

OMB APPROVAL

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

File No. SR - 2010 - 007

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).

The proposed rule change would amend the By-Laws of FINRA Dispute Resolution.

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 Mignon Last Name McLemore

Title Assistant Chief Counsel, FINRA Dispute Resolution

E-mail mignon.mclemore@finra.org

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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 01/22/2010

By Linda D. Fienberg

(Name)

President, FINRA Dispute Resolution

(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.

Linda D. Fienberg,

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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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 Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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 dispute resolution subsidiary (“FINRA Dispute Resolution”) to: modify the composition of the FINRA Dispute Resolution Board; adopt changes to conform the FINRA Dispute Resolution By-Laws to the FINRA By-Laws; and implement other conforming changes to reflect the corporate name change and other similar matters.

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

On December 10, 2007, the sole stockholder and Chief Executive Officer of NASD Dispute Resolution, Inc. authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

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

¹ 15 U.S.C. 78s(b)(1).

² Exhibit 5 reflects proposed changes to the By-Laws. If the proposed revision creates new numbering, the revised section numbers and paragraphs are underlined.

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 Subsidiaries

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

On September 8, 2008, FINRA filed a proposal with the SEC 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.⁴ The SEC approved the amendments to FINRA Regulation's By-Laws on November 6, 2008.⁵

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).

⁴ See Securities Exchange Act Rel. No. 58626 (Sept. 23, 2008), 73 FR 56872 (Sept. 30, 2008) (File No. SR-FINRA-2008-046, Notice of Filing and Amendment No. 1).

⁵ See Securities Exchange Act Rel. No. 58909 (Nov. 6, 2008), 73 FR 68467 (Nov. 18, 2008).

On March 27, 2009, FINRA filed a proposal with the SEC to amend further the By-Laws of FINRA Regulation to modify the FINRA Regulation Board (“FINRA Regulation Board”) composition, to adopt changes to conform the FINRA Regulation By-Laws to the FINRA By-Laws, and to reflect the corporate name change and similar matters.⁶ The SEC approved the amendments to FINRA Regulation’s By-Laws on May 21, 2009.⁷

FINRA Dispute Resolution (formerly known as NASD Dispute Resolution) is a subsidiary of FINRA that operates according to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”), as amended,⁸ which NASD adopted first in 1996. Pursuant to the Delegation Plan, FINRA’s dispute resolution subsidiary conducts arbitration, mediation and other dispute resolution programs and interprets rules and regulations pertaining to its dispute resolution programs.⁹ FINRA Dispute Resolution’s By-Laws were not amended at the time of the consolidation. Now that the consolidation has been completed and amendments to FINRA Regulation’s By-Laws have been approved, FINRA believes FINRA Dispute Resolution’s By-Laws should be updated.

In July 2007, when NASD and the NYSE consolidated their member firm regulation and dispute resolution operations, FINRA created a Regulation Policy Committee of the Board of Governors, whose members are 14 Governors from FINRA’s

⁶ See Securities Exchange Act Rel. No. 59696 (Apr. 2, 2009), 74 FR 16020 (Apr. 8, 2009) (File No. SR-FINRA-2009-020).

⁷ See Securities Exchange Act Rel. No. 59962 (May 21, 2009), 74 FR 25792 (May 29, 2009) (Order Approving SR-FINRA-2009-020).

⁸ See Securities Exchange Act Rel. No. 41971 (Sept. 30, 1999), 64 FR 55793 (Oct. 14, 1999) (Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Create a Dispute Resolution Subsidiary).

⁹ See FINRA Manual, Corporate Organization, Plan of Allocation & Delegation of Functions by NASD to Subsidiaries, NASD Dispute Resolution, §§III (A)(1)(a) and (c).

Board of Governors.¹⁰ The members of the Regulation Policy Committee also serve as the Directors of the FINRA Regulation and FINRA Dispute Resolution Boards of Directors.¹¹ The Commission approved the composition of FINRA's committees when it approved amendments to FINRA's By-Laws on July 26, 2007.¹² The Commission also approved the composition of FINRA Regulation's Board of Directors when it approved amendments to FINRA's By-Laws on May 21, 2009.¹³ When the FINRA Regulation and FINRA Dispute Resolution Boards of Directors meet, they act in their respective capacities as directors of those subsidiaries. The FINRA Dispute Resolution Board of Directors continues to oversee the management of FINRA Dispute Resolution, establish policies and procedures, and monitor the use of financial resources, among other things.

Proposal to Amend FINRA Dispute Resolution's By-Laws

FINRA is proposing to amend the FINRA Dispute Resolution By-Laws to: modify the composition of the FINRA Dispute Resolution Board; adopt changes to conform the FINRA Dispute Resolution By-Laws to the FINRA By-Laws; and implement other conforming changes to reflect the corporate name change and other similar matters. The proposed amendments to FINRA Dispute Resolution By-Laws are modeled on those of the FINRA and FINRA Regulation By-Laws (both of which were

¹⁰ FINRA's Board of Governors consists of 21 members, 11 of whom are public members. See FINRA By-Laws, Article I(ss) and I(tt), definitions of Public Director and Public Governor, respectively. The Regulation Policy Committee is comprised of seven public, five industry, and two neutral members of FINRA's Board of Governors. The two neutral members are the Chief Executive Officers of FINRA and NYSE Regulation, Inc. FINRA's By-Laws require that FINRA's committees consist of a majority public members. See FINRA By-Laws, Article IX (Committees – Appointment), §1(b).

¹¹ FINRA's Chairman and Chief Executive Officer is an ex-officio, non-voting member of the FINRA Regulation and FINRA Dispute Resolution Boards of Directors.

¹² Supra note 3.

¹³ Supra note 7.

previously approved by the Commission), with modifications, described below, as appropriate to the particular functions of FINRA Dispute Resolution.

The following discussion addresses the proposed amendments to FINRA Dispute Resolution's By-Laws under the article of the By-Laws in which the amendments would first appear.

Amendments to Article I - Definitions

Article I of the FINRA Dispute Resolution By-Laws contains definitions of terms used in the By-Laws. FINRA is proposing to add to or amend some of these definitions.

Broker and Dealer

FINRA is proposing to amend the definitions of "broker" and "dealer" in Article I of the By-Laws of FINRA Dispute Resolution to conform them with the definitions of "broker" and "dealer" in the Act, as amended by the Gramm-Leach-Bliley Act of 1999.¹⁴ As proposed, FINRA would incorporate by reference the definitions of the terms "broker" and "dealer" as set forth in Sections 3(a)(4) and 3(a)(5), respectively, of the Act.¹⁵ The SEC approved the same change to definitions of the terms "broker" and "dealer" in the then-NASD Regulation's By-Laws in March 2001.¹⁶ FINRA believes that the proposed changes to the terms "broker" and "dealer" are necessary to ensure that the definitions in the FINRA Dispute Resolution By-Laws remain consistent with the definitions of the Act.

Corporation

¹⁴ Pub. L. 106-102, 113 Stat. 1338 (1999).

¹⁵ 15 U.S.C. 78c(a)(4) and (a)(5).

¹⁶ See Securities Exchange Act Rel. No. 44052 (March 8, 2001), 66 FR 15157 (March 15, 2001) (File No. SR-NASD-01-13).

FINRA is proposing to add the term “Corporation” to Article I of the By-Laws of FINRA Dispute Resolution to reflect the change of the Corporation’s name from “NASD” to “FINRA.”¹⁷ Proposed Article I(e) would define Corporation to mean the National Association of Securities Dealers, Inc., the Financial Industry Regulatory Authority, Inc., or any future name of the entity.

Electronic Transmission

FINRA is proposing to add the term “electronic transmission” to Article I of the By-Laws of FINRA Dispute Resolution to reflect the common usage of electronic transmission as a means of communication.¹⁸ The term “electronic transmission” would be defined to mean communicating or disseminating information or documents to individuals or entities by telegraph, telefax, cable, radio, wireless or other device or method. FINRA intends “other device or method” to include email, text messages, and related technologies, for example. FINRA believes that the new definition clarifies the current methods FINRA uses to communicate with and disseminate information to individuals and entities, and gives FINRA flexibility to use other devices or methods as advances in technology are made.

FINRA Member

FINRA is proposing to add the term “FINRA member” to Article I of the By-Laws of FINRA Dispute Resolution.¹⁹ As proposed, the term “FINRA member” would mean “any broker or dealer admitted to membership in FINRA, whether or not the

¹⁷ Supra note 3.

¹⁸ The new term “electronic transmission” would be added as proposed Article I(k) of the By-Laws of FINRA Dispute Resolution.

¹⁹ The new term “FINRA member” would be added as proposed Article I(o) of the By-Laws of FINRA Dispute Resolution.

membership has been terminated or cancelled; and any broker or dealer admitted to membership in a self-regulatory organization that, with FINRA consent, has required its members to arbitrate pursuant to the Code of Arbitration Procedure for Customer Disputes or the Code of Arbitration Procedure for Industry Disputes and/or to be treated as members of FINRA for purposes of the Codes of Arbitration Procedure, whether or not the membership has been terminated or cancelled.”

