

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 029

Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☒ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☒ Section 19(b)(3)(B) * ☐

Pilot ☐ Extension of Time Period for Commission Action * ☐ Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☒ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

☐

Section 806(e)(2) *

☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) *

☐

Exhibit 2 Sent As Paper Document

☐

Exhibit 3 Sent As Paper Document

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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

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

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * John Last Name * Nachmann
Title * Associate General Counsel
E-mail * john.nachmann@finra.org
Telephone * (240) 386-4816 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 10/17/2022

(Title *)

By Philip Shaikun

Vice President and Associate General Counsel

(Name *)

Philip Shaikun

Digitally signed by Philip Shaikun
Date: 2022.10.17 15:22:49 -04'00'

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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FINRA-2022-029 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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FINRA-2022-029 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

☐

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

☐

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) 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 from October 31, 2022, to January 31, 2023.² The proposed rule change would not make any changes to the text of FINRA rules.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Chief Legal Officer of FINRA authorized the filing of the proposed rule change with the SEC pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

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 that FINRA can implement the proposed rule change immediately.

¹ 15 U.S.C. 78s(b)(1).

² If FINRA seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond January 31, 2023, FINRA will submit a separate rule filing to further extend the temporary extension of time. The amended FINRA rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

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

(a) 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 July 2022, FINRA filed a proposed rule change, SR-FINRA-2022-018, to extend the expiration date of the temporary amendments in both SR-FINRA-2020-015 and SR-FINRA-2020-027 from July 31, 2022, to October 31, 2022.³ Due 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 October 31, 2022, to January 31, 2023.⁴

³ See 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).

⁴ 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

Due to the public health concerns and restrictions resulting from the outbreak of COVID-19, along with a corresponding backlog of disciplinary cases,⁵ FINRA filed, and subsequently extended to October 31, 2022, SR-FINRA-2020-027⁶ to temporarily amend FINRA Rules 1015, 9261, 9524, and 9830 to grant OHO and the NAC authority⁷ to conduct hearings in connection 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.⁸

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)).

⁵ For example, FINRA began temporarily postponing in-person hearings as a result of the COVID-19 impacts on March 16, 2020.

⁶ 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).

⁷ 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.

⁸ 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

Although there has been a downward trend in the number of COVID-19 cases since FINRA filed SR-FINRA-2022-018 in July 2022, FINRA believes there is a continued need for temporary relief beyond October 31, 2022. In this regard, FINRA notes that COVID-19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (“CDC”), the 7-day moving average of new deaths from COVID-19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,⁹ and approximately 23 percent of counties in the United States have a medium or high COVID-19 Community Level based on the CDC’s most recent calculations.¹⁰ Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID-19 in the future given the emergence of new Omicron variants that the CDC currently is tracking¹¹ and the

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); supra note 3.

⁹ See CDC, COVID Data Tracker - Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory, https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths_select_00 (last visited Oct. 11, 2022).

¹⁰ 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 Oct. 11, 2022).

¹¹ These new Omicron variants include BA.4.6, BF.7, and BA.2.75. See CDC, COVID Data Tracker – Variant Proportions, <https://covid.cdc.gov/covid-data-tracker/#variant-proportions> (last visited Oct. 11, 2022).

dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.¹²

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.¹³ 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 October 31, 2022. 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 FINRA Rule 9341(d) in SR-FINRA-2020-015 from October 31, 2022, to January 31, 2023.¹⁴ As previously noted, FINRA strives to hold in-person

¹² A state-by-state comparison of vaccination rates is available at https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-additional-dose-totalpop.

¹³ 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.

¹⁴ See supra note 3.

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.¹⁵ 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.¹⁶

¹⁵ In fact, FINRA began to hold in-person hearings at a single location last year. 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.

¹⁶ Since the temporary amendments were implemented, OHO and the NAC have conducted several hearings by video conference. As of October 10, 2022, OHO has conducted 17 disciplinary hearings by video conference (decisions have been issued in all 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 five additional disciplinary matters. No determination has yet been made regarding whether these five hearings will be in-person or by video conference. Also, as of October 10, 2022, the NAC, through the relevant Subcommittee, has conducted 16 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.

As noted in Item 2 of this filing, 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.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁷ 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,¹⁸ 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 uncertainty around a potential spike in cases of the disease, without this relief allowing 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

¹⁷ 15 U.S.C. 78o-3(b)(6).

¹⁸ 15 U.S.C. 78o-3(b)(8).

