

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96746; File No. SR-FINRA-2023-001)

January 25, 2023

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Expiration Date of the Temporary Amendments Set Forth in SR-FINRA-2020-027 and the Temporary Amendments to FINRA Rule 9341(d) in SR-FINRA-2020-015

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 18, 2023, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to extend the expiration date of the temporary amendments set forth in SR-FINRA-2020-027 and the temporary amendments to FINRA Rule 9341(d) in SR-FINRA-2020-015 from January 31, 2023, to April 30, 2023.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ If FINRA seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond April 30, 2023, FINRA will submit a separate rule filing to further extend the temporary extension of time. The amended

The proposed rule change would not make any changes to the text of FINRA rules.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

In response to the COVID-19 global health crisis and the corresponding need to restrict in-person activities, FINRA filed proposed rule changes, SR-FINRA-2020-015 and SR-FINRA-2020-027, which respectively provide temporary relief from some timing, method of service and other procedural requirements in FINRA rules and allow FINRA’s Office of Hearing Officers (“OHO”) and the National Adjudicatory Council (“NAC”) to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. In October 2022, FINRA filed a proposed rule change, SR-FINRA-2022-029, to extend the expiration date of the temporary amendments in both SR-FINRA-2020-015 and SR-FINRA-2020-027 from October 31, 2022, to January 31, 2023.⁵ Due

FINRA rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

⁵ See Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-029).

to the continued presence and uncertainty of COVID-19, FINRA proposes to extend the expiration date of the temporary amendments in SR-FINRA-2020-027 and the temporary amendments to FINRA Rule 9341(d) in SR-FINRA-2020-015 from January 31, 2023, to April 30, 2023.⁶

Due to the public health concerns and restrictions resulting from the outbreak of COVID-19, along with a corresponding backlog of disciplinary cases,⁷ FINRA filed, and subsequently extended to January 31, 2023, SR-FINRA-2020-027⁸ to temporarily amend FINRA Rules 1015, 9261, 9524, and 9830 to grant OHO and the NAC authority⁹ to conduct hearings in connection

⁶ In June 2022, the Commission approved FINRA's rule proposal to make permanent the temporary amendments to the electronic service and filing rules originally set forth in SR-FINRA-2020-015, with some modifications, as described in the approval order. See Securities Exchange Act Release No. 95147 (June 23, 2022), 87 FR 38803 (June 29, 2022) (Order Approving File No. SR-FINRA-2022-009). Those amendments became effective on August 22, 2022. See Regulatory Notice 22-16 (July 2022). In addition to the electronic service and filing rules, SR-FINRA-2020-015 also included other temporary amendments pertaining to certain adjudicatory and review processes. All of these other temporary amendments expired on the effective date of SR-FINRA-2022-009, except for the provisions to allow NAC oral arguments by video conference (FINRA Rule 9341(d)).

⁷ For example, FINRA began temporarily postponing in-person hearings as a result of the COVID-19 impacts on March 16, 2020.

⁸ The same COVID-19 public health concerns and restrictions led FINRA to file SR-FINRA-2020-015, which included the temporary amendments to allow NAC oral arguments by videoconference. See Securities Exchange Act Release No. 88917 (May 20, 2020), 85 FR 31832 (May 27, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-015).

⁹ For OHO hearings under FINRA Rules 9261 and 9830, the proposed rule change temporarily grants authority to the Chief or Deputy Chief Hearing Officer to order that a hearing be conducted by video conference. For NAC hearings under FINRA Rules 1015 and 9524, this temporary authority is granted to the NAC or the relevant Subcommittee. With respect to both OHO and NAC hearings, the temporary authority of the adjudicator is discretionary, so in-person hearings may continue to take place where safe and appropriate.

with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the COVID-19-related public health risks posed by an in-person hearing.¹⁰

Due to the upward trend in the number of COVID-19 cases since FINRA filed SR-FINRA-2022-029 in October 2022, FINRA believes there is a continued need for temporary relief beyond January 31, 2023. In this regard, FINRA notes that COVID-19 remains a public health concern. For example, according to the Centers for Disease Control and Prevention (“CDC”), approximately 61.73 percent of counties in the United States have a medium or high COVID-19 Community Level based on the CDC’s most recent calculations.¹¹ The daily average number of hospital admissions is also on the rise.¹² Much uncertainty also remains given the

¹⁰ See Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-027); Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-042); Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-006); Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-019); Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-031); Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-004); Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-018); and File No. SR-FINRA-2022-029, supra note 5.