FINRA believes the proposed change would clarify the forum’s jurisdiction concerning a FINRA member, and would conform the definition in the By-Laws with that in the Code of Arbitration Procedure for Customer Disputes (Customer Code) and the Code of Arbitration Procedure for Industry Disputes (Industry Code) (together, Codes).²⁰ FINRA believes that the proposed change to add the term “FINRA member” is necessary to ensure that the definitions in the FINRA Dispute Resolution By-Laws are consistent with the definitions of the Codes.

Industry Director or Industry Member and Public Director or Public Member

FINRA is proposing to modify the terms “Industry Director” or “Industry member” and “Public Director” or “Public member” in Articles I(k) and I(t), respectively. With regard to the term “Industry Director” or “Industry member”, the proposed rule change would amend the FINRA Dispute Resolution’s By-Laws by separating it into two definitions for ease of reference.²¹

FINRA is also proposing to amend the revised terms “Industry Director” and

²⁰ Rule 12100(o) of the Customer Code (definition of member) and Rule 13100(o) of the Industry Code (definition of member). In July 2007, the SEC approved an amendment to the Codes to clarify the term “member.” See Securities Exchange Act Rel. No. 56029 (July 9, 2007), 72 FR 38641 (July 13, 2007) (File No. SR-NASD-2007-038).

²¹ The term “Industry Director” will be defined in proposed Article I(r); “Industry Member” in proposed Article I(s).

“Industry Member” to limit the look-back test that characterizes committee members as industry if they have served as an officer, director, or employee of a broker or dealer, among other reasons, to the past twelve months. The current provision uses a three-year look-back test. The proposed change would make the definitions of “Industry Director” and “Industry Member” under the FINRA Dispute Resolution By-Laws consistent with the definitions of “Industry Director” and “Industry Governor” or “Industry committee member” in the FINRA By-Laws.²²

The proposal would also add the term “independent director” to the portion of the definitions of “Industry Director” and “Industry Member” that excludes outside directors of a broker or dealer. The term “independent director” is synonymous with outside director, but FINRA is proposing to add it to the exclusionary clause to harmonize the FINRA Dispute Resolution By-Laws with the definition of Industry Governor in the FINRA By-Laws.²³

Similarly, FINRA is proposing to modify the term “Public Director” or “Public member” by separating it into two definitions for ease of reference.²⁴ FINRA would also amend the proposed terms “Public Director” or “Public Member” to clarify that an individual’s service as a public director of a self regulatory organization does not does not disqualify that person from serving as a Pubic Director or Public Member under FINRA Dispute Resolution’s By-Laws.

FINRA notes that the proposed changes to the definitions of “Industry Director” and “Industry Member” as well as “Public Director” and “Public Member” under the

²² See FINRA By-Laws, Article I(s) and I(t).

²³ See FINRA By-Laws, Article I(t).

²⁴ The term “Public Director” will be defined in proposed Article I(w); “Public Member” in proposed Article I(x).

FINRA Dispute Resolution By-Laws are generally consistent with similar amendments to the By-Laws of FINRA Regulation,²⁵ which the SEC approved in November 2008.²⁶ FINRA believes that the changes to the definitions would eliminate any ambiguity concerning the interpretation of the rules within the Corporation, and would ensure uniform application of the rules.

Person Associated With a Member or Associated Person of a Member

On June 5, 2009, FINRA filed a proposed rule change to amend Rules 12100(r), 12506(a), and 12902(a) of the Customer Code and Rule 13100(r) of the Industry Code to amend the definition of “associated person,” streamline a case administration procedure, and clarify that customers could be assessed hearing session fees based on their own claims for relief in connection with an industry claim.²⁷ The Commission approved the proposal on October 26, 2009.²⁸

Under the proposal, FINRA is amending the definition of associated person under the Codes²⁹ to match the definition in the Corporation’s By-Laws.³⁰ The proposal

²⁵ Under the FINRA Regulation’s By-Laws, the definitions of Industry Member and Public Member contain a reference to a NAC or committee member. See FINRA Regulation By-Laws, Articles I(y) and I(ii). The NAC is appointed and governed pursuant to FINRA Regulation By-Laws; FINRA Dispute Resolution does not use this committee, and thus, references thereto do not appear in FINRA Dispute Resolution By-Laws.

²⁶ Supra note 5.

²⁷ See Securities Exchange Act Rel. No. 60159 (June 22, 2009), 74 FR 31779 (July 2, 2009) (File No. SR-FINRA-2009-041).

²⁸ See Securities Exchange Act Rel. No. 60878, 74 FR 56679 (Nov. 2, 2009) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of SR-2009-041, as Modified by Amendment No. 1).

²⁹ Rule 12100(r) of the Customer Code and Rule 13100(r) of the Industry Code define “person associated with a member” to mean:

- (1) A natural person registered under the Rules of FINRA; or
- (2) A sole proprietor, partner, officer, director, or branch manager of a member, or a 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

amends the definition of “person associated with a member” in the Codes in two ways:

(1) inserts the word “other” before the second reference to “natural person” to clarify that the definition does not include corporate entities; and (2) inserts the criterion that a natural person includes someone who has applied for registration.

FINRA is proposing to implement the same changes to the definition of associated person of member in the FINRA Dispute Resolution By-Laws, as have been approved recently by the Commission to same definitions under the Codes, to ensure uniform application of the definition.

Amendments to Article IV – Board of Directors

FINRA is proposing to make limited conforming changes to Article IV of the FINRA Dispute Resolution By-Laws to parallel more closely the governance structure of the FINRA Board.

Section 4.3 - Qualifications

The proposed rule change would amend Article IV, §4.3(a) to reflect FINRA’s current governance structure by establishing that FINRA Dispute Resolution Board members would be drawn exclusively from the FINRA Board. The proposed rule change

or not any such person is registered or exempt from registration with FINRA under the By-Laws or the Rules of FINRA.

For purposes of the Code, a person formerly associated with a member is a person associated with a member.

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FINRA’s By-Laws define “person associated with a member or associated person of a member” as (1) a natural person who is registered or has applied for registration under the Rules of the Corporation; (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 the Corporation under these By-Laws or the Rules of the Corporation; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member. See By-Laws of the Corporation, Article I, Definitions (rr).

would also amend §4.3(a) to streamline the composition of FINRA Dispute Resolution’s Board and implement a requirement that it contain more Public Directors than Industry Directors. Thus, §4.3(a) would be amended to state that “the number of Public Directors shall exceed the number of Industry Directors.” FINRA’s By-Laws contain a similar requirement.³¹

The proposal would make other changes to Article IV, §4.3 as follows:

- re-structure the Board to remove the President of FINRA Dispute Resolution. The President would not be deemed a Director, and therefore, the proposed rule change would delete several references to the President of FINRA Dispute Resolution;³²
- clarify that the Chairman of the FINRA Board and the Chief Executive Officer (“CEO”) of FINRA shall be ex-officio non-voting members of the Board;
- transfer the task of selecting the Chair of the FINRA Dispute Resolution Board from the Board members to FINRA Dispute Resolution’s stockholder;³³
- eliminate the requirement that the Board select a Vice Chair; and

³¹ See By-Laws of the Corporation, Article VII (Board of Governors), §4(a).

³² See FINRA Dispute Resolution By-Laws, Article IV, Sections 4.3(a) (Qualifications), 4.5 (Resignation), 4.11(c) (Meetings), 4.13(f) (Executive Committee), and 4.13(g) (Finance Committee). Section 141(c)(2) of the General Corporation Law of the State of Delaware provides that “[t]he board of directors may designate 1 or more committees, each committee to consist of 1 or more **directors** of the corporation.” (Emphasis added). Committees of the board, therefore, may be comprised exclusively of board members. In addition, any committee of the board that is delegated any power and authority of the board, such as the Executive Committee, must be comprised exclusively of board members. See Delaware General Corporation Law, § 141(c)(2).

³³ See Delaware General Corporation Law § 142, which allows the sole stockholder to make this selection if expressly provided for in the By-Laws.

- state that the stockholder would designate the Chair at the same time that the Directors are elected.

Section 4.4 - Election

The proposed rule change would eliminate as unnecessary the reference to the first meeting of NASD Regulation at which Directors initially were elected.

Section 4.5 - Resignation

The proposal would remove the requirement that Directors submit written notice of resignation to the President. Under the proposal, such notice would be submitted to the Chair of the Board, instead of the President.