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.

4. 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 October 31, 2022.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act¹⁹ and paragraph (f)(6) of Rule 19b-4 thereunder,²⁰ in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing or such shorter time as the Commission may designate.

FINRA requests that the Commission waive the requirement that the proposed rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii),²¹ so that the proposed rule change may become operative immediately. Waiver of the operative delay would allow the proposed changes, which are designed to minimize unnecessary impediments to FINRA's critical adjudicatory processes and allow FINRA to fulfill its obligations to protect investors and maintain fair and orderly markets, to be operative on the date of filing. Given that the

¹⁹ 15 U.S.C. 78s(b)(3).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

need for the temporary relief provided originally by FINRA in SR-FINRA-2020-027 (and in SR-FINRA-2020-015 with respect to FINRA Rule 9341(d)) persists, waiving the 30-day operative delay would provide continuation and an uninterrupted extension of this necessary relief.²² In accordance with Rule 19b-4(f)(6),²³ FINRA submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as the Commission may designate, as specified in Rule 19b-4(f)(6)(iii) under the Act.²⁴

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

²² FINRA notes that waiver of the 30-day operative period here is consistent with previous extensions of this temporary relief. See, e.g., supra note 3.

²³ 17 CFR 240.19b-4(f)(6).

²⁴ 17 CFR 240.19b-4(f)(6)(iii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2022-029)

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 , 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, II, and III 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)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

in SR-FINRA-2020-015 from October 31, 2022, to January 31, 2023.⁴ The proposed rule change would not make any changes to the text of FINRA rules.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA 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, 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

⁴ If FINRA seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond January 31, 2023, FINRA will submit a separate rule filing to further extend the temporary extension of time. The amended FINRA rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

the current COVID-19-related public health risks posed by an in-person hearing. In July 2022, FINRA filed a proposed rule change, SR-FINRA-2022-018, to extend the expiration date of the temporary amendments in both SR-FINRA-2020-015 and SR-FINRA-2020-027 from July 31, 2022, to October 31, 2022.⁵ Due 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 October 31, 2022, to January 31, 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 October 31, 2022, SR-FINRA-2020-027⁸ to temporarily amend

⁵ See 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).

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.

FINRA Rules 1015, 9261, 9524, and 9830 to grant OHO and the NAC authority⁹ to conduct hearings in connection 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

Although there has been a downward trend in the number of COVID-19 cases since FINRA filed SR-FINRA-2022-018 in July 2022, FINRA believes there is a continued need for temporary relief beyond October 31, 2022. In this regard, FINRA notes that COVID-19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (“CDC”), the 7-day moving average of

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.

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); supra note 5.

new deaths from COVID-19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,¹¹ and approximately 23 percent of counties in the United States have a medium or high COVID-19 Community Level based on the CDC's most recent calculations.¹² Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID-19 in the future given the emergence of new Omicron variants that the CDC currently is tracking¹³ and the dissimilar vaccination rates (completed primary series and a first 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

¹¹ See CDC, COVID Data Tracker - Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory, https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths_select_00 (last visited Oct. 11, 2022).

¹² 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 Oct. 11, 2022).

¹³ These new Omicron variants include BA.4.6, BF.7, and BA.2.75. See CDC, COVID Data Tracker – Variant Proportions, <https://covid.cdc.gov/covid-data-tracker/#variant-proportions> (last visited Oct. 11, 2022).

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.

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-

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 October 31, 2022. 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 FINRA Rule 9341(d) in SR-FINRA-2020-015 from October 31, 2022, to January 31, 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-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.

¹⁶ See supra note 5.

¹⁷ In fact, FINRA began to hold in-person hearings at a single location last year. 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.

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

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

¹⁸ Since the temporary amendments were implemented, OHO and the NAC have conducted several hearings by video conference. As of October 10, 2022, OHO has conducted 17 disciplinary hearings by video conference (decisions have been issued in all 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 five additional disciplinary matters. No determination has yet been made regarding whether these five hearings will be in-person or by video conference. Also, as of October 10, 2022, the NAC, through the relevant Subcommittee, has conducted 16 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).

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 uncertainty around a potential spike in cases of the disease, without this relief allowing 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

²⁰ 15 U.S.C. 78o-3(b)(8).

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 October 31, 2022.

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

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-2022-029 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.

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-FINRA-2022-029. 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 a.m. and 3 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-2022-029 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.²³

Jill M. Peterson
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).