

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95147; File No. SR–FINRA–2022–009]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend Certain FINRA Rules To Permit, and in Some Instances Require, Electronic Service and Filing of Documents in Disciplinary and Other Proceedings and Appeals

June 23, 2022.

#### I. Introduction

On April 6, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to amend FINRA Rules 1012, 1015, 6490, 9132, 9133, 9135, 9146, 9321, 9341, 9349, 9351, 9522, 9524, 9525, 9559 and 9630 to permit, and in some instances require, electronic service and filing of documents in disciplinary and other proceedings and appeals. The proposed rule change was published for comment in the **Federal Register** on April 14, 2022.<sup>3</sup> On May 25, 2022, FINRA consented to extend until July 13, 2022, the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

##### A. Background

As discussed in the Notice, the FINRA Rule 1000, 6400, 9100, 9300, 9520, 9550, and 9600 Series contain, among other things, rules regarding the method of service and filing of documents in disciplinary and other proceedings and appeals, as well as other procedural

requirements.<sup>5</sup> Several of FINRA’s rules regarding the method of service and filing have been amended temporarily to permit, and in some instances require, electronic filing and service during the period in which FINRA’s operations have been impacted by the COVID–19 pandemic<sup>6</sup> (the “temporary amendments”).<sup>7</sup> The temporary amendments pertain to disciplinary proceedings before the Office of Hearing Officers (“OHO”), to appeals before the National Adjudicatory Council (“NAC”), as well as to other types of administrative proceedings.<sup>8</sup> FINRA stated that the temporary amendments allowed, and in some cases required, FINRA (in its capacity as an Adjudicator) to serve certain documents on parties by electronic mail (“email”) and required parties to file or serve documents by email, unless the parties agreed to an alternative method of service.<sup>9</sup> FINRA’s proposed rule change

would make the temporary amendments regarding electronic service and filing permanent, with some modifications.<sup>10</sup> More specifically, the proposed rule change would allow, and in some instances require, electronic service and filing unless another method of service is ordered by the Adjudicator.<sup>11</sup> This approach differs from the temporary amendments, which required email service unless the *parties agreed* to an alternative method of service.<sup>12</sup> As set forth in the Notice, FINRA has observed that it would be more effective to require email service unless the Adjudicator orders otherwise.<sup>13</sup> Nevertheless, the proposed rule change would allow all parties who lack the ability to use or access email to request relief to use an alternative method of service upon a showing of good cause.<sup>14</sup> But, unlike what had been permitted under the temporary amendments, the parties’ agreement to use an alternative method of service would be insufficient unless the parties also obtained an order from the Adjudicator permitting use of the alternative method of service.<sup>15</sup>

The temporary amendments also provided extensions of time to FINRA staff, respondents, and other parties in connection with certain adjudicatory