



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92685; File No. SR-FINRA-2021-019]

### **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-2020-015 and SR-FINRA-2020-027**

August 17, 2021.

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> notice is hereby given that on August 13, 2021, 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,<sup>3</sup> 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-2020-015 and SR-FINRA-2020-027 from August 31, 2021, to December 31, 2021.<sup>4</sup> The proposed rule change would not make any changes to the text of FINRA rules.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> If FINRA seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond December 31, 2021, FINRA will submit a separate rule filing to further extend the temporary extension of time. The amended

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 the current COVID-19-related public health risks posed by an in-person hearing. In April 2021, FINRA filed a proposed rule change, SR-FINRA-2021-006, to extend the expiration date of the temporary amendments in both SR-FINRA-2020-015 and SR-FINRA-2020-027 from April 30, 2021, to August 31, 2021.<sup>5</sup>

While there are signs of improvement, much uncertainty remains for the coming months. The emergence of the Delta variant, dissimilar vaccination rates throughout the United States,

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

<sup>5</sup> See 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).

and the uptick in transmissions in many locations indicate that COVID-19 remains an active and real public health concern.<sup>6</sup> Based on its assessment of current COVID-19 conditions and the lack of a clear timeframe for a sustained and widespread abatement of COVID-19-related health concerns and corresponding restrictions,<sup>7</sup> FINRA has determined that there is a continued need for temporary relief for several months beyond August 31, 2021. Accordingly, FINRA proposes to extend the expiration date of the temporary rule amendments in SR-FINRA-2020-015 and SR-FINRA-2020-027 from August 31, 2021, to December 31, 2021.

i. SR-FINRA-2020-015

As stated in its previous filings, FINRA proposed, and subsequently extended, the changes set forth in SR-FINRA-2020-015 to temporarily amend some timing, method of service and other procedural requirements in FINRA rules during the period in which FINRA's operations are impacted by the outbreak of COVID-19.<sup>8</sup> Among other things, the need for FINRA staff, with limited exceptions, to work remotely and restrict in-person activities –

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<sup>6</sup> For example, President Joe Biden on July 29, 2021, announced several measures to increase the number of people vaccinated against COVID-19 and to slow the spread of the Delta variant, including strengthening safety protocols for federal government employees and contractors. See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/fact-sheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant/>.

<sup>7</sup> For instance, the Centers for Disease Control and Prevention on July 27, 2021, began recommending that fully vaccinated people wear a mask in public indoor settings in areas of substantial or high transmission and noted that fully vaccinated people might choose to wear a mask regardless of the level of transmission, particularly if they are immunocompromised or at increased risk for severe disease from COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>. Also, several cities, including Atlanta, Baltimore, Los Angeles, New Haven and San Francisco, have recently reinstated their mask mandates.

<sup>8</sup> 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); Securities Exchange Act Release No. 89055 (June 12, 2020), 85 FR 36928 (June 18, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-017); Securities Exchange Act Release No. 89423 (July 29, 2020), 85 FR 47278 (August 4, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-022); 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); supra note 5.

consistent with the recommendations of public health officials – have made it challenging to meet some procedural requirements and perform some functions required under FINRA rules. For example, working remotely makes it difficult to send and receive hard copy documents and conduct in-person oral arguments. The temporary amendments have addressed these concerns by easing logistical and other issues and providing FINRA with needed flexibility for its operations during the COVID-19 outbreak, allowing 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 staff.

FINRA staff, with limited exceptions, continue to work remotely to protect their health and safety. As indicated in its previous filings, FINRA has established a COVID-19 task force to develop a data-driven, staged plan for FINRA staff to safely return to working in FINRA office locations and resume other in-person activities. Based on its assessment of current COVID-19 conditions, FINRA does not believe the COVID-19-related health concerns necessitating this relief will meaningfully subside by August 31, 2021, and therefore proposes to extend the expiration date of the temporary rule amendments originally set forth in SR-FINRA-2020-015 from August 31, 2021, to December 31, 2021.<sup>9</sup>

ii. SR-FINRA-2020-027

The same public health concerns and restrictions, along with a corresponding backlog of disciplinary cases,<sup>10</sup> led FINRA to file, and subsequently extend to August 31, 2021, SR-FINRA-2020-027 to temporarily amend FINRA Rules 1015, 9261, 9524, and 9830 to grant OHO and the NAC authority<sup>11</sup> to conduct hearings in connection with appeals of Membership Application

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<sup>9</sup> See supra note 8 (outlining the filing history of SR-FINRA-2020-015 and its prior extensions).

<sup>10</sup> For example, FINRA began temporarily postponing in-person hearings as a result of the COVID-19 impacts on March 16, 2020.