¹¹ See CDC, COVID Data Tracker – COVID-19 Integrated County View, https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels (last visited Jan. 9, 2023).

¹² See CDC, COVID Data Tracker Weekly Review – Daily Trend in Number of New COVID-19 Hospital Admissions in the United States, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html> (last visited Jan. 9, 2023) (“The current 7-day daily average for December 28, 2022–January

emergence of new Omicron variants that the CDC currently is tracking¹³ and the dissimilar vaccination rates (completed primary series and updated booster dose) throughout the United States.¹⁴

In addition, as set forth in the previous filings, FINRA relies on the guidance of its health and safety consultant, in conjunction with COVID-19 data and guidance issued by public health authorities, to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference.¹⁵ FINRA strives to hold in-person hearings when it is safe to do so, but because FINRA conducts hearings at locations throughout the United States, FINRA believes that it may be difficult to conduct in-person hearings at certain locations based on that data and guidance.

As a result, FINRA believes there will be a continued need for temporary relief beyond January 31, 2023. Accordingly, FINRA proposes to extend the expiration date of the temporary amendments originally set forth in SR-FINRA-2020-027 and the temporary amendments to

3, 2023, was 6,519. This is a 16.1% increase from the prior 7-day average (5,613) from December 21–27, 2022.”).

¹³ These new Omicron variants include BQ.1.1, XBB.1.5 and BQ.1. See CDC, COVID Data Tracker – Variant Proportions, <https://covid.cdc.gov/covid-data-tracker/#variant-proportions> (last visited Jan. 9, 2023).

¹⁴ A state-by-state comparison of vaccination rates is available at https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-additional-dose-totalpop (last visited Jan. 9, 2023).

¹⁵ As noted in SR-FINRA-2020-027, the temporary proposed rule change grants discretion to OHO and the NAC to order a video conference hearing. In deciding whether to schedule a hearing by video conference, OHO and the NAC may consider a variety of other factors in addition to COVID-19 trends. In SR-FINRA-2020-027, FINRA provided a non-exhaustive list of other factors OHO and the NAC may take into consideration, including a hearing participant’s individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.

FINRA Rule 9341(d) in SR-FINRA-2020-015 from January 31, 2023, to April 30, 2023.¹⁶ As previously noted, FINRA strives to hold in-person hearings when it is safe to do so and the extension of temporary relief therefore does not mean a video conference hearing will be ordered in every case.¹⁷ Given the uncertainty regarding COVID-19, however, the extension of these temporary amendments allowing for specified OHO and NAC hearings to proceed by video conference will ensure that FINRA’s critical adjudicatory functions continue to operate effectively in these circumstances—enabling FINRA to fulfill its statutory obligations to protect investors and maintain fair and orderly markets—while also protecting the health and safety of hearing participants.¹⁸

¹⁶ See supra note 5. As a further basis for extending the expiration date to April 30, 2023, FINRA notes that its Board has approved the submission of a rule proposal to the Commission to make permanent, with some modifications, the temporary rules to allow hearings to be conducted by video conference originally set forth in SR-FINRA-2020-027 and SR-FINRA-2020-015. See <https://www.finra.org/about/governance/finra-board-governors/meetings/update-finra-board-governors-meeting-december-2022>. FINRA contemplates filing the rule proposal with the Commission in the near future and the extension of the temporary rule amendments would help avoid the rules reverting to their original form before the permanent rules, if approved by the Commission, become effective.

¹⁷ In fact, FINRA began to hold in-person hearings at a single location in 2021. In July 2021, FINRA held its first in-person hearing since the temporary amendments were implemented. A subsequent surge in case numbers for the Delta variant of the COVID-19 virus caused FINRA’s outside health and safety consultant to recommend in early August 2021 against in-person hearings. Accordingly, the Chief Hearing Officer converted hearings scheduled after mid-September 2021 from in-person to video conference on a case-by-case basis. In July 2022, FINRA scheduled another in-person hearing but shortly before it began the parties jointly requested that the hearing be conducted via video conference instead, and the Chief Hearing Officer used her discretion to order that the hearing be conducted by video conference.

¹⁸ Since the temporary amendments were implemented, OHO and the NAC have conducted several hearings by video conference. As of January 9, 2023, OHO has conducted 17 disciplinary hearings by video conference (decisions have been issued in all but one of these cases). In six of these disciplinary hearings, all of the parties agreed to proceed by video conference; the other 11 were ordered to proceed by video conference by the Chief Hearing Officer. OHO currently has hearings scheduled in eight additional disciplinary

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁹ which requires, among other things, that FINRA rules must 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. FINRA believes that the proposed rule change is also consistent with Section 15A(b)(8) of the Act,²⁰ which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members.

