

interruption. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the pilot and allowing members to continue to benefit from the program. Based on the foregoing, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>12</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)<sup>13</sup> of the Act to determine whether the proposed rule change should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2015-122 on the subject line.

##### *Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEARCA-2015-122. This file number should be included on the subject line if email 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-NYSEARCA-2015-122, and should be submitted on or before January 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76670; File No. SR-FINRA-2015-034]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Merge FINRA Dispute Resolution, Inc. Into and With FINRA Regulation, Inc.

December 16, 2015.

#### I. Introduction

On September 29, 2015, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to merge its dispute resolution subsidiary, FINRA Dispute Resolution, Inc. ("FINRA Dispute Resolution") into and with its regulatory subsidiary, FINRA

Regulation, Inc. ("FINRA Regulation"), and to amend the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan") and the By-Laws of FINRA Regulation ("FINRA Regulation By-Laws"); delete the By-Laws of FINRA Dispute Resolution ("FINRA Dispute Resolution By-Laws"); and make conforming amendments to FINRA rules in order to implement the merger. In addition, the proposed rule change would amend the FINRA Regulation By-Laws to increase the total number of directors who could serve on the FINRA Regulation board. The proposed rule change was published for comment in the **Federal Register** on October 13, 2015.<sup>3</sup> The Commission received five comment letters on the proposed rule change.<sup>4</sup> On December 1, 2015,<sup>5</sup> the Commission received a response to the comments from FINRA.<sup>6</sup> This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

FINRA has proposed to merge FINRA Dispute Resolution into FINRA Regulation. To implement the merger, FINRA proposes to make conforming amendments to the Delegation Plan, amend the FINRA Regulation By-Laws to incorporate substantive and unique provisions from the FINRA Dispute Resolution By-Laws and to make other conforming amendments, delete the FINRA Dispute Resolution By-Laws in their entirety, and make conforming amendments to FINRA rules.<sup>7</sup> FINRA

<sup>3</sup> See Securities Exchange Act Release No. 76082 (October 6, 2015), 80 FR 61545 ("Notice").

<sup>4</sup> See letters from Hugh D. Berkson, President, Public Investors Arbitration Bar Association, dated November 3, 2015 ("PIABA Letter"); Ron A. Rhoades, dated November 3, 2015 ("Rhoades Letter"); Jill Gross, Director, Pace Investor Rights Clinic, Pace Law School, dated November 3, 2015 ("PIRC Letter"); Larry A. Tawwater, President, American Association for Justice, dated November 3, 2015 ("AAJ Letter"); and William A. Jacobson, Director, Cornell Securities Law Clinic, Cornell Law School, dated November 4, 2015 ("CSLC Letter").

<sup>5</sup> See Securities Exchange Act Release No. 76444 (November 16, 2015), 80 FR 72775 (November 20, 2015) extending the time for the Commission to act on the proposed rule change.

<sup>6</sup> See letter from Meredith Cordisco, Assistant General Counsel, FINRA, dated December 1, 2015 ("FINRA Letter").

<sup>7</sup> The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from New York Stock Exchange LLC ("NYSE") ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation

<sup>12</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

represents that its dispute resolution program would continue to operate as a separate department within FINRA Regulation, and it would be referred to as the Office of Dispute Resolution. FINRA has also proposed to amend the FINRA Regulation By-Laws to increase the total number of directors who could serve on the FINRA Regulation board.

#### A. Delegation Plan

FINRA proposed to delete Section III of the Delegation Plan, which delegates responsibilities and functions to FINRA Dispute Resolution, and to amend Section II of the Delegation Plan, which delegates responsibilities and functions to FINRA Regulation, to incorporate several of the provisions from Section III that apply to dispute resolution. Specifically, FINRA proposed to amend Section II of the Delegation Plan to provide FINRA Regulation with the authority to establish and interpret rules and regulations regarding dispute resolution programs; develop and adopt appropriate and necessary rule changes relating to the dispute resolution forum; conduct arbitrations, mediations, and other dispute resolution programs; establish and assess fees and other charges on FINRA members, persons associated with members, and others using the dispute resolution forum; and manage external relations on dispute resolution. In addition, FINRA proposed to incorporate in its entirety current Section III(C)(1) of the Delegation Plan, which governs the National Arbitration and Mediation Committee ("NAMC"), into Section II(C) of the Delegation Plan.<sup>8</sup> FINRA states that the NAMC's authority, role and responsibilities would not change under the proposed rule change.<sup>9</sup>