<sup>11</sup> 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

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.<sup>12</sup>

As set forth in the previous filings, FINRA also 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.<sup>13</sup> Based on that guidance and data, FINRA does not believe the COVID-19-related health concerns necessitating this relief will meaningfully subside by August 31, 2021, and has determined that there will be a continued need for this temporary relief for several months beyond that date.<sup>14</sup> Accordingly, FINRA proposes to extend the expiration date of the temporary rule amendments originally set forth in SR-FINRA-2020-027 from August 31, 2021, to December 31, 2021.<sup>15</sup> The extension of these

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and 9524, this temporary authority is granted to the NAC or the relevant Subcommittee.

<sup>12</sup> See Securities Exchange Act Release No. 89739 (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); *supra* note 5.

<sup>13</sup> 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.

<sup>14</sup> FINRA notes that the proposed extension of the temporary amendments does not mean a video conference hearing will be ordered in every case. FINRA strives to hold in-person hearings when it is safe to do so and had recently begun to hold such hearings at a single location. FINRA held its first in-person hearing since the temporary rule change was implemented in July 2021. A recent 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 against in-person hearings. Accordingly, the Chief Hearing Officer recently converted a hearing scheduled for mid-September from in-person to video conference. In addition to creating a safe environment in which an in-person hearing may be held, as mentioned above, a number of other considerations inform whether any given case will be held in-person or by video conference.

<sup>15</sup> See *supra* note 5.

temporary amendments allowing for specified OHO and NAC hearings to proceed by video conference will allow FINRA's critical adjudicatory functions to continue to operate effectively in these extraordinary 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.<sup>16</sup>

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,<sup>17</sup> 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,<sup>18</sup> 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-2020-015, will continue to provide FINRA,

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<sup>16</sup> Since the temporary amendments were implemented, OHO and the NAC have conducted several hearings by video conference. As of July 21, 2021, OHO has conducted 10 disciplinary hearings by video conference (decisions have been issued in seven of these cases) and scheduled hearings in nine other disciplinary matters. The parties have agreed to proceed by video conference for one of the hearings. Also, as of July 21, 2021, the NAC, through the relevant Subcommittee, has conducted 11 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.

<sup>17</sup> 15 U.S.C. 78o-3(b)(6).

<sup>18</sup> 15 U.S.C. 78o-3(b)(8).

and in some cases another party to a proceeding, temporary modifications to its procedural requirements in order to allow FINRA to maintain fair processes and protect investors while operating in a remote work environment and with corresponding restrictions on its activities. It is in the public interest, and consistent with the Act's purpose, for FINRA to operate pursuant to this temporary relief. The temporary amendments allow FINRA to specify filing and service methods, extend certain time periods, and modify the format of oral argument for FINRA disciplinary and eligibility proceedings and other review processes to cope with the current pandemic conditions. In addition, extending this temporary relief will further support FINRA's disciplinary and eligibility proceedings and other review processes that serve a critical role in providing investor protection and maintaining fair and orderly markets.

The proposed rule change, which also extends the expiration date of the temporary amendments to FINRA rules set forth in SR-FINRA-2020-027, will continue to aid FINRA's efforts to timely conduct hearings in connection with its core adjudicatory functions. Given the current and frequently changing COVID-19 conditions and the uncertainty around when those conditions will see meaningful, widespread and sustained improvement, without this relief allowing OHO and NAC hearings to proceed by video conference, FINRA might be required to postpone some or almost all hearings indefinitely. 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 serious 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 filing, 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-2020-015 and SR-FINRA-2020-027, the proposed rule change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID-19 outbreak 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 operations, including its 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 August 31, 2021.

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 Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

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,<sup>21</sup> 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.

FINRA has indicated that extending the relief provided originally in SR-FINRA-2020-015 and SR-FINRA-2020-027 will continue to ease logistical and other issues by providing FINRA with needed flexibility for its operations 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.<sup>22</sup> 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 December 31, 2021.<sup>23</sup> 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

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<sup>21</sup> 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 and FINRA-2021-006, which extended the expiration date of the temporary amendments originally set forth in SR-FINRA-2020-027.

<sup>22</sup> See supra Item II.A.1; see also SR-FINRA-2020-015, 85 FR at 31833.

<sup>23</sup> As noted above, see supra note 4, FINRA stated that if it requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2021, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

applicable, any extension thereof.<sup>24</sup> 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.<sup>25</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2021-019 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.

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<sup>24</sup> See SR-FINRA-2020-015, 85 FR at 31833; see also SR-FINRA-2020-027, 85 FR at 55712.

<sup>25</sup> 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).

All submissions should refer to File Number SR-FINRA-2021-019. 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-2021-019 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Jill Peterson,**

*Assistant Secretary.*

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<sup>26</sup> 17 CFR 200.30-3(a)(12).