Section 4.6 - Removal

The proposed rule change would transfer the authority to remove Directors from a majority vote of the FINRA Board to the stockholder of FINRA Regulation.³⁴ The proposed amendment would reflect Delaware law, which requires that a stock corporation vest the power to remove directors with the stockholder.³⁵

Section 4.7 - Disqualification

In connection with the proposed change to §4.3(a), which would require the number of Public Directors to exceed the number of Industry Directors, the proposal would also amend §4.7 to clarify that when a Director is disqualified from Board service and the Director's remaining term is not more than six months, the Board may continue

³⁴ The sole stockholder of the capital stock of FINRA Dispute Resolution, Inc. is FINRA, Inc. See Article VIII, § 8.1 (Sole Stockholder).

³⁵ See Delaware General Corporation Law, § 141(k). As a practical matter, the FINRA Board generally would be asked to pass a resolution authorizing an officer of FINRA to execute a sole stockholder consent on behalf of FINRA (who is the sole stockholder of FINRA Dispute Resolution) before such a consent is executed. As such, the FINRA Board would have a voice in the matter, but as a matter of Delaware law, the consent authorizing the removal must be executed by a duly authorized officer of FINRA in FINRA's capacity as sole stockholder.

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

Section 4.8 – Filling of Vacancies

Currently, Directors of FINRA Dispute Resolution are elected annually at the meeting of FINRA Dispute Resolution’s stockholder meeting or at a special meeting dedicated to Board elections.³⁶ When the annual election of Directors is not held on the designated date, the By-Laws charge the Directors to “cause such election” to be held.³⁷ The proposed rule change would confirm that the same process should be used by the FINRA Dispute Resolution Board when filling vacancies among its ranks. Thus, the proposal would amend §4.8 to adopt language that the FINRA Board shall “cause the election” of a qualified Director to fill the vacant position.³⁸

Section 4.9 – Quorum and Voting

The proposed rule change would remove a cross-reference to §4.14(b) in the quorum provision, and also amend the provision to clarify that, when there is a quorum, a majority vote of the Directors present at a meeting constitutes action of the Board.

Section 4.12 – Notice of Meetings; Waiver of Notice

The proposal would clarify the conditions under which the FINRA Dispute Resolution Board may meet. The current FINRA Dispute Resolution By-Laws instruct that a Director may waive notice of a Board meeting by being present at the meeting, so

³⁶ See current FINRA Dispute Resolution By-Laws, Article IV, §4.4 (Election).

³⁷ Id.

³⁸ Pursuant to Delaware law, FINRA, as the sole stockholder of FINRA Dispute Resolution, has the authority to execute a stockholder consent electing an individual to fill the vacancy pursuant to directions of the FINRA Board. Alternatively, the FINRA Board may pass a resolution making it known who they would like appointed to fill the vacancy. Under this scenario, it is likely that the remaining members of the FINRA Dispute Resolution Board will follow the advice of its controlling stockholder and elect the recommended individual. See Delaware General Corporation Law, §223.

long as the Director did not attend the meeting solely to object to the meeting taking place.³⁹ FINRA is proposing to amend §4.12(c) to clarify that a Board meeting is a legal meeting if all Directors are present and no Director is present solely for the purpose of objecting to the meeting taking place.

The proposed rule change also would amend §§4.12(a) and (b) to replace the phrase “telegraph, telefax, cable, radio, or wireless” with the new term “electronic transmission.”⁴⁰ For an explanation of the term “electronic transmission,” see the discussion under “Amendments to Article I – Definitions” above.

Section 4.13 – Committees

As explained under §4.3(a), the proposal would implement a requirement that the FINRA Dispute Resolution Board contain more Public Directors than Industry Directors.⁴¹ In furtherance of this change, references throughout Article IV to balancing “Industry” and “Non-Industry” Board members have been replaced with references to balancing “Industry” and “Public” Board members. The proposal likewise would remove the requirement that the Executive Committee include at least one Public Director and institute the requirement that Public Directors shall exceed Industry Directors on FINRA Dispute Resolution’s Executive Committee of the Board.⁴²

Section 4.15 – Action Without Meeting

³⁹ See current FINRA Dispute Resolution By-Laws, Article IV, §4.12(b) (Notice of Meeting; Waiver of Notice) and Article IX, §9.3(b) (Waiver of Notice).

⁴⁰ FINRA proposed similar changes to Article IV, Section 4.12 (Notice of Meeting; Waiver of Notice) and Article XII, Section 12.3 (Waiver of Notice) of the FINRA Regulation By-Laws. See Securities Exchange Act Rel. No. 59696 (April 2, 2009), 74 FR 16020 (April 8, 2009) (File No. SR-FINRA-2009-020).

⁴¹ See also proposed Article I(r) (Industry Director); proposed Article I(s) (Industry Member); proposed Article I(w) (Public Director); and proposed Article I(x) (Public Member).

⁴² See Article IV, §4.12(f) (Executive Committee).

The proposal would make a related change to §4.15 to eliminate the requirement that unanimous consent for taking action without a meeting specifically be in writing and filed with the minutes of the meeting. Instead, the proposal would require the consent to be “in accordance with applicable law,” which in the instance of FINRA Dispute Resolution, would be Delaware law.

FINRA believes that the proposed amendments to Article IV would align FINRA Dispute Resolution’s Board structure with that of FINRA and its other subsidiary, and conform FINRA Dispute Resolution’s corporate practices to the laws of the state in which it is incorporated.

Amendment to Article V – Officers, Agents, and Employees

Section 5.1 – Officers

As explained under Article IV, §4.3, the proposed rule change would re-structure the Board to remove the President of FINRA Dispute Resolution as a Director of the Board.⁴³ In connection with this change, the proposal would remove a reference to the President from §5.1, so that the amended language would state, in relevant part, that none of the officers need to be Directors of FINRA Dispute Resolution.

Amendments to Article VIII – Capital Stock

Section 8.3 - Signatures

The proposed rule change would amend several provisions regarding FINRA Dispute Resolution’s capital stock. Currently, under §8.3(a), FINRA’s approach to the corporate law issue of signing certificates representing shares of FINRA Dispute Resolution capital stock is to have these shares signed by FINRA Dispute Resolution

⁴³ Supra note 32.

officers. Under the proposed re-structuring of the Board, FINRA Dispute Resolution will not have an officer as Chair of the Board. Thus, FINRA is proposing to remove provision that permits the Chair of the Board to sign stock certificates, and limit the authority to sign such certificates to the President, Vice President, Secretary or Treasurer.

FINRA is proposing to amend §8.3(b) to remove the limitations on the type of signatures required on certificates of capital stock. The current provision states, in relevant part, that “if any such certificates are countersigned by a transfer agent other than NASD Dispute Resolution or its employee, or by a registrar other than NASD Dispute Resolution or its employee, any other signature on the certificate may be a facsimile.” The proposed amendment would eliminate limitations on when signatures on certificates representing shares of FINRA Dispute Resolution’s capital stock may be facsimiles and permit any signature to be a facsimile. Thus, under the proposal, the provision would be amended to state that “any signature on the stock certificate may be a facsimile.” FINRA believes this change would be consistent with current practice that permits its certificates representing capital stock to be sealed with a facsimile of FINRA Dispute Resolution’s corporate seal.

Section 8.4 – Stock Ledger

Currently, §8.4(a) of the FINRA Dispute Resolution By-Laws requires that the FINRA Dispute Resolution Secretary, or another officer, employee, or agent, keep a record of FINRA Dispute Resolution’s capital stock ownership and “the number of shares represented by each such certificate.” FINRA is proposing to change several phrases that discuss “capital stock” to “certificates representing shares of capital stock” or similar

constructions, instead of “certificates for shares of capital stock.”⁴⁴ This change would make FINRA Dispute Resolution’s By-Laws more consistent with the language of the applicable section of the General Corporation Law of the state of Delaware.⁴⁵

Amendments to Article IX – Miscellaneous Provisions

Section 9.3 – Waiver of Notice

FINRA is proposing to amend §9.3(a) of the FINRA Dispute Resolution By-Laws to replace the phrase “telegraph, telefax, cable, radio, or wireless” with the new term “electronic transmission.”⁴⁶

Conforming Changes Relating to the New FINRA name and Other Technical Changes

FINRA is proposing to implement certain other non-substantive changes to all articles of the FINRA Dispute Resolution By-Laws that are reflected in Exhibit 5. The proposed rule change would make certain non-substantive changes to the FINRA Dispute Resolution By-Laws as follows:

- “the NASD” or “NASD” would be replaced with “FINRA” or “the Corporation;”
- “NASD Dispute Resolution” would be changed to “FINRA Dispute Resolution;”
- “the Rules of the Association” would be replaced with “the Rules of the Corporation;”

⁴⁴ The proposal would delete as imprecise the words “certificates for” in the discussion of potential registration of shares of capital stock. See proposed FINRA Dispute Resolution By-Laws, Article VIII, §§ 8.4(b) (Stock Ledger), 8.5 (Transfers of Stock), 8.6 (Cancellation), and 8.7 (Lost, Stolen, Destroyed, and Mutilated Certificates).

