

FINRA Regulation Board Composition

SEC Approves Changes to the FINRA Regulation Board Composition and Conforming Changes to the FINRA Regulation By-Laws

Effective Date: August 20, 2009

Executive Summary

Effective August 20, 2009, the Board composition of FINRA Regulation, Inc. (a subsidiary of FINRA) will more closely parallel the composition and governance structure of the FINRA Inc. Board of Governors (FINRA Board).¹ The revisions to the FINRA Regulation, Inc. By-Laws (By-Laws) also reflect current business and legal practices concerning the administration of FINRA Regulation. In addition, the revisions make non-substantive or conforming changes to the By-Laws, including updates to reflect the corporate name change. The revised By-Laws are available at www.finra.org/finramanual/bylaws.

Questions concerning this *Notice* should be directed to Stacy Paxson Chittick, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8375.

Background & Discussion

On July 30, 2007, NASD and the New York Stock Exchange consolidated their member firm regulation, enforcement and arbitration functions and became FINRA. As part of the consolidation transaction, the Securities and Commission (SEC) approved amendments to the NASD By-Laws to implement governance and related changes,² including a FINRA Board governance structure that balanced public and industry representation.

July 2009

Notice Type

- Rule Amendment

Suggested Routing

- Executive Representative
- Senior Management

Key Topic(s)

- By-Laws
- FINRA Regulation Board Composition

Referenced Rules & Notices

- FINRA Regulation By-Laws

FINRA Regulation is a subsidiary of FINRA. FINRA Regulation's By-Laws were not amended at the time of the consolidation, other than in a few sections where those By-Laws conflicted with the new FINRA By-Laws.

On November 6, 2008, the SEC approved amendments to the FINRA Regulation By-Laws that:

- ▶ restructured the industry representation on the National Adjudicatory Council (NAC)³ to parallel the firm-size criteria for industry representation on the FINRA Board;
- ▶ modified the nomination process for certain industry member seats on the NAC by using the FINRA Nominating Committee and by discontinuing the Regional Nominating Committees; and
- ▶ adopted conforming changes to reflect the corporate name change and similar matters.⁴

The SEC approved the current changes to the FINRA Regulation By-Laws on May 21, 2009.⁵ These changes complete the process of updating the FINRA Regulation By-Laws to reflect the consolidation transaction and harmonizing them with the FINRA By-Laws. The effective date for these changes is August 20, 2009.

Revisions to FINRA Regulation By-Laws

The FINRA By-Laws provide that the FINRA Board of Governors must consist of:

- ▶ the Chief Executive Officer of FINRA;
- ▶ the Chief Executive Officer of NYSE Regulation;
- ▶ eleven Public Governors; and
- ▶ ten Industry Governors, including the following:
 - ▶ a Floor Member Governor;
 - ▶ an Independent Dealer/Insurance Affiliate Governor;
 - ▶ an Investment Company Affiliate Governor;
 - ▶ three Small Firm Governors;
 - ▶ one Mid-Size Firm Governor; and
 - ▶ three Large-Firm Governors.⁶

The Small Firm Governors, Mid-Size Firm Governor and Large-Firm Governors are elected by FINRA member firms according to their classification as a Small Firm, Mid-Size Firm, or Large Firm.⁷

Under the revised By-Laws, the FINRA Regulation Board will continue to consist of between five and 15 members.⁸ The FINRA Regulation Board members will be drawn exclusively from, and elected by, the FINRA Board. In addition, the revised By-Laws require the FINRA Regulation Board, like the FINRA Board, to have a greater number of Public Directors than Industry Directors.⁹ To foster industry representation on the FINRA Regulation Board, the revised By-Laws also require that at least two, and not less than 20 percent, of the FINRA Regulation Board Directors be Small, Mid-Size or Large Firm Governors.¹⁰

The revised By-Laws provide that FINRA Regulation's stockholder, FINRA, has the authority to remove FINRA Regulation Directors and select the Chair of the FINRA Regulation Board. The revised By-Laws reflect other current business and legal practices concerning the administration of FINRA Regulation and its capital stock.

Finally, the revised By-Laws are updated by using the FINRA name throughout and by making several non-substantive or conforming changes, such as making the provision on communicating views about contested elections or nominations consistent with the FINRA By-Laws.

Endnotes

- 1 See Exchange Act Release No. 59962 (May 21, 2009), 74 FR 25792 (May 29, 2009) (SEC Order Approving SR-FINRA-2009-020).
- 2 See Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007), as amended by Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (File No. SR-NASD-2007-023).
- 3 The NAC is appointed by the FINRA Board of Governors to review all disciplinary decisions issued by FINRA hearing panels and presides over disciplinary matters that have been appealed to or called for review by the NAC. The NAC also reviews statutory disqualification matters and considers appeals of membership proceedings and exemption requests.
- 4 See Exchange Act Release No. 58909 (November 6, 2008), 73 FR 68467 (Nov. 18, 2008) (SEC Order Approving SR-FINRA-2008-046).
- 5 See Exchange Act Release No. 59962 (May 21, 2009), 74 FR 25792 (May 29, 2009) (SEC Order Approving SR-FINRA-2009-020).
- 6 See FINRA By-Laws, Article VII, Section 4 and Article XXII, Section 2(a).
- 7 See FINRA By-Laws, Article I(z), (dd) & (xx) (defining Small Firm Governor, Mid-Size Firm Governor, and Large-Firm Governor), and Article VII, Section 4(a).
- 8 See FINRA Regulation By-Laws, Article IV, Section 4.2 (Number of Directors).
- 9 See FINRA Regulation By-Laws, Article IV, Section 4.3(a) (Qualifications).
- 10 See *id.*