In addition, FINRA proposed to make other technical and conforming changes throughout the Delegation Plan.<sup>10</sup>

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

FINRA proposed to amend the FINRA Regulation By-Laws to incorporate substantive and unique provisions from the FINRA Dispute Resolution By-Laws and, consequently, to delete the FINRA Dispute Resolution By-Laws in their entirety. FINRA has represented that

where differences exist in the FINRA Dispute Resolution By-Laws that would not be incorporated into the FINRA Regulation By-Laws under the proposed rule change, the differences are non-substantive or would not otherwise affect the governance or operation of the dispute resolution program.<sup>11</sup> Specifically, FINRA proposed to amend the FINRA Regulation By-Laws to: (i) Expand the definition of "FINRA member" for purposes of the Codes of Arbitration Procedure to include "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;" and (ii) amend the definitions of "Industry Member" and "Public Member" to clarify that, for purposes of determining membership on the NAMC, acting in the capacity as a mediator of disputes involving a person and not representing any party in such mediations would not be considered professional services provided to, in the case of the term "Industry Member," or a material business relationship with, in the case of the term "Public Member," such persons.

In addition, FINRA is proposing to amend Section 4.2 of the FINRA Regulation By-Laws to increase the total number of directors who could serve on the FINRA Regulation board from 15 to 17. FINRA states that members of the FINRA Board's Regulatory Policy Committee currently serve as the directors of the board of FINRA Regulation.<sup>12</sup> Accordingly, in appointing governors of the FINRA Board to the Regulatory Policy Committee, FINRA must adhere to the compositional requirements for the Board of Directors of FINRA Regulation.<sup>13</sup> FINRA states that increasing the maximum number of FINRA Regulation board seats would

provide it with additional flexibility to manage its board committee assignments and meet the compositional requirements under the FINRA Regulation By-Laws.<sup>14</sup>

FINRA proposed to make other conforming and technical amendments to the FINRA Regulation By-Laws.<sup>15</sup>

#### C. Amendments to the FINRA Rules

FINRA proposed to amend several FINRA rules in connection with the proposed merger of FINRA Dispute Resolution into FINRA Regulation to, among other things, delete references to FINRA Dispute Resolution; add a definition of "FINRA Regulation;" change references to "subsidiaries" or "subsidiary" to "FINRA Regulation;" remove references to Section III of the Delegation Plan, which pertains to FINRA Dispute Resolution, and change the language to reference FINRA Regulation; and replace references to "Dispute Resolution" with "Regulation."

In addition, in connection with the merger, FINRA proposed to rename FINRA Dispute Resolution as the Office of Dispute Resolution. As discussed above, the Office of Dispute Resolution would become a separate department within FINRA Regulation that would continue to administer FINRA's existing dispute resolution programs. Accordingly, the proposed rule change would add a definition of "Office of Dispute Resolution" to FINRA's rules and amend various FINRA rules to replace certain references to "Dispute Resolution" with "Office of Dispute Resolution."

Upon completion of the merger, the position of President of FINRA Dispute Resolution would no longer exist, therefore FINRA proposed to delete references to the President of FINRA Dispute Resolution from its Rules.<sup>16</sup>

<sup>14</sup> See Notice, *supra* note 3, at 61549.

<sup>15</sup> See Notice, *supra* note 3, at 61548–50.