⁴⁵ See Delaware General Corporation Law §158.

⁴⁶ See *supra* note 40, and the explanation of the term “electronic transmission” under “Amendments to Article I - Definitions.”

- “National Nominating Committee” would be replaced with “Nominating Committee;”
- a reference to “FINRA Regulation” would be added; and
- “Association” would be replaced with “Corporation.”

FINRA is also proposing to amend Article II, §2.1 to change the name and address of the registered agent from The Corporation Trust Company, 1209 Orange Street, 19801 to Corporation Creations Network Inc., 1308 Delaware Avenue, 19806.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(2) of the Act,⁴⁷ in that it provides for the organization of FINRA and FINRA Dispute Resolution in a manner that will permit FINRA to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by FINRA members and persons associated with FINRA members with the Act, the rules and regulations thereunder, FINRA and NASD rules and the federal securities laws. FINRA further believes that the proposed rule change is consistent with Section 15A(b)(4) of the Act,⁴⁸ which requires, among other things, that FINRA’s rules assure a fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of FINRA, broker or dealer. FINRA believes that the proposed composition of its Dispute Resolution Board would fairly and effectively represent users of the dispute resolution forum, and will help resolve dispute resolution issues in a manner that will redound to the

⁴⁷ 15 U.S.C. 78o-3(b)(2).

⁴⁸ 15 U.S.C. 78o-3(b)(4).

benefit of investors.

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.

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.⁴⁹

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 (redline).

⁴⁹

15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-_____; File No. SR-FINRA-2010-007

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

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 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”) on January 22, 2010, 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 Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to amend the By-Laws of FINRA Dispute Resolution.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Subsidiaries

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

On September 8, 2008, FINRA filed a proposal with the SEC 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

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).

“FINRA” respectively.⁴ The SEC approved the amendments to FINRA Regulation’s By-Laws on November 6, 2008.⁵

On March 27, 2009, FINRA filed a proposal with the SEC to amend further the By-Laws of FINRA Regulation to modify the FINRA Regulation Board (“FINRA Regulation Board”) composition, to adopt changes to conform the FINRA Regulation By-Laws to the FINRA By-Laws, and to reflect the corporate name change and similar matters.⁶ The SEC approved the amendments to FINRA Regulation’s By-Laws on May 21, 2009.⁷

FINRA Dispute Resolution (formerly known as NASD Dispute Resolution) is a subsidiary of FINRA that operates according to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”), as amended,⁸ which NASD adopted first in 1996. Pursuant to the Delegation Plan, FINRA’s dispute resolution subsidiary conducts arbitration, mediation and other dispute resolution programs and interprets rules and regulations pertaining to its dispute resolution programs.⁹ FINRA Dispute Resolution’s By-Laws were not amended at the time of the consolidation. Now that the consolidation has been completed and amendments to FINRA Regulation’s By-Laws have been approved, FINRA believes FINRA Dispute Resolution’s By-Laws should be updated.

⁴ See Securities Exchange Act Rel. No. 58626 (Sept. 23, 2008), 73 FR 56872 (Sept. 30, 2008) (File No. SR-FINRA-2008-046, Notice of Filing and Amendment No. 1).

⁵ See Securities Exchange Act Rel. No. 58909 (Nov. 6, 2008), 73 FR 68467 (Nov. 18, 2008).

⁶ See Securities Exchange Act Rel. No. 59696 (Apr. 2, 2009), 74 FR 16020 (Apr. 8, 2009) (File No. SR-FINRA-2009-020).

⁷ See Securities Exchange Act Rel. No. 59962 (May 21, 2009), 74 FR 25792 (May 29, 2009) (Order Approving SR-FINRA-2009-020).

⁸ See Securities Exchange Act Rel. No. 41971 (Sept. 30, 1999), 64 FR 55793 (Oct. 14, 1999) (Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Create a Dispute Resolution Subsidiary).

⁹ See FINRA Manual, Corporate Organization, Plan of Allocation & Delegation of Functions by NASD to Subsidiaries, NASD Dispute Resolution, §§III (A)(1)(a) and (c).

In July 2007, when NASD and the NYSE consolidated their member firm regulation and dispute resolution operations, FINRA created a Regulation Policy Committee of the Board of Governors, whose members are 14 Governors from FINRA's Board of Governors.¹⁰ The members of the Regulation Policy Committee also serve as the Directors of the FINRA Regulation and FINRA Dispute Resolution Boards of Directors.¹¹ The Commission approved the composition of FINRA's committees when it approved amendments to FINRA's By-Laws on July 26, 2007.¹² The Commission also approved the composition of FINRA Regulation's Board of Directors when it approved amendments to FINRA's By-Laws on May 21, 2009.¹³ When the FINRA Regulation and FINRA Dispute Resolution Boards of Directors meet, they act in their respective capacities as directors of those subsidiaries. The FINRA Dispute Resolution Board of Directors continues to oversee the management of FINRA Dispute Resolution, establish policies and procedures, and monitor the use of financial resources, among other things.

Proposal to Amend FINRA Dispute Resolution's By-Laws

FINRA is proposing to amend the FINRA Dispute Resolution By-Laws to: modify the composition of the FINRA Dispute Resolution Board; adopt changes to conform the FINRA Dispute Resolution By-Laws to the FINRA By-Laws; and implement other conforming changes to reflect the corporate name change and other similar matters. The

¹⁰ FINRA's Board of Governors consists of 21 members, 11 of whom are public members. See FINRA By-Laws, Article I(ss) and I(tt), definitions of Public Director and Public Governor, respectively. The Regulation Policy Committee is comprised of seven public, five industry, and two neutral members of FINRA's Board of Governors. The two neutral members are the Chief Executive Officers of FINRA and NYSE Regulation, Inc. FINRA's By-Laws require that FINRA's committees consist of a majority public members. See FINRA By-Laws, Article IX (Committees – Appointment), §1(b).

¹¹ FINRA's Chairman and Chief Executive Officer is an ex-officio, non-voting member of the FINRA Regulation and FINRA Dispute Resolution Boards of Directors.

¹² Supra note 3.

¹³ Supra note 7.

proposed amendments to FINRA Dispute Resolution By-Laws are modeled on those of the FINRA and FINRA Regulation By-Laws (both of which were previously approved by the Commission), with modifications, described below, as appropriate to the particular functions of FINRA Dispute Resolution.

The following discussion addresses the proposed amendments to FINRA Dispute Resolution's By-Laws under the article of the By-Laws in which the amendments would first appear.

Amendments to Article I - Definitions

Article I of the FINRA Dispute Resolution By-Laws contains definitions of terms used in the By-Laws. FINRA is proposing to add to or amend some of these definitions.

Broker and Dealer

FINRA is proposing to amend the definitions of "broker" and "dealer" in Article I of the By-Laws of FINRA Dispute Resolution to conform them with the definitions of "broker" and "dealer" in the Act, as amended by the Gramm-Leach-Bliley Act of 1999.¹⁴ As proposed, FINRA would incorporate by reference the definitions of the terms "broker" and "dealer" as set forth in Sections 3(a)(4) and 3(a)(5), respectively, of the Act.¹⁵ The SEC approved the same change to definitions of the terms "broker" and "dealer" in the then-NASD Regulation's By-Laws in March 2001.¹⁶ FINRA believes that the proposed changes to the terms "broker" and "dealer" are necessary to ensure that the definitions in the FINRA Dispute Resolution By-Laws remain consistent with the definitions of the Act.

Corporation

¹⁴ Pub. L. 106-102, 113 Stat. 1338 (1999).

¹⁵ 15 U.S.C. 78c(a)(4) and (a)(5).

¹⁶ See Securities Exchange Act Rel. No. 44052 (March 8, 2001), 66 FR 15157 (March 15, 2001) (File No. SR-NASD-01-13).

FINRA is proposing to add the term “Corporation” to Article I of the By-Laws of FINRA Dispute Resolution to reflect the change of the Corporation’s name from “NASD” to “FINRA.”¹⁷ Proposed Article I(e) would define Corporation to mean the National Association of Securities Dealers, Inc., the Financial Industry Regulatory Authority, Inc., or any future name of the entity.

Electronic Transmission

FINRA is proposing to add the term “electronic transmission” to Article I of the By-Laws of FINRA Dispute Resolution to reflect the common usage of electronic transmission as a means of communication.¹⁸ The term “electronic transmission” would be defined to mean communicating or disseminating information or documents to individuals or entities by telegraph, telefax, cable, radio, wireless or other device or method. FINRA intends “other device or method” to include email, text messages, and related technologies, for example. FINRA believes that the new definition clarifies the current methods FINRA uses to communicate with and disseminate information to individuals and entities, and gives FINRA flexibility to use other devices or methods as advances in technology are made.