The proposed rule change, which extends the expiration date of the temporary amendments to FINRA rules set forth in SR-FINRA-2020-027 and the temporary amendments to FINRA Rule 9341(d) in SR-FINRA-2020-015, will continue to aid FINRA's efforts to timely conduct hearings in connection with its core adjudicatory functions. Given that COVID-19 remains a public health concern and the spike in cases of the disease, without this relief allowing

matters. No determination has yet been made regarding whether these eight hearings will be in-person or by video conference. Also, as of January 9, 2023, the NAC, through the relevant Subcommittee, has conducted 19 oral arguments by video conference in connection with appeals of FINRA disciplinary proceedings pursuant to FINRA Rule 9341(d), as temporarily amended. Furthermore, the NAC has conducted via video conference a one-day evidentiary hearing in a membership application proceeding pursuant to FINRA Rule 1015, as temporarily amended. The NAC also has conducted via video conference three evidentiary hearings in eligibility matters pursuant to FINRA Rule 9524, as temporarily amended.

¹⁹ 15 U.S.C. 78o-3(b)(6).

²⁰ 15 U.S.C. 78o-3(b)(8).

OHO and NAC hearings to proceed by video conference, FINRA might be required to postpone some or almost all hearings for a significant period of time. FINRA must be able to perform its critical adjudicatory functions to fulfill its statutory obligations to protect investors and maintain fair and orderly markets. As such, this relief is essential to FINRA's ability to fulfill its statutory obligations and allows hearing participants to avoid the COVID-19-related health and safety risks associated with in-person hearings.

Among other things, this relief will allow OHO to conduct temporary cease and desist proceedings by video conference so that FINRA can take immediate action to stop ongoing customer harm and will allow the NAC to timely provide members, disqualified individuals and other applicants an approval or denial of their applications. As set forth in detail in the original filings, this temporary relief allowing OHO and NAC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID-19-related public health risks for hearing participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the temporary proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As set forth in SR-FINRA-2020-027 and, with respect to FINRA Rule 9341(d), in SR-FINRA-2020-015, the proposed rule change is intended solely to extend temporary relief necessitated by the continued presence of COVID-19 and the related health and safety risks of conducting in-person activities. FINRA believes that the proposed rule change will prevent unnecessary impediments to FINRA's critical adjudicatory processes and its ability to fulfill its

statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on January 31, 2023.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²²

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. As FINRA requested in connection with SR-FINRA-2020-015 and related extensions,²³ FINRA has also asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing.

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6).

²³ See SR-FINRA-2020-015, 85 FR at 31836. Although FINRA did not request that the Commission waive the 30-day operative delay for SR-FINRA-2020-027, FINRA did request that the Commission waive the 30-day operative delay for SR-FINRA-2020-042, SR-FINRA-2021-006, SR-FINRA-2021-019, SR-FINRA-2021-031, SR-FINRA-2022-004, and SR-FINRA-2022-018 which extended the expiration date of the temporary amendments originally set forth in SR-FINRA-2020-027.

FINRA has indicated that extending the relief provided originally in SR-FINRA-2020-015 and SR-FINRA-2020-027 will continue to provide FINRA the ability to safely conduct hearings in connection with its core functions during the COVID-19 outbreak. Importantly, extending the relief provided in these prior rule changes immediately upon filing and without a 30-day operative delay will allow FINRA to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its employees.²⁴ The Commission also notes that this proposal, like SR-FINRA-2020-015 and SR-FINRA-2020-027, provides only temporary relief during the period in which FINRA's operations are impacted by COVID-19. As proposed, the changes would be in place through April 30, 2023.²⁵ FINRA also noted in both SR-FINRA-2020-015 and SR-FINRA-2020-027 that the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.²⁶ For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁷

²⁴ See supra Item II.A.1; see also SR-FINRA-2020-015, 85 FR at 31833.

²⁵ As noted above, see supra note 4, FINRA stated that if it requires temporary relief from the rule requirements identified in this proposal beyond April 30, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

²⁶ See SR-FINRA-2020-015, 85 FR at 31833; see also SR-FINRA-2020-027, 85 FR at 55712.

²⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the 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 to determine whether the proposed rule 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 e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2023-001 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-FINRA-2023-001. This file number should be included on the subject line if e-mail 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 website (<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 website 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 FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2023-001 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier
Deputy Secretary

²⁸ 17 CFR 200.30-3(a)(12).