<sup>16</sup> See Rules 10103 (Director of Arbitration), 10312 (Disclosures Required of Arbitrators and Director's Authority to Disqualify), 12103 (Director of Dispute Resolution), 12104 (Effect of Arbitration on FINRA Regulatory Activities; Arbitrator Referral During or at Conclusion of Case), 12203 (Denial of FINRA Forum), 12407 (Removal of Arbitrator by Director), 13103 (Director of Dispute Resolution), 13104 (Effect of Arbitration on FINRA Regulatory Activities; Arbitrator Referral During or at Conclusion of Case), 13203 (Denial of FINRA Forum) and 13410 (Removal of Arbitrator by Director). Any authority formerly granted by those rules to the President of FINRA Dispute Resolution would be deleted in its entirety or granted solely to the Director of the Office of Dispute Resolution, except that in amended Rules 10103 (Director of Arbitration), 12103 (Director of Dispute Resolution) and 13103 (Director of Dispute Resolution), the authority to appoint an interim Director if the Director is unable to perform his duties would be

process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>8</sup> Under the proposed rule change, the FINRA Regulation board would appoint the NAMC and the NAMC would have the authority to advise the FINRA Regulation board on issues relating to dispute resolution.

<sup>9</sup> See Notice, *supra* note 3, at 61548.

<sup>10</sup> See Notice, *supra* note 3, at 61547–48 for the list of these changes.

<sup>11</sup> See Notice, *supra* note 3, at 61548.

<sup>12</sup> See Notice, *supra* note 3, at 61549.

<sup>13</sup> See Article IV, Section 4.3(a) of the FINRA Regulation By-Laws, which provides, among other things, that the FINRA Regulation board must consist of at least two and not less than 20 percent of directors who are Small Firm, Mid-Size Firm or Large Firm Governors, and that a majority of the FINRA Regulation board must be public directors.

### III. Comment Letters and FINRA's Response

The Commission received four comment letters opposing the proposed rule change<sup>17</sup> and one comment letter expressing concerns regarding the proposed rule change.<sup>18</sup> In general, commenters believe that FINRA Dispute Resolution should remain separate from FINRA Regulation in order to maintain the independence and autonomy of the dispute resolution forum.<sup>19</sup> One commenter states that the proposed merger is contrary to the stated purpose of maintaining a neutral and independent dispute resolution program, would damage the credibility of the FINRA arbitration program, and would "create even more public perception that the forum serves the purposes of the securities industry."<sup>20</sup> Another commenter states that the proposed merger would negatively affect investors' perceptions of the neutrality and fairness of FINRA's dispute resolution forum.<sup>21</sup> Further, one commenter argues that it is important FINRA Dispute Resolution "be able to adopt its own policies, determine the appropriate allocation of its resources, and manage its external relations" and "that the NAMC remain separate and apart from [FINRA] Regulation."<sup>22</sup>

In addition, two commenters believe FINRA's justifications for the proposed merger are conclusory<sup>23</sup> and one commenter believes the proposal lacks detail to support the changes being made.<sup>24</sup> PIABA states that it finds

granted to the President of FINRA Regulation. FINRA also proposed to delete references to an Executive Vice President of FINRA Dispute Resolution from Rule 10103.

<sup>17</sup> See PIABA Letter, Rhoades Letter, PIRC Letter, and CSLC Letter. One commenter that opposes the proposed merger argues that arbitration should be independent of FINRA altogether and should be conducted by an independent arbitration forum such as the American Arbitration Association. See Rhoades Letter. FINRA stated that it believes, and the Commission agrees, that this comment is beyond the scope of the proposed rule change. See FINRA Letter at 1, n.4.

<sup>18</sup> See AAJ Letter.

<sup>19</sup> See, e.g., PIABA Letter at 3–4; PIRC Letter. Two commenters believe that the proposed rule change contradicts previous statements made by FINRA (formerly NASD) and the Commission when NASD first proposed, and the Commission approved, a separate dispute resolution subsidiary. See PIABA Letter at 2–3 (citing Securities Exchange Act Release Nos. 41510 (June 10, 1999), 64 FR 32575 (June 17, 1999) (SR–NASD–99–21) (notice of proposed rule change to create a dispute resolution subsidiary); and 41971 (September 30, 1999), 64 FR 55793 (October 14, 1999) (SR–NASD–99–21) (order approving proposed rule change to create a dispute resolution subsidiary)). See also PIRC Letter.

