

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56145A; File No. SR-NASD-2007-023)

May 30, 2008

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Order Approving Proposed Rule Change To Amend the By-Laws of NASD To Implement Governance and Related Changes To Accommodate the Consolidation of the Member Firm Regulatory Functions of NASD and NYSE Regulation, Inc.

Amended

In Part V of Securities Exchange Act Release No. 56145 (“Release No. 34-56145”), issued July 26, 2007,<sup>1</sup> the Securities and Exchange Commission (“Commission”) is adding, immediately after the following sentence:

“Accordingly, after reviewing the record in this matter, the Commission believes that NASD has provided sufficient basis on which the Commission can find that, under the Exchange Act, NASD complied with its Certificate of Incorporation and By-Laws with respect to the proxy approval process and that the proposed amendments to its By-Laws were properly approved by NASD members.”

the following paragraph:

“This finding as to NASD compliance and members’ approval is not a definitive adjudication under state law, such as a trial court would make after an evidentiary hearing, regarding the claim that the proxy statement was misleading. Except to the extent that state law informs the Commission’s finding that, as a federal matter under the Exchange Act, NASD complied with its Certificate of Incorporation and By-Laws with respect to the proxy approval process and that the proposed amendments to its By-Laws

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<sup>1</sup> See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (FR Doc. E7-14855).

were properly approved by NASD members, the Commission is not purporting to decide a question of state law. The Commission does not intend that its determination regarding the NASD's uncontradicted prima facie showing before the Commission that the proxy statement was not misleading be binding on a court in a claim based on state law."

In adding this clarifying language, the Commission is not vacating, nullifying or rendering void Release No. 34-56145, which approved NASD's proposed rule change to amend the By-Laws of NASD to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. Release No. 34-56145, as amended herein, remains in effect as of July 26, 2007, the date it was issued by the Commission.

By the Commission.

Florence E. Harmon  
Acting Secretary