FINRA Member

FINRA is proposing to add the term “FINRA member” to Article I of the By-Laws of FINRA Dispute Resolution.¹⁹ As proposed, the term “FINRA member” would mean “any broker or dealer admitted to membership in FINRA, whether or not the membership has been terminated or cancelled; and any broker or dealer admitted to membership in a self-

¹⁷ Supra note 3.

¹⁸ The new term “electronic transmission” would be added as proposed Article I(k) of the By-Laws of FINRA Dispute Resolution.

¹⁹ The new term “FINRA member” would be added as proposed Article I(o) of the By-Laws of FINRA Dispute Resolution.

regulatory organization that, with FINRA consent, has required its members to arbitrate pursuant to the Code of Arbitration Procedure for Customer Disputes or the Code of Arbitration Procedure for Industry Disputes and/or to be treated as members of FINRA for purposes of the Codes of Arbitration Procedure, whether or not the membership has been terminated or cancelled.”

FINRA believes the proposed change would clarify the forum’s jurisdiction concerning a FINRA member, and would conform the definition in the By-Laws with that in the Code of Arbitration Procedure for Customer Disputes (Customer Code) and the Code of Arbitration Procedure for Industry Disputes (Industry Code) (together, Codes).²⁰ FINRA believes that the proposed change to add the term “FINRA member” is necessary to ensure that the definitions in the FINRA Dispute Resolution By-Laws are consistent with the definitions of the Codes.

Industry Director or Industry Member and Public Director or Public Member

FINRA is proposing to modify the terms “Industry Director” or “Industry member” and “Public Director” or “Public member” in Articles I(k) and I(t), respectively. With regard to the term “Industry Director” or “Industry member”, the proposed rule change would amend the FINRA Dispute Resolution’s By-Laws by separating it into two definitions for ease of reference.²¹

FINRA is also proposing to amend the revised terms “Industry Director” and “Industry Member” to limit the look-back test that characterizes committee members as

²⁰ Rule 12100(o) of the Customer Code (definition of member) and Rule 13100(o) of the Industry Code (definition of member). In July 2007, the SEC approved an amendment to the Codes to clarify the term “member.” See Securities Exchange Act Rel. No. 56029 (July 9, 2007), 72 FR 38641 (July 13, 2007) (File No. SR-NASD-2007-038).

²¹ The term “Industry Director” will be defined in proposed Article I(r); “Industry Member” in proposed Article I(s).

industry if they have served as an officer, director, or employee of a broker or dealer, among other reasons, to the past twelve months. The current provision uses a three-year look-back test. The proposed change would make the definitions of “Industry Director” and “Industry Member” under the FINRA Dispute Resolution By-Laws consistent with the definitions of “Industry Director” and “Industry Governor” or “Industry committee member” in the FINRA By-Laws.²²

The proposal would also add the term “independent director” to the portion of the definitions of “Industry Director” and “Industry Member” that excludes outside directors of a broker or dealer. The term “independent director” is synonymous with outside director, but FINRA is proposing to add it to the exclusionary clause to harmonize the FINRA Dispute Resolution By-Laws with the definition of Industry Governor in the FINRA By-Laws.²³

Similarly, FINRA is proposing to modify the term “Public Director” or “Public member” by separating it into two definitions for ease of reference.²⁴ FINRA would also amend the proposed terms “Public Director” or “Public Member” to clarify that an individual’s service as a public director of a self regulatory organization does not does not disqualify that person from serving as a Pubic Director or Public Member under FINRA Dispute Resolution’s By-Laws.

FINRA notes that the proposed changes to the definitions of “Industry Director” and “Industry Member” as well as “Public Director” and “Public Member” under the FINRA Dispute Resolution By-Laws are generally consistent with similar amendments to the By-

²² See FINRA By-Laws, Article I(s) and I(t).

²³ See FINRA By-Laws, Article I(t).

²⁴ The term “Public Director” will be defined in proposed Article I(w); “Public Member” in proposed Article I(x).

Laws of FINRA Regulation,²⁵ which the SEC approved in November 2008.²⁶ FINRA believes that the changes to the definitions would eliminate any ambiguity concerning the interpretation of the rules within the Corporation, and would ensure uniform application of the rules.

Person Associated With a Member or Associated Person of a Member

On June 5, 2009, FINRA filed a proposed rule change to amend Rules 12100(r), 12506(a), and 12902(a) of the Customer Code and Rule 13100(r) of the Industry Code to amend the definition of “associated person,” streamline a case administration procedure, and clarify that customers could be assessed hearing session fees based on their own claims for relief in connection with an industry claim.²⁷ The Commission approved the proposal on October 26, 2009.²⁸

Under the proposal, FINRA is amending the definition of associated person under the Codes²⁹ to match the definition in the Corporation’s By-Laws.³⁰ The proposal amends the

²⁵ Under the FINRA Regulation’s By-Laws, the definitions of Industry Member and Public Member contain a reference to a NAC or committee member. See FINRA Regulation By-Laws, Articles I(y) and I(ii). The NAC is appointed and governed pursuant to FINRA Regulation By-Laws; FINRA Dispute Resolution does not use this committee, and thus, references thereto do not appear in FINRA Dispute Resolution By-Laws.

²⁶ Supra note 5.

²⁷ See Securities Exchange Act Rel. No. 60159 (June 22, 2009), 74 FR 31779 (July 2, 2009) (File No. SR-FINRA-2009-041).

²⁸ See Securities Exchange Act Rel. No. 60878, 74 FR 56679 (Nov. 2, 2009) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of SR-2009-041, as Modified by Amendment No. 1).

²⁹ Rule 12100(r) of the Customer Code and Rule 13100(r) of the Industry Code define “person associated with a member” to mean:

- (1) A natural person registered under the Rules of FINRA; or
- (2) A sole proprietor, partner, officer, director, or branch manager of a member, or a 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 under the By-Laws or the Rules of FINRA.

definition of “person associated with a member” in the Codes in two ways: (1) inserts the word “other” before the second reference to “natural person” to clarify that the definition does not include corporate entities; and (2) inserts the criterion that a natural person includes someone who has applied for registration.

FINRA is proposing to implement the same changes to the definition of associated person of member in the FINRA Dispute Resolution By-Laws, as have been approved recently by the Commission to same definitions under the Codes, to ensure uniform application of the definition.

Amendments to Article IV – Board of Directors

FINRA is proposing to make limited conforming changes to Article IV of the FINRA Dispute Resolution By-Laws to parallel more closely the governance structure of the FINRA Board.

Section 4.3 - Qualifications

The proposed rule change would amend Article IV, §4.3(a) to reflect FINRA’s current governance structure by establishing that FINRA Dispute Resolution Board members would be drawn exclusively from the FINRA Board. The proposed rule change would also amend §4.3(a) to streamline the composition of FINRA Dispute Resolution’s Board and implement a requirement that it contain more Public Directors than Industry Directors. Thus,

For purposes of the Code, a person formerly associated with a member is a person associated with a member.

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FINRA’s By-Laws define “person associated with a member or associated person of a member” as (1) a natural person who is registered or has applied for registration under the Rules of the Corporation; (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 the Corporation under these By-Laws or the Rules of the Corporation; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member. See By-Laws of the Corporation, Article I, Definitions (rr).

§4.3(a) would be amended to state that “the number of Public Directors shall exceed the number of Industry Directors.” FINRA’s By-Laws contain a similar requirement.³¹

The proposal would make other changes to Article IV, §4.3 as follows:

- re-structure the Board to remove the President of FINRA Dispute Resolution. The President would not be deemed a Director, and therefore, the proposed rule change would delete several references to the President of FINRA Dispute Resolution;³²
- clarify that the Chairman of the FINRA Board and the Chief Executive Officer (“CEO”) of FINRA shall be ex-officio non-voting members of the Board;
- transfer the task of selecting the Chair of the FINRA Dispute Resolution Board from the Board members to FINRA Dispute Resolution’s stockholder;³³
- eliminate the requirement that the Board select a Vice Chair; and
- state that the stockholder would designate the Chair at the same time that the Directors are elected.

Section 4.4 - Election

³¹ See By-Laws of the Corporation, Article VII (Board of Governors), §4(a).

³² See FINRA Dispute Resolution By-Laws, Article IV, Sections 4.3(a) (Qualifications), 4.5 (Resignation), 4.11(c) (Meetings), 4.13(f) (Executive Committee), and 4.13(g) (Finance Committee). Section 141(c)(2) of the General Corporation Law of the State of Delaware provides that “[t]he board of directors may designate 1 or more committees, each committee to consist of 1 or more **directors** of the corporation.” (Emphasis added). Committees of the board, therefore, may be comprised exclusively of board members. In addition, any committee of the board that is delegated any power and authority of the board, such as the Executive Committee, must be comprised exclusively of board members. See Delaware General Corporation Law, § 141(c)(2).

³³ See Delaware General Corporation Law § 142, which allows the sole stockholder to make this selection if expressly provided for in the By-Laws.