<sup>20</sup> See CSLC Letter.

<sup>21</sup> See PIRC Letter.

<sup>22</sup> See PIABA Letter at 4.

<sup>23</sup> See PIABA Letter and PIRC Letter.

<sup>24</sup> See AAJ Letter.

troubling FINRA's statements that the proposed merger would better align FINRA's legal structure with the public's perception as well as its operational realities.<sup>25</sup> PIABA argues that any public confusion regarding the distinct nature of FINRA Regulation and FINRA Dispute Resolution results from FINRA's failure to adequately explain to the public the different roles of each entity, and that FINRA should take steps to improve the public's understanding that FINRA Dispute Resolution is separate and independent from FINRA Regulation, which the commenter believes would improve the confidence level of forum users.<sup>26</sup> In addition, PIABA argues that if FINRA has not been operating FINRA Dispute Resolution and FINRA Regulation as two separate and distinct entities, it should take steps to do so rather than merging the entities.<sup>27</sup>

In response, FINRA notes that it "does not need to maintain separate corporate entities in order to provide a fair, neutral and efficient dispute resolution forum."<sup>28</sup> FINRA states that FINRA, FINRA Regulation, and FINRA Dispute Resolution largely function as a single organization today in that the entities currently share many administrative and support functions; FINRA Dispute Resolution remains financially dependent on the FINRA enterprise; and the rules, administrative processes, and leadership of the entities are largely integrated.<sup>29</sup> FINRA argues that "the significant commonalities and shared resources between the corporate entities serve to benefit the dispute resolution forum and its users."<sup>30</sup>

In addition, FINRA states that it retained and incorporated into FINRA Regulation's operations, the unique elements of the dispute resolution program that "strengthen its operations and enhance the fairness and neutrality of the forum."<sup>31</sup> Following the merger,

<sup>25</sup> See PIABA Letter at 3.

<sup>26</sup> See PIABA Letter at 3–4.

<sup>27</sup> *Id.*

<sup>28</sup> See FINRA Letter at 3.

<sup>29</sup> See FINRA Letter at 2–3. For example, FINRA notes that FINRA Dispute Resolution staff "works closely with the Department of Enforcement and FINRA's operating departments to identify misconduct by individuals or firms involved in arbitration cases that might merit further investigation or action to ensure protection of the investing public" and that FINRA's procedural rules "specifically provide that if a FINRA arbitration panel issues an award in favor of the claimant, and the member firm or associated person fails to comply with the award or related settlement, FINRA has the authority to suspend or cancel the membership of the firm or suspend the associated person for such non-compliance." *Id.* at 3 (citing FINRA By-Laws, Article VI, Section 3, and FINRA Rule 9554).

<sup>30</sup> See FINRA Letter at 2.

<sup>31</sup> *Id.* at 3.

the NAMC, an advisory committee on arbitration matters currently maintained by FINRA Dispute Resolution, would continue under FINRA Regulation in "both its current form (including the requirement that non-industry members compose at least 50 percent of the NAMC) and function (providing input that would shape the forum's rules, policies and procedures)."<sup>32</sup> FINRA states that the NAMC "is a key component to maintaining a fair and efficient forum."<sup>33</sup>

Moreover, FINRA states that the merger would not have a practical effect on corporate governance of the dispute resolution forum as members of the FINRA Board's Regulatory Policy Committee, who currently serve as the directors of the boards of both FINRA Regulation and FINRA Dispute Resolution,<sup>34</sup> would continue to serve as directors of the board of the merged entity, "thereby ensuring fair representation of FINRA's constituents in the administration of the dispute resolution program."<sup>35</sup> In addition, FINRA notes that the governance structure would continue to consist of a majority of public board members, "which helps to ensure that FINRA receives input on the forum's proposed rules, policies and procedures from those whose backgrounds and affiliations are not connected to the industry."<sup>36</sup>

FINRA states that following the merger, FINRA's dispute resolution program will continue to function as a separate department within FINRA Regulation, and will be overseen by the Director of the Office of Dispute Resolution, who will be responsible for managing the day-to-day operations of the dispute resolution program.<sup>37</sup> FINRA also points out that the merger will have no effect on its current regulatory oversight, noting that it will still be subject to the rule filing requirements of the Act and to

<sup>32</sup> *Id.* at 3–4.

