

to the comment.<sup>34</sup> The commenter opposed the rule filing arguing that the proposed rule change would not “redound to the benefit of investors” because: (1) The Chair of the FINRA Dispute Resolution Board would be selected by FINRA; (2) FINRA, by selecting the Chair of the FINRA Dispute Resolution Board, may prevent a director of FINRA Dispute Resolution from “suggesting a measure that might bring some element of fairness to the dispute resolution process”; and (3) FINRA would have the power to remove directors of FINRA Dispute Resolution.<sup>35</sup>

FINRA responded to the commenter’s concern regarding the selection of the Chair of the FINRA Dispute Resolution Board by stating that since the FINRA Board is comprised of a majority of public governors, “the majority will be able to represent the interests of the investing public regarding the selection of the [Chair of the FINRA Dispute Resolution Board].”<sup>36</sup> FINRA also noted that, “as the proposed FINRA Dispute Resolution By-Laws require that the number of Public Directors exceeds the number of Industry Directors, matters affecting the dispute resolution process also would be controlled by a majority of Public Directors”.<sup>37</sup>

With respect to the commenter’s concern that the proposed rule change would provide the Chair with the authority to prevent matters from being raised at a meeting, FINRA stated that the Chair cannot prevent an item from being raised at a meeting. FINRA also noted that any member of the Board may raise a matter for consideration and that the Chair may influence when the matter is heard, but cannot prevent it from being heard.<sup>38</sup>

In response to the commenter’s concern regarding FINRA’s power to remove directors of FINRA Dispute Resolution with or without cause, FINRA reiterated that Delaware law requires that the stockholder have the power to remove directors. Since FINRA is the stockholder of FINRA Dispute Resolution, the removal of a Director from FINRA Dispute Resolution’s Board is also a function that is controlled by FINRA’s Board. FINRA also stated that since the FINRA Board is comprised of a majority of public governors, that majority would consider the public interests and market implications in determining whether to remove a

<sup>34</sup> See letter from Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution, dated May 5, 2010 (“FINRA Letter”).

<sup>35</sup> See Estell Letter.

<sup>36</sup> See FINRA Letter at page 1.

<sup>37</sup> Id.

<sup>38</sup> See FINRA Letter at page 2.

Director from FINRA Dispute Resolution’s Board.<sup>39</sup>

### III. Discussion and Findings

After careful review of the proposed rule change, the comment received, and FINRA’s response to the comment, the Commission finds the proposed rule change to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>40</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>41</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is consistent with FINRA’s obligations under the Act. In particular, the proposed rule change will conform definitions in the By-Laws with definitions in the Act, as well as to the By-Laws of FINRA and FINRA Regulation. The proposed rule change will also conform other provisions of the By-Laws with the FINRA and FINRA Regulation By-Laws and be consistent with Delaware law, under which all the entities are organized. In addition, the proposed rule change would clarify that FINRA members remain subject to the requirements of the Codes after their membership has been terminated or cancelled.

### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>42</sup> that the proposed rule change (SR-FINRA-2010-007) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62160; File No. SR-FINRA-2010-027]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Restated Certificate of Incorporation of Financial Industry Regulatory Authority, Inc.

May 24, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 21, 2010, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend the Restated Certificate of Incorporation of FINRA (the “Certificate of Incorporation”) to specify the quorum requirements for a meeting of FINRA members, in anticipation of amendments to the General Corporation Law of the State of Delaware (the “General Corporation Law”). The proposed rule change would serve to maintain the status quo with respect to the quorum requirements for meetings of members.

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

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>39</sup> *Id.*

<sup>40</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>41</sup> 15 U.S.C. 78o-3(b)(6).

<sup>42</sup> 15 U.S.C. 78s(b)(2).

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

The proposed rule change would amend FINRA's Certificate of Incorporation to specify the quorum required at a meeting of FINRA members and where a separate vote by classes or groups is required. FINRA is proposing this rule change in anticipation of amendments to the General Corporation Law, described in detail below, to preserve FINRA's current quorum requirements.

FINRA is a nonstock corporation under the General Corporation Law. Generally, Section 215(c) of the General Corporation Law provides that the certificate of incorporation or bylaws of a nonstock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business.<sup>3</sup> However, in the absence of such specification in the certificate of incorporation or bylaws of a nonstock corporation, one-third of the members of such corporation constitute a quorum at a meeting of such members.<sup>4</sup>

Neither FINRA's Certificate of Incorporation nor its By-Laws specify the quorum required at a meeting of its members. Accordingly, pursuant to Section 215(c)(1) of the General Corporation Law, attendance in person or by proxy of one-third of FINRA members currently constitutes a quorum at a meeting of such members.<sup>5</sup>

On August 1, 2010, the General Corporation Law will be amended to, among other things, clarify the application of the statute to nonstock corporations. As part of the

amendments, a new Section 215(c)(4) will define the quorum necessary to take action where a separate vote by a class or group of members is required and the certificate of incorporation or bylaws of the nonstock corporation do not specify the requisite quorum. Specifically, from and after August 1, 2010, if the certificate of incorporation or bylaws of a nonstock corporation do not specify the quorum necessary to transact business at a meeting of its members, (1) one-third of the members shall constitute a quorum at a meeting of members; and (2) “[w]here a separate vote by a class or group or classes or groups is required, *a majority* of the members of such class or group or classes or groups, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter \* \* \*<sup>6</sup>

FINRA is proposing an amendment to its Certificate of Incorporation to maintain the status quo with respect to its current quorum requirements. Accordingly, the proposed rule change would amend Article Ninth of FINRA's Certificate of Incorporation to specify that, at all meetings of members of FINRA, the presence in person or by proxy of one-third of the members entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum; provided, however, where a separate vote by a class or group or classes or groups is required, the presence in person or by proxy of one-third of the members of such class or group or classes or groups shall be necessary and sufficient to constitute a quorum with respect to that vote on that matter.