The proposed rule change would eliminate as unnecessary the reference to the first meeting of NASD Regulation at which Directors initially were elected.

Section 4.5 - Resignation

The proposal would remove the requirement that Directors submit written notice of resignation to the President. Under the proposal, such notice would be submitted to the Chair of the Board, instead of the President.

Section 4.6 - Removal

The proposed rule change would transfer the authority to remove Directors from a majority vote of the FINRA Board to the stockholder of FINRA Regulation.³⁴ The proposed amendment would reflect Delaware law, which requires that a stock corporation vest the power to remove directors with the stockholder.³⁵

Section 4.7 - Disqualification

In connection with the proposed change to §4.3(a), which would require the number of Public Directors to exceed the number of Industry Directors, the proposal would also amend §4.7 to clarify that when a Director is disqualified from Board service and the Director's remaining term is not more than six months, the Board may continue to operate and will not violate any compositional requirements if it does not replace the disqualified Director.

Section 4.8 – Filling of Vacancies

³⁴ The sole stockholder of the capital stock of FINRA Dispute Resolution, Inc. is FINRA, Inc. See Article VIII, § 8.1 (Sole Stockholder).

³⁵ See Delaware General Corporation Law, § 141(k). As a practical matter, the FINRA Board generally would be asked to pass a resolution authorizing an officer of FINRA to execute a sole stockholder consent on behalf of FINRA (who is the sole stockholder of FINRA Dispute Resolution) before such a consent is executed. As such, the FINRA Board would have a voice in the matter, but as a matter of Delaware law, the consent authorizing the removal must be executed by a duly authorized officer of FINRA in FINRA's capacity as sole stockholder.

Currently, Directors of FINRA Dispute Resolution are elected annually at the meeting of FINRA Dispute Resolution's stockholder meeting or at a special meeting dedicated to Board elections.³⁶ When the annual election of Directors is not held on the designated date, the By-Laws charge the Directors to "cause such election" to be held.³⁷ The proposed rule change would confirm that the same process should be used by the FINRA Dispute Resolution Board when filling vacancies among its ranks. Thus, the proposal would amend §4.8 to adopt language that the FINRA Board shall "cause the election" of a qualified Director to fill the vacant position.³⁸

Section 4.9 – Quorum and Voting

The proposed rule change would remove a cross-reference to §4.14(b) in the quorum provision, and also amend the provision to clarify that, when there is a quorum, a majority vote of the Directors present at a meeting constitutes action of the Board.

Section 4.12 – Notice of Meetings; Waiver of Notice

The proposal would clarify the conditions under which the FINRA Dispute Resolution Board may meet. The current FINRA Dispute Resolution By-Laws instruct that a Director may waive notice of a Board meeting by being present at the meeting, so long as the Director did not attend the meeting solely to object to the meeting taking place.³⁹ FINRA is proposing to amend §4.12(c) to clarify that a Board meeting is a legal meeting if all Directors are

³⁶ See current FINRA Dispute Resolution By-Laws, Article IV, §4.4 (Election).

³⁷ Id.

³⁸ Pursuant to Delaware law, FINRA, as the sole stockholder of FINRA Dispute Resolution, has the authority to execute a stockholder consent electing an individual to fill the vacancy pursuant to directions of the FINRA Board. Alternatively, the FINRA Board may pass a resolution making it known who they would like appointed to fill the vacancy. Under this scenario, it is likely that the remaining members of the FINRA Dispute Resolution Board will follow the advice of its controlling stockholder and elect the recommended individual. See Delaware General Corporation Law, §223.

³⁹ See current FINRA Dispute Resolution By-Laws, Article IV, §4.12(b) (Notice of Meeting; Waiver of Notice) and Article IX, §9.3(b) (Waiver of Notice).

present and no Director is present solely for the purpose of objecting to the meeting taking place.

The proposed rule change also would amend §§4.12(a) and (b) to replace the phrase “telegraph, telefax, cable, radio, or wireless” with the new term “electronic transmission.”⁴⁰ For an explanation of the term “electronic transmission,” see the discussion under “Amendments to Article I – Definitions” above.

Section 4.13 – Committees

As explained under §4.3(a), the proposal would implement a requirement that the FINRA Dispute Resolution Board contain more Public Directors than Industry Directors.⁴¹ In furtherance of this change, references throughout Article IV to balancing “Industry” and “Non-Industry” Board members have been replaced with references to balancing “Industry” and “Public” Board members. The proposal likewise would remove the requirement that the Executive Committee include at least one Public Director and institute the requirement that Public Directors shall exceed Industry Directors on FINRA Dispute Resolution’s Executive Committee of the Board.⁴²

Section 4.15 – Action Without Meeting

The proposal would make a related change to §4.15 to eliminate the requirement that unanimous consent for taking action without a meeting specifically be in writing and filed with the minutes of the meeting. Instead, the proposal would require the consent to be “in

⁴⁰ FINRA proposed similar changes to Article IV, Section 4.12 (Notice of Meeting; Waiver of Notice) and Article XII, Section 12.3 (Waiver of Notice) of the FINRA Regulation By-Laws. See Securities Exchange Act Rel. No. 59696 (April 2, 2009), 74 FR 16020 (April 8, 2009) (File No. SR-FINRA-2009-020).

⁴¹ See also proposed Article I(r) (Industry Director); proposed Article I(s) (Industry Member); proposed Article I(w) (Public Director); and proposed Article I(x) (Public Member).

⁴² See Article IV, §4.12(f) (Executive Committee).

accordance with applicable law,” which in the instance of FINRA Dispute Resolution, would be Delaware law.

FINRA believes that the proposed amendments to Article IV would align FINRA Dispute Resolution’s Board structure with that of FINRA and its other subsidiary, and conform FINRA Dispute Resolution’s corporate practices to the laws of the state in which it is incorporated.

Amendment to Article V – Officers, Agents, and Employees

Section 5.1 – Officers

As explained under Article IV, §4.3, the proposed rule change would re-structure the Board to remove the President of FINRA Dispute Resolution as a Director of the Board.⁴³ In connection with this change, the proposal would remove a reference to the President from §5.1, so that the amended language would state, in relevant part, that none of the officers need to be Directors of FINRA Dispute Resolution.

Amendments to Article VIII – Capital Stock

Section 8.3 - Signatures

The proposed rule change would amend several provisions regarding FINRA Dispute Resolution’s capital stock. Currently, under §8.3(a), FINRA’s approach to the corporate law issue of signing certificates representing shares of FINRA Dispute Resolution capital stock is to have these shares signed by FINRA Dispute Resolution officers. Under the proposed re-structuring of the Board, FINRA Dispute Resolution will not have an officer as Chair of the Board. Thus, FINRA is proposing to remove provision that permits the Chair of the Board to

⁴³

Supra note 32.

sign stock certificates, and limit the authority to sign such certificates to the President, Vice President, Secretary or Treasurer.

FINRA is proposing to amend §8.3(b) to remove the limitations on the type of signatures required on certificates of capital stock. The current provision states, in relevant part, that “if any such certificates are countersigned by a transfer agent other than NASD Dispute Resolution or its employee, or by a registrar other than NASD Dispute Resolution or its employee, any other signature on the certificate may be a facsimile.” The proposed amendment would eliminate limitations on when signatures on certificates representing shares of FINRA Dispute Resolution’s capital stock may be facsimiles and permit any signature to be a facsimile. Thus, under the proposal, the provision would be amended to state that “any signature on the stock certificate may be a facsimile.” FINRA believes this change would be consistent with current practice that permits its certificates representing capital stock to be sealed with a facsimile of FINRA Dispute Resolution’s corporate seal.

Section 8.4 – Stock Ledger

Currently, §8.4(a) of the FINRA Dispute Resolution By-Laws requires that the FINRA Dispute Resolution Secretary, or another officer, employee, or agent, keep a record of FINRA Dispute Resolution’s capital stock ownership and “the number of shares represented by each such certificate.” FINRA is proposing to change several phrases that discuss “capital stock” to “certificates representing shares of capital stock” or similar constructions, instead of “certificates for shares of capital stock.”⁴⁴ This change would make

⁴⁴ The proposal would delete as imprecise the words “certificates for” in the discussion of potential registration of shares of capital stock. See proposed FINRA Dispute Resolution By-Laws, Article VIII, §§ 8.4(b) (Stock Ledger), 8.5 (Transfers of Stock), 8.6 (Cancellation), and 8.7 (Lost, Stolen, Destroyed, and Mutilated Certificates).