<sup>33</sup> *Id.* at 4.

<sup>34</sup> FINRA states that "overlapping board membership was contemplated at the time it sought to create the dispute resolution subsidiary as a way to provide stability and uniformity among the corporate entities." See FINRA Letter at 4 (citing Securities Exchange Act Release No. 41510, 64 FR 32575, 32586 (June 17, 1999) (Notice of Filing of File No. SR–NASD–99–21)).

<sup>35</sup> See FINRA Letter at 4. FINRA notes that the proposed rule change would amend the FINRA Regulation corporate governance structure to add two board seats, "which would provide FINRA with additional flexibility to manage its board committee assignments and meet the compositional requirements under the FINRA Regulation By-Laws." *Id.* at n. 13.

<sup>36</sup> *Id.* at 4.

<sup>37</sup> *Id.* at 5.

inspections by the Commission.<sup>38</sup> FINRA argues that this “robust regulatory framework serves to ensure that FINRA manages and administers the forum in a manner that is fair and protects investors and the public interest.”<sup>39</sup>

FINRA also states that it “does not believe that the merger would impact public perception of fairness of the forum” because FINRA, FINRA Regulation and FINRA Dispute Resolution appear to the public to be a single organization and, furthermore, the merger will not affect the services and benefits provided by, or the costs to use, the dispute resolution forum, or its corporate governance or oversight.<sup>40</sup> In addition, FINRA “does not believe it would be relevant or helpful, as PIABA suggests, for FINRA to engage in educational efforts regarding the existing corporate distinction” between the entities, as “maintaining a separate corporate entity does not contribute to the fairness or efficiency of operating the forum.”<sup>41</sup> FINRA notes, however, that it “continuously engages in efforts to educate the investing public about the services and benefits of its dispute resolution forum, including the fairness and neutrality of the forum.”<sup>42</sup> FINRA also states that it “has made many enhancements to the dispute resolution program since the establishment of FINRA Dispute Resolution that are wholly unrelated to its corporate structure[,]” such as allowing investors to have an all public arbitration panel, and it “is continuously looking at ways to strengthen the dispute resolution process and would continue to work closely with investors, members, and other interested parties in such efforts, irrespective of FINRA’s corporate structure.”<sup>43</sup>

PIABA states that there may be unintended consequences of merging FINRA Dispute Resolution into FINRA Regulation, specifically questioning whether a decision by FINRA Enforcement to decline to take action against a member for conduct that is the subject of a pending arbitration could be used as defensive evidence in an arbitration proceeding.<sup>44</sup> FINRA noted that this issue exists irrespective of the

proposed merger and that it has previously stated that its determination not to take enforcement action against a member has no evidentiary weight in a subsequent proceeding.<sup>45</sup> FINRA also states that it considers it unethical and potentially misleading to suggest to an adjudicator or mediator that FINRA’s determination is probative evidence in a dispute on the merits of a related claim.<sup>46</sup>

One commenter states that FINRA did not provide a cost-benefit analysis or quantify the administrative savings that will result from the merger or state what it will do with these savings.<sup>47</sup> In response, FINRA states that proposed rule change would allow for more efficient use of FINRA’s administrative resources resulting from the elimination of numerous tax and other regulatory filings each year.<sup>48</sup> While FINRA does not expect the cost savings to have a material effect on its budget or the costs of forum-related services, FINRA believes it is nevertheless prudent for FINRA to “streamline its operational procedures and re-allocate staff involved in such processes to other matters,” which will enhance the efficient operation of FINRA, in turn benefitting those who are governed by, and those who use, FINRA’s services.<sup>49</sup>

