

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62441; File No. SR-FINRA-2010-027)

July 2, 2010

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

On May 21, 2010, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Restated Certificate of Incorporation of FINRA (“Certificate of Incorporation”) to specify its quorum requirements. The proposed rule change was published for comment in the Federal Register on June 1, 2010.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

The proposed rule change would amend FINRA’s Certificate of Incorporation to specify the quorum required for a meeting of FINRA members and the quorum required to take action on a matter where a separate vote by a class or group is required.⁴ FINRA has represented that it has proposed this rule change in order to preserve FINRA’s current quorum requirements in anticipation of amendments to the General Corporation Law of the State of Delaware (the “General Corporation Law”) that will take effect on August 1, 2010.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 62160 (May 24, 2010), 75 FR 30457.

⁴ Pursuant to FINRA’s Certificate of Incorporation and By-Laws, FINRA members vote as three distinct classes, based upon firm size, for the election of members to the Board of Governors, i.e., Small Firm Governors, Mid-Size Firm Governor, and Large Firm Governors.

Section 215(c) of the General Corporation Law, as currently in effect, 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 the transaction of any business and, that in the absence of such specification, one-third of the members of such corporation shall constitute a quorum at a meeting of such members.⁵ FINRA is a nonstock corporation and 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) of the General Corporation Law, attendance in person or by proxy of one-third of FINRA's members currently constitutes a quorum at a meeting of such members.⁶

On August 1, 2010, the General Corporation Law will be amended to, among other things, add new Section 215(c)(4), which section will add a new default quorum requirement for instances where a separate vote by a class or group of members is required. Specifically, effective August 1, 2010, unless the certificate of incorporation or bylaws of a nonstock corporation provides otherwise, where a separate vote by a class or group of members is required, a majority of the members of such class or group shall constitute a quorum entitled to take action with respect to the vote on such matter.⁷

In anticipation of the foregoing amendment to the General Corporation Law, FINRA has proposed to amend its Certificate of Incorporation to set forth quorum requirements for its meetings of members, including in instances where a separate vote by a class or group is required. Specifically, FINRA has proposed that, at all meetings of its members, the presence in

⁵ Del. Code Ann. tit. 8 § 215(c) and (c)(1) (2010).

⁶ See id.

⁷ Del. H.B. 341, 145th Gen. Assem. § 19 (2010).

person or by proxy of one-third of the members entitled to vote at the meeting shall constitute a quorum; provided, however, where a separate vote by a class or group of members is required, the presence in person or by proxy of one-third of the members of such class or group shall constitute a quorum with respect to the vote on that matter. By incorporating these quorum requirements into the Certification of Incorporation, FINRA has represented that the proposed rule change would maintain FINRA's current one-third quorum requirement where a separate vote of classes or groups of members is required instead of resorting to the default requirement in the General Corporation Law.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(2) of the Act,⁹ which requires, among other things, that FINRA be so organized and have the capacity to be able 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 Commission notes that the proposed rule change would codify FINRA's current quorum requirements. By clearly specifying FINRA's quorum requirements in its Certificate of Incorporation, the Commission believes that the proposed rule change would provide greater transparency about FINRA's deliberative and voting processes, which should facilitate the ability of FINRA's members to conduct business at meetings and exercise their voting rights.

Therefore, the Commission believes that the proposed rule change is consistent with the Act.

⁸ 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).

⁹ 15 U.S.C. 78q-3(b)(2).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-FINRA-2010-027), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Elizabeth M. Murphy
Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).