FINRA Dispute Resolution’s By-Laws more consistent with the language of the applicable section of the General Corporation Law of the state of Delaware.⁴⁵

Amendments to Article IX – Miscellaneous Provisions

Section 9.3 – Waiver of Notice

FINRA is proposing to amend §9.3(a) of the FINRA Dispute Resolution By-Laws to replace the phrase “telegraph, telefax, cable, radio, or wireless” with the new term “electronic transmission.”⁴⁶

Conforming Changes Relating to the New FINRA name and Other Technical Changes

FINRA is proposing to implement certain other non-substantive changes to all articles of the FINRA Dispute Resolution By-Laws that are reflected in Exhibit 5. The proposed rule change would make certain non-substantive changes to the FINRA Dispute Resolution By-Laws as follows:

- “the NASD” or “NASD” would be replaced with “FINRA” or “the Corporation;”
- “NASD Dispute Resolution” would be changed to “FINRA Dispute Resolution;”
- “the Rules of the Association” would be replaced with “the Rules of the Corporation;”
- “National Nominating Committee” would be replaced with “Nominating Committee;”
- a reference to “FINRA Regulation” would be added; and
- “Association” would be replaced with “Corporation.”

⁴⁵ See Delaware General Corporation Law §158.

⁴⁶ See *supra* note 40, and the explanation of the term “electronic transmission” under “Amendments to Article I - Definitions.”

FINRA is also proposing to amend Article II, §2.1 to change the name and address of the registered agent from The Corporation Trust Company, 1209 Orange Street, 19801 to Corporation Creations Network Inc., 1308 Delaware Avenue, 19806.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(2) of the Act,⁴⁷ in that it provides for the organization of FINRA and FINRA Dispute Resolution in a manner that will permit FINRA to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by FINRA members and persons associated with FINRA members with the Act, the rules and regulations thereunder, FINRA and NASD rules and the federal securities laws. FINRA further believes that the proposed rule change is consistent with Section 15A(b)(4) of the Act,⁴⁸ which requires, among other things, that FINRA's rules assure a fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of FINRA, broker or dealer. FINRA believes that the proposed composition of its Dispute Resolution Board would fairly and effectively represent users of the dispute resolution forum, and will help resolve dispute resolution issues in a manner that will redound to the benefit of investors.

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, as amended.

⁴⁷ 15 U.S.C. 78o-3(b)(2).

⁴⁸ 15 U.S.C. 78o-3(b)(4).

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 by FINRA.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it 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-2010-007 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2010-007. 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. 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 the File Number SR-FINRA-2010-007 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.⁴⁹

Florence E. Harmon
Deputy Secretary

⁴⁹ 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 DISPUTE RESOLUTION, INC.

ARTICLE I

DEFINITIONS

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

(a) No change;

(b) “Board” means the Board of Directors of [NASD] FINRA Dispute Resolution;

(c) [“broker” means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;] “broker” shall have the same meaning as in Section 3(a)(4) of the Act;

(d) No change;

(e) “Corporation” means the National Association of Securities Dealers, Inc., the Financial Industry Regulatory Authority, Inc., or any future name of the entity;

[(e)] (f) “day” means calendar day;

[(f) “dealer” means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual’s or entity’s own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person’s own account, either individually or in some fiduciary capacity, but not as part of a regular business;]

(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[, excluding the Chief Executive Officer of the NASD];

[(j)] (k) “Electronic transmission” means communicating or disseminating information or documents to individuals or entities by telegraph, telefax, cable, radio, wireless or other device or method;

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

(m) “FINRA” means the Financial Industry Regulatory Authority, Inc.;

(n) “FINRA Board” means the FINRA Board of Governors;

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

(p) “FINRA member” means any broker or dealer admitted to membership in FINRA, whether or not the membership has been terminated or cancelled; and any broker or dealer admitted to membership in a self-regulatory organization that, with FINRA consent, has required its members to arbitrate pursuant to the Code of Arbitration Procedure for Customer Disputes or the Code of Arbitration Procedure for Industry Disputes and/or to be treated as members of FINRA for purposes of the Codes of Arbitration Procedure, whether or not the membership has been terminated or cancelled;

(q) “FINRA Regulation” means FINRA Regulation, Inc.;

(r) “Industry Director” means a Director of the Board (other than the Chairman of the FINRA Board and the Chief Executive Officer of FINRA) who: (1) is or has served in the prior year as an officer, director (other than as an independent director), employee or controlling person of a broker or dealer, or (2) has a consulting or employment relationship with or provides professional services to a self regulatory organization registered under the Act, or has had any such relationship or provided any such services at any time within the prior year;

[(k)] “Industry Director” or “Industry member” means a Director (excluding the President) or a committee member who (1) is or has served in the

prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or]

(s) “Industry Member” means a committee member who (1) is or has served in the prior year as an officer, director, 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 [the NASD, NASD Regulation, NASD Dispute Resolution, or a market for which NASD provides regulation] 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 [three] year[s];

[(l) “NASD” means the National Association of Securities Dealers, Inc.;

(m) “NASD Board” means the NASD Board of Governors;

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

(o) “NASD member” means any broker or dealer admitted to membership in the NASD;

(p) “NASD Regulation” means NASD Regulation, Inc.;

(q) “National]

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

[(r) “Non-Industry Director” or]

(u) “Non-Industry [m]Member” means a [Director (excluding the President) or] committee member who is: (1) a [Public Director or] Public [m]Member; (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]Member;

[(s)] (v) “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 [Association] Corporation; or (2) a sole proprietor, partner, officer, director, or branch manager of a member, or [a] 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 [the NASD] FINRA under these By-Laws or the Rules of the [Association] Corporation;

[(t)] (w) “Public Director” [or “Public member”] means a Director [or committee member] of the Board who is not an Industry Director and who otherwise has no material business relationship with a broker or dealer or [the NASD, NASD Regulation, a market for which NASD provides regulation, or NASD Dispute Resolution] a self regulatory organization registered under the Act (other than serving as a public director of such a self regulatory organization);

(x) “Public Member” means a 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 public member on a committee of such a self regulatory organization);

[(u)] (y) “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.

ARTICLE II

OFFICES

Location

Sec. 2.1 The address of the registered office of [NASD] FINRA Dispute Resolution 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] 19806. [NASD] FINRA Dispute Resolution 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 Dispute Resolution 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 Dispute Resolution'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 Dispute Resolution 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 The property, business, and affairs of [NASD] FINRA Dispute Resolution shall be managed by or under the direction of the Board. The Board may exercise all such powers of [NASD] FINRA Dispute Resolution and have the authority to perform all such lawful acts as are permitted by law, the Certificate of Incorporation, these By-Laws, or the Delegation Plan to assist [the NASD] FINRA in fulfilling its self-regulatory responsibilities as set forth in Section 15A of the Act, and to support such other initiatives as the Board may deem appropriate. To the fullest extent permitted by applicable law, the Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.13 or to [NASD] FINRA Dispute Resolution staff in a manner not inconsistent with the Delegation Plan.

Number of Directors

Sec. 4.2 The [Board shall consist of no fewer than five and no more than eight Directors, the] exact number of Board members will [to] be determined by resolution adopted by the stockholder of [NASD] FINRA Dispute Resolution

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

Qualifications

Sec. 4.3 (a) [Directors need not be stockholders of NASD Dispute Resolution.] The Board shall consist exclusively of members of the FINRA Board. The number of [Non-Industry] Public Directors shall [equal or] exceed the number of Industry Directors [plus the President]. The [Board shall include the President, at least two Non-Industry Directors who are also Governors] Chairman of the [NASD] FINRA Board[,] and [at least one Industry Director who is also a Governor of the NASD Board. The Board shall include at least one Public Director, unless the Board consists of eight Directors. In such case, at least two Directors shall be Public Directors. The] the Chief Executive Officer of [the NASD] FINRA shall be [an] ex-officio non-voting members of the Board.

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

Election

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

Resignation

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

Removal

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

Disqualification

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

Filling of Vacancies

Sec. 4.8 If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the [National] Nominating Committee shall nominate, and the [NASD] FINRA Board shall [elect] by majority vote, cause the election of a person satisfying the [classification (Industry or Non-Industry Director)] qualifications for the directorship as provided in Section 4.3 to fill such vacancy, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

Quorum and Voting

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

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

Regulation

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

Meetings

Sec. 4.11 (a) - (b) No change.

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

(d) No change.

Notice of Meetings; Waiver of Notice

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

(b) Notice of any meeting of the Board need not be given to any Director if waived by that Director in writing [(or by [telegram, telefax, cable, radio, or wireless and subsequently confirmed in writing]) electronic transmission whether before or after the holding of such meeting, or if such Director is present at such meeting, subject to Article IX, Section 9.3(b).

(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present thereat, subject to Article IX, Section 9.3(b).

Committees

Sec. 4.13 (a) No change.

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

(c) Except as otherwise permitted by applicable law, no committee shall have the power or authority of the Board with regard to: amending the Certificate of Incorporation or the By-Laws of [NASD] FINRA Dispute Resolution; adopting an agreement of merger or consolidation; recommending to the stockholder the sale, lease, or exchange of all or substantially all [NASD] FINRA Dispute Resolution's property and assets; or recommending to the stockholder a dissolution of [NASD] FINRA Dispute Resolution or a revocation of a dissolution. Unless the resolution of the Board expressly so provides, no committee shall have the power or authority to authorize the issuance of stock.

(d) - (e) No change.

(f) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of [NASD] FINRA Dispute Resolution between meetings of the Board, and which may authorize the seal of [NASD] FINRA Dispute Resolution to be affixed to all papers that may require it. The Executive Committee shall consist of three or four Directors, including at least one Public Director. [The President of NASD Dispute Resolution shall be a member of the Executive Committee.] The number of [Non-Industry committee] Public

[m]Members shall [equal or] exceed the number of Industry [committee] [m]Members [plus the President]. An Executive Committee member shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including not less than 50 percent of the [Non-Industry committee] Public [m]Members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

(g) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of [NASD] FINRA Dispute Resolution, including recommendations for [NASD] FINRA Dispute Resolution's annual operating and capital budgets and proposed changes to the rates and fees charged by [NASD] FINRA Dispute Resolution. The Finance Committee shall consist of two or three Directors. [The President of NASD Dispute Resolution shall serve as a member of the Committee.] A Finance Committee member shall hold office for a term of one year.

(h) If the Board appoints a non-Director to a committee, upon request of the Secretary of [NASD] FINRA Dispute Resolution, each such prospective committee member shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, [or] Non-Industry [committee] , or Public [m]Member. The Secretary of [NASD] FINRA Dispute Resolution shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this Section at least annually and upon request of the Secretary of [NASD] FINRA Dispute Resolution, and shall report immediately to the Secretary any change in such classification.

Conflicts of Interest; Contracts and Transactions Involving Directors

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

(b) No contract or transaction between [NASD] FINRA Dispute Resolution and one or more of its Directors or officers, or between [NASD] FINRA Dispute Resolution and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's

relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between [NASD] FINRA Dispute Resolution and [the NASD] FINRA or [NASD] FINRA Regulation.

Action Without Meeting

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

Communication of Views Regarding Contested Election or Nomination

Sec. 4.16 [NASD] FINRA Dispute Resolution, the Board, any committee, and [NASD] FINRA Dispute Resolution staff shall not take any position publicly or with [an NASD] a 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 the [NASD] FINRA By-Laws or the [NASD] FINRA Regulation By-Laws. A Director or committee member may communicate his or her views with respect to a candidate if such individual acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of [NASD] FINRA Dispute Resolution, the Board, or any committee. [NASD] FINRA Dispute Resolution, the Board, any committee, and the [NASD] FINRA Dispute Resolution staff shall not provide any administrative support to any candidate in a contested election or nomination conducted pursuant to the [NASD] FINRA By-Laws or the [NASD] FINRA Regulation By-Laws.

ARTICLE V

OFFICERS, AGENTS, AND EMPLOYEES

Officers

Sec. 5.1 The Board shall elect the officers of [NASD] FINRA Dispute Resolution, 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 Dispute Resolution. 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 Dispute Resolution.

Absence of the President

Sec. 5.2 In the case of the absence or inability to act of the President of [NASD] FINRA Dispute Resolution, 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. 5.3 In addition to the officers, [NASD] FINRA Dispute Resolution 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 Dispute Resolution shall be under the supervision and control of the officers of [the NASD] FINRA Dispute Resolution, 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. 5.4 The Board may delegate the duties and powers of any officer of [NASD] FINRA Dispute Resolution 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. 5.5 (a) No change.

(b) Any officer of [NASD] FINRA Dispute Resolution 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 Dispute Resolution.

Bond

Sec. 5.6 [NASD] FINRA Dispute Resolution may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

ARTICLE VI

COMPENSATION

Compensation of Board, Council, and Committee Members

Sec. 6.1 The Board may provide for reasonable compensation of the Chair of the Board, the Directors, and the members of any committee of the Board. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of [NASD] FINRA Dispute Resolution.

ARTICLE VII

INDEMNIFICATION

Indemnification of Directors, Officers, Employees, Agents, and Committee Members

Sec. 7.1 (a) [NASD] FINRA Dispute Resolution 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 Dispute Resolution or a committee member, or is or was a Director, officer, or employee of [NASD] FINRA Dispute Resolution who is or was serving at the request of [NASD] FINRA Dispute Resolution 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 Dispute Resolution) 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 Dispute Resolution 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 Dispute Resolution 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 Dispute Resolution 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 Dispute Resolution or is or was an agent of [NASD] FINRA Dispute Resolution who is or was serving at the request of [NASD] FINRA Dispute Resolution 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 Dispute Resolution 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 Dispute Resolution 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 Dispute Resolution; (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 Dispute Resolution.

(f) No change.

(g) Notwithstanding the foregoing, but subject to subsection (j), [NASD] FINRA Dispute Resolution 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 Dispute Resolution'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) Any repeal or modification of the foregoing provisions of this Section shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

(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 Dispute Resolution, 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 Dispute Resolution 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. 7.2 [NASD] FINRA Dispute Resolution shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, committee member, employee, or agent of [NASD] FINRA Dispute Resolution, or is or was serving at the request of [NASD] FINRA Dispute Resolution 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 Dispute Resolution would have the power to indemnify such person against such liability hereunder.

ARTICLE VIII

CAPITAL STOCK

Sole Stockholder

Sec. 8.1 [The NASD] FINRA shall be the sole stockholder of the capital stock of [NASD] FINRA Dispute Resolution.

Certificates

Sec. 8.2 The stockholder shall be entitled to a certificate or certificates in such form as shall be approved by the Board, certifying the number of shares of capital stock [in NASD] of FINRA Dispute Resolution owned by the stockholder.

Signatures

Sec. 8.3 (a) Certificates [for] representing shares of capital stock of [NASD] FINRA Dispute Resolution shall be signed in the name of [NASD] FINRA Dispute Resolution by two officers with one being the [Chair of the Board, the] President[,], or a Vice President, and the other being the Secretary[, the] or Treasurer [, or such other officer that may be authorized by the Board]. Such certificates may be sealed with the corporate seal of [NASD] FINRA Dispute Resolution or a facsimile thereof.

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

Stock Ledger

Sec. 8.4 (a) A record of all certificates [for] representing capital stock issued by [NASD] FINRA Dispute Resolution shall be kept by the Secretary or any other officer, employee, or agent designated by the Board. Such record shall show the name and address of the person, firm, or corporation in which certificates [for]

representing capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates that have been canceled, the date of cancellation thereof.

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

Transfers of Stock

Sec. 8.5 (a) The Board may make such rules and regulations as it may deem expedient, not inconsistent with law, the Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of [certificates for] shares of capital stock of [NASD] FINRA Dispute Resolution. The Board may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates [for] representing capital stock to bear the signature or signatures of any of them.

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

Cancellation

Sec. 8.6 Each certificate [for] representing capital stock surrendered to [NASD] FINRA Dispute Resolution for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to Section 8.7 until such existing certificate shall have been canceled.

Lost, Stolen, Destroyed, and Mutilated Certificates

Sec. 8.7 In the event that any certificate [for] representing shares of capital stock of [NASD] FINRA Dispute Resolution shall be mutilated, [NASD] FINRA Dispute Resolution shall issue a new certificate in place of such mutilated certificate. In the event that any such certificate shall be lost, stolen, or destroyed [NASD] FINRA Dispute Resolution may, in the discretion of the Board or a

committee appointed thereby with power so to act, issue a new certificate [for] representing shares of capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or such owner's representatives, to furnish to [NASD] FINRA Dispute Resolution a bond with an acceptable surety or sureties and in such sum as shall be sufficient to indemnify [NASD] FINRA Dispute Resolution against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board, it is proper to do so.

Fixing of Record Date

Sec. 8.8 No change.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Corporate Seal

Sec. 9.1 The seal of [NASD] FINRA Dispute Resolution 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 Dispute Resolution, 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. 9.2 The fiscal year of [NASD] FINRA Dispute Resolution 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. 9.3 (a) Whenever notice is required to be given by law, the Certificate of Incorporation, or these By-Laws, a written waiver thereof, signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholder, Directors, or

members of a committee of Directors need be specified in any written waiver of notice.

(b) No change.

Execution of Instruments, Contracts, Etc.

Sec. 9.4 (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 Dispute Resolution 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 Dispute Resolution, 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 Dispute Resolution by any principal officer or subordinate officer of [NASD] FINRA Dispute Resolution, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of [NASD] FINRA Dispute Resolution. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Form of Records

Sec. 9.5 Any records maintained by [NASD] FINRA Dispute Resolution 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 X

AMENDMENTS; EMERGENCY BY-LAWS

By Stockholder

Sec. 10.1 No change.

By Directors

Sec. 10.2 No change.

Emergency By-Laws

Sec. 10.3 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 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 Dispute Resolution 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.