Two commenters believe that the comment period for the proposed rule change was too short to allow interested parties to fully evaluate the proposal and provide comments.<sup>50</sup> FINRA argues that interested parties were provided with sufficient time to comment on the proposal.<sup>51</sup> In this regard, FINRA notes that it adhered to the procedures set forth in Section 19 of the Act for self-regulatory organizations to file proposed rule changes with the Commission and that the Commission adhered to standard practices with respect to the proposed rule change by providing a 21 day comment period following

publication of notice of the proposed rule change in the **Federal Register**.<sup>52</sup>

#### IV. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA’s response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.<sup>53</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>54</sup> which requires, among other things, that FINRA’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission recognizes that commenters raised concerns that in approving the current proposal, the Commission would be contradicting its prior findings when it approved the creation of Dispute Resolution as a separate subsidiary.<sup>55</sup> The Commission notes, however, that FINRA is not required to maintain separate corporate entities, nor will the maintenance of separate corporate entities ensure a fair, neutral and efficient dispute resolution forum. FINRA represents that while the proposed rule change would alter FINRA Dispute Resolution’s corporate status, it would not affect the services and benefits provided by, or costs to use, the dispute resolution forum, its corporate governance, or oversight.<sup>56</sup> Moreover, the FINRA Regulation board, like the FINRA Dispute Resolution board, will continue to consist of members of the FINRA Board’s Regulatory Policy Committee and a majority of the members will continue to be public board members. Further, following the merger, the NAMC, which

<sup>38</sup> *Id.*

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

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 6. For example, last year, FINRA formed the Dispute Resolution Task Force to consider possible enhancements to the forum to improve the effectiveness, transparency, impartiality and efficiency of FINRA’s securities arbitration forum for all participants.

<sup>44</sup> See PIABA Letter at 4.

<sup>45</sup> See FINRA Letter at 7. For example, FINRA states that the merger would eliminate the need to file numerous tax filings each year, including multiple state tax and information returns, sales tax returns, property tax returns, as well as many state registrations and annual reports, and also would eliminate a separate payroll entity, eliminating the need for separate compensation and accounting protocols. See *id.* at 2.

<sup>46</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>47</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>48</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>49</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>50</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>51</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>52</sup> *Id.*

<sup>53</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>54</sup> 15 U.S.C. 78o-3(b)(6).

<sup>55</sup> See *supra* note 19.

<sup>56</sup> See Notice, *supra* note 3, at 61546 n.8. According to FINRA, FINRA Dispute Resolution remains financially dependent on the FINRA enterprise, as fees received from parties who use the arbitration and mediation programs are not sufficient to fund the forum’s arbitration and mediation activities at current cost levels. FINRA represents that following the merger, FINRA will continue to supplement the fees collected from users, as necessary, to maintain a cost effective forum. See FINRA Letter at 3. The Commission expects FINRA to ensure that the Office of Dispute Resolution is adequately funded and able to fulfill its responsibilities.

<sup>57</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>58</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>59</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>60</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>61</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>62</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>63</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>64</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>65</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>38</sup> *Id.*

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

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 6. For example, last year, FINRA formed the Dispute Resolution Task Force to consider possible enhancements to the forum to improve the effectiveness, transparency, impartiality and efficiency of FINRA’s securities arbitration forum for all participants.

<sup>44</sup> See PIABA Letter at 4.

<sup>45</sup> See FINRA Letter at 7. For example, FINRA states that the merger would eliminate the need to file numerous tax filings each year, including multiple state tax and information returns, sales tax returns, property tax returns, as well as many state registrations and annual reports, and also would eliminate a separate payroll entity, eliminating the need for separate compensation and accounting protocols. See *id.* at 2.

<sup>46</sup> See PIABA Letter at 4.

<sup>47</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>48</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>49</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>50</sup> See PIABA Letter at 1 and AAJ Letter at 1.

<sup>51</sup> See PIABA Letter at 1 and AAJ Letter at 1.

was maintained by FINRA Dispute Resolution before the merger, will be maintained by FINRA Regulation, and the composition of the NAMC will not change. At least 50 percent of the members must be non-industry members. The Commission believes that the foregoing should help to ensure the maintenance of a fair and neutral forum.

With respect to concerns raised by commenters regarding the public perception of fairness if the merger is approved, the Commission notes that the dispute resolution forum will continue to be subject to the same Commission oversight as other departments of FINRA, which includes the requirement to file all rule changes, which include changes to the By-Laws, with the Commission,<sup>57</sup> and the forum will continue to be subject to inspections by the Commission and by the Government Accountability Office, which performs audits at the request of the United States Congress.<sup>58</sup> In addition, the Commission expects FINRA to continue to work closely with investors, members, and other interested parties in looking at ways to strengthen the dispute resolution process and serve the needs of the investing public, and to consider any recommendations raised by its Dispute Resolution Task Force<sup>59</sup> for improving the effectiveness, transparency, impartiality and efficiency of its arbitration forums.

PIABA also questioned the actual cost savings generated by the proposed merger. FINRA indicated that the merger will reduce unnecessary administrative burdens that result from the need to maintain separate legal entities, such as costs and resources associated with complying with multiple-entity regulatory and tax filings and maintaining separate accounting protocols. The merger will allow FINRA to streamline its operational procedures and re-allocate staff involved in such processes, which should make FINRA's operations more efficient.

FINRA states that the increase to the maximum number of FINRA Regulation board seats from 15 to 17 will provide

<sup>57</sup> The arbitration program and services will continue to be governed by the FINRA Codes of Arbitration Procedure and the mediation program and services by the FINRA Code of Mediation Procedure. See FINRA Rule 12000, 13000 and 14000 Series.

<sup>58</sup> See Notice, *supra* note 3, at 61547. Moreover, FINRA has represented that a decision not to take enforcement action against a member has no evidentiary weight and further, that FINRA would consider it unethical and potentially misleading to suggest that such a determination is probative evidence in a dispute on the merits of a related claim.

<sup>59</sup> See *supra* note 43.

it with additional flexibility to manage its board committee assignments and meet the compositional requirements under the FINRA Regulation By-Laws. The Commission notes that following the increase, the FINRA Regulation board compositional requirements will continue to provide for the fair representation of FINRA's members and the numerical dominance of public directors, consistent with the requirements of the Act.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>60</sup> that the proposed rule change (SR-FINRA-2015-034), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>61</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76664; File No. SR-BATS-2015-110]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 13.3, Forwarding of Proxy and Other Issuer Materials; Proxy Voting

December 16, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 2, 2015, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>60</sup> 15 U.S.C. 78s(b)(2).

<sup>61</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

The Exchange is proposing to amend paragraph (a) of Rule 13.3, Forwarding or Proxy and other Issuer Materials; Proxy Voting, to conform to the rules of EDGA Exchange, Inc. ("EDGA") and EDGX Exchange, Inc. ("EDGX").<sup>5</sup>

The text of the proposed rule change is available at the Exchange's Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, 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, the Exchange 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

#### 1. Purpose

In early 2014, the Exchange and its affiliate, BATS Y-Exchange, Inc. ("BYX"), received approval to effect a merger (the "Merger") of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA (together with BZX, BYX and EDGX, the "BGM Affiliated Exchanges").<sup>6</sup> In the context of the Merger, the BGM Affiliated Exchanges are working to align their rules, retaining only intended differences between the BGM Affiliated Exchanges.

EDGA and EDGX recently filed proposed rule changes with the Commission to restructure and amend their Rules 3.22. Proxy Voting, and 13.3, Forwarding of Proxy and Other Issuer Materials, to conform to BYX and BZX Rule 13.3.<sup>7</sup> In order to provide a consistent rule set across each of the

<sup>5</sup> See Securities Exchange Act Release Nos. 76329 (November 3, 2015), 80 FR 69259 (November 9, 2015); 76330 (November 3, 2015), 80 FR 69264 (November 9, 2015) (SR-EDGX-2015-51; SR-EDGA-2015-41).

<sup>6</sup> See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

<sup>7</sup> See *supra* note 3.