8** No Change.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Corporate Seal

Sec. 12.1 The seal of [NASD] FINRA Regulation shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board, the name of [NASD] FINRA Regulation, the year of its incorporation, and the words “Corporate Seal” and “Delaware.” The seal may be used by causing it to be affixed or impressed, or a facsimile thereof may be reproduced or otherwise used in such manner as the Board may determine.

Fiscal Year

Sec. 12.2 The fiscal year of [NASD] FINRA Regulation shall begin on the first day of January in each year, or such other month as the Board may determine by resolution.

Waiver of Notice

Sec. 12.3 No Change.

Execution of Instruments, Contracts, Etc.

Sec. 12.4 (a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of [NASD] FINRA Regulation by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board, any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board, may authorize any officer, employee, or agent, in the name of and on behalf of [NASD] FINRA Regulation, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of [NASD] FINRA Regulation by any principal officer or subordinate officer of [NASD] FINRA Regulation, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of [NASD] FINRA Regulation. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Form of Records

Sec. 12.5 Any records maintained by [NASD] FINRA Regulation in the regular course of business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information

storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

ARTICLE XIII

AMENDMENTS; EMERGENCY BY-LAWS

By Stockholder

Sec. 13.1 through **13.2** No Change.

Emergency By-Laws

Sec. 13.3 The Board may adopt emergency By-Laws subject to repeal or change by action of the stockholder that shall, notwithstanding any different provision of law, the Restated Certificate of Incorporation, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which [NASD] FINRA Regulation conducts its business or customarily holds meetings of the Board or stockholder, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.

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