By specifying the quorum requirements in the Certification of Incorporation, the proposed rule change would maintain the one-third quorum requirement where separate votes of classes or groups of members is required, thus avoiding the new default quorum requirement (*i.e.*, a majority) for such votes as set forth in the new Section 215(c)(4) of the General Corporation Law. Pursuant to the FINRA Certificate of Incorporation and the FINRA By-Laws, members vote as three distinct classes, based upon firm size, to elect the FINRA Board of Governors, *i.e.*, Small Firm Governors, Mid-Size Firm Governors and Large Firm Governors. In this regard, the proposed rule change not only would preserve the status quo, but it also would facilitate the ability of members

to conduct business at meetings and exercise their voting rights.

The effective date of the proposed rule change will be the date of approval by the Commission; provided, however, assuming Commission approval of the proposed rule change, the amendment to the Certificate of Incorporation will become effective upon filing with the Secretary of State of the State of Delaware.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> including Section 15A(b)(2) of the Act,<sup>8</sup> in that it 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 members with the Act, the rules and regulations thereunder, and FINRA rules. The proposed rule change will preserve FINRA's current quorum requirements, facilitating the ability of members to conduct business at meetings.

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

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

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

Written comments were neither solicited nor received.

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

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

<sup>3</sup> Del. Code Ann. tit. 8 § 215(c) (2010).

<sup>4</sup> Del. Code Ann. tit. 8 § 215(c)(1) (2010).

<sup>5</sup> Del. Code Ann. tit. 8 § 215(c)(1) (2010).

<sup>6</sup> Del. H.B. 341, 145th Gen. Assem. § 19 (2010) (emphasis added).

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(2).

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-2010-027 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2010-027. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2010-027 and should be submitted on or before June 22, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-12987 Filed 5-28-10; 8:45 am]

**BILLING CODE 8010-01-P**

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**DEPARTMENT OF STATE**

**[Public Notice 7033]**

**Assistance to the Autonomous Government of Southern Sudan and the United States Contribution to the Global Fund To Fight AIDS, Tuberculosis and Malaria (Global Fund) for Fiscal Year 2008**

**AGENCY:** Department of State.

**ACTION:** Notice of a Waiver Determination under Section 202(d)(4)(A)(ii) of the United States Leadership against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, as amended, for Fiscal Year 2008.

**SUMMARY:** This is a notice of a waiver determination under Section 202(d)(4)(A)(ii) of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, as amended by the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (the Leadership Act). The Leadership Act requires that the U.S. Global AIDS Coordinator withhold from the U.S. contribution to the Global Fund an amount equal to expenditures by the Global Fund in the previous fiscal year to governments of countries that have been determined to have repeatedly provided support for acts of international terrorism in accordance with section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405 (j)(1)) (the "6(j) list").

The government of the Republic of Sudan is designated on the "6(j) list." Thus, Global Fund expenditures to the Government of the Republic of Sudan trigger a withholding requirement from the U.S. contribution to the Global Fund, subject to the waiver authority provided for Global Fund expenditures in Southern Sudan. During FY 2007, \$260,139 was provided to government entities in Southern Sudan under malaria and HIV/AIDS grants, thus triggering a potential withholding requirement in this amount from the FY 2008 U.S. contribution to the Global Fund. These funds were used to support malaria treatment, create State HIV/

AIDS Commissions in all ten southern Sudan states, provide needed financial support for project specialists, and meet other incurred expenses under HIV/AIDS and malaria grants.

Under the Leadership Act, the President has authority to waive the withholding requirement for assistance overseen by the Southern Sudan Country Coordinating Mechanism (SSCCM) if such an action is justified by the national interest or for humanitarian reasons. This authority has been delegated to the U.S. Global AIDS Coordinator. The United States places a high priority on ensuring appropriate disbursement and expenditure of foreign development and humanitarian funding. Following consultations with the relevant Congressional committees, the U.S. Global AIDS Coordinator has determined waiver of the withholding requirement for assistance by the Global Fund to the Autonomous Government of Southern Sudan through the Global Fund SSCCM is justified for humanitarian reasons. The application of the withholding requirement of Section 202(d)(4)(A)(ii) of the Act is hereby waived with respect to such assistance, allowing for the additional contribution of \$260,139 to the Global Fund from the FY 2008 appropriations for the U. S. contribution to the Global Fund. This notice of waiver determination is published in the **Federal Register** in compliance with Section 202(d)(4)(A)(ii) of the Leadership Act.

**DATES:** *Date Effective:* May 26, 2010.

**FOR FURTHER INFORMATION CONTACT:** Margaret Lidstone, Director, Multilateral Diplomacy, Office of the Global AIDS Coordinator (202) 663-2586.

Dated: May 14, 2010.

**Eric P. Goosby,**

*Ambassador, Office of the U.S. Global AIDS Coordinator, Department of State.*

[FR Doc. 2010-13060 Filed 5-28-10; 8:45 am]

**BILLING CODE 4701-10-P**

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**DEPARTMENT OF STATE**

**[Public Notice 7032]**

**Culturally Significant Objects Imported for Exhibition Determinations:  
"Dynasty and Divinity: Ife Art in Ancient Nigeria"**

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et*

<sup>9</sup> 17 CFR 200.30-3(a)(12).