

Merger of FINRA Dispute Resolution

SEC Approves Proposed Rule Change to Merge FINRA Dispute Resolution, Inc. Into and With FINRA Regulation, Inc.

Effective Date: December 20, 2015

Executive Summary

The SEC recently approved FINRA's proposal to merge its dispute resolution subsidiary, FINRA Dispute Resolution, Inc. into and with its regulatory subsidiary, FINRA Regulation, Inc.¹ FINRA continues to operate its dispute resolution program, now as a separate department within FINRA Regulation under the name of the Office of Dispute Resolution. To implement the merger, FINRA made necessary conforming amendments to its Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (Delegation Plan), amended the FINRA Regulation By-Laws to incorporate substantive and unique provisions from the FINRA Dispute Resolution By-Laws, deleted the FINRA Dispute Resolution By-Laws in their entirety and made conforming amendments to FINRA rules. The SEC also approved amendments to the FINRA Regulation By-Laws to increase the total number of directors who may serve on the FINRA Regulation board from 15 to 17.

The amendments became effective on December 20, 2015. The amended rule text is available at <http://www.finra.org/industry/notices/16-04>.

Questions concerning this *Notice* should be directed to:

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- ▶ Mignon McLemore, Assistant Chief Counsel, Office of Dispute Resolution, at (202) 728-8151 or by email at mignon.mclemore@finra.org.

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Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Senior Management

Key Topics

- ▶ By-Laws
- ▶ Dispute Resolution
- ▶ FINRA Regulation Board Composition

Referenced Rules & Notices

- ▶ By-Laws of FINRA Dispute Resolution, Inc.
- ▶ By-Laws of FINRA Regulation, Inc.
- ▶ Plan of Allocation and Delegation of Functions by NASD to Subsidiaries

Background & Discussion

In 1999, FINRA moved NASD's Office of Dispute Resolution into a separate subsidiary, NASD Dispute Resolution (later known as FINRA Dispute Resolution).² In the years since then, however, it became clear that FINRA could achieve considerable operational efficiencies by merging the two subsidiaries, while also ensuring the continued operation of a fair, neutral and efficient dispute resolution forum. Accordingly, FINRA has merged its dispute resolution subsidiary into its regulatory subsidiary. The merger does not affect the services and benefits provided by or costs to use the dispute resolution forum, or have a practical impact on its corporate governance or oversight.

To effect the merger, the SEC approved FINRA's proposal to:

- ▶ amend the Delegation Plan to provide FINRA Regulation with the authority to carry out dispute resolution functions and to make other conforming changes;
- ▶ amend the FINRA Regulation By-Laws to incorporate substantive and unique provisions from the FINRA Dispute Resolution By-Laws and to make other conforming changes;
- ▶ amend the FINRA Regulation By-Laws to increase the total number of directors who may serve on the FINRA Regulation board;
- ▶ delete the FINRA Dispute Resolution By-Laws in their entirety; and
- ▶ make necessary conforming amendments to FINRA rules to reflect the merger.

Amendments to the Delegation Plan

FINRA has amended the Delegation Plan to reflect the corporate changes resulting from the merger and to make several non-substantive changes. Specifically, FINRA deleted Section III of the Delegation Plan, which previously set forth the responsibilities and functions delegated to FINRA Dispute Resolution, and incorporated several of its provisions into Section II, which delegates responsibilities and functions to FINRA Regulation.

Amendments to the FINRA Regulation By-Laws; Deletion of the FINRA Dispute Resolution By-Laws

FINRA amended the FINRA Regulation By-Laws to incorporate substantive and unique provisions from the FINRA Dispute Resolution By-Laws and, consequently, deleted the FINRA Dispute Resolution By-Laws. In 2012, the SEC approved amendments to the FINRA Dispute Resolution By-Laws to clarify that services provided by mediators, when acting in such capacity and not representing parties in mediation, should not cause the individuals to be classified as Industry Members under the Dispute Resolution By-Laws.³ The purpose of the amendments was to allow mediators, who are otherwise qualified, to be eligible to become Public Members of the National Arbitration and Mediation Committee (NAMC).

The recently approved amendments incorporated these unique provisions of the FINRA Dispute Resolution By-Laws into the definition of “Industry Member” in the FINRA Regulation By-Laws. Similarly, FINRA amended the definition of “Public Member” to clarify that, for the purposes of determining membership on the NAMC, acting in the capacity as a mediator of disputes involving a broker or dealer and not representing any party in such mediations is not considered a material business relationship with a broker or dealer.

In addition to these changes, FINRA also amended the FINRA Regulation By-Laws to expand the definition of “FINRA member” to incorporate a definition that applies to the dispute resolution forum and that clarifies that FINRA members remain subject to the requirements of the Codes of Arbitration Procedure⁴ after their membership has been terminated or cancelled.

The SEC also approved amendments to the FINRA Regulation By-Laws to increase the total number of directors who may serve on the FINRA Regulation board from 15 to 17.

Amendments to FINRA Rules

As a result of the merger, FINRA has amended several FINRA rules to update references. In addition, in connection with the merger, FINRA renamed FINRA Dispute Resolution as the Office of Dispute Resolution, which operates as a separate department within FINRA Regulation to administer FINRA’s existing dispute resolution programs. Accordingly, FINRA added a definition of “Office of Dispute Resolution” to FINRA’s rules to reflect the name change and amended various rules to replace references to “Dispute Resolution” with “Office of Dispute Resolution.”

Endnotes

1. See Securities Exchange Act Release No. 76670 (December 16, 2015), 80 FR 79632 (December 22, 2015) (Order Approving File No. SR-FINRA-2015-034).
2. See Securities Exchange Act Release No. 41971 (September 30, 1999), 64 FR 55793 (October 14, 1999) (Order Approving File No. SR-NASD-99-21).
3. See Securities Exchange Act Release No. 68142 (November 2, 2012), 77 FR 67038 (November 8, 2012) (Order Approving File No. SR-FINRA-2012-040).
4. See Rule 12000 and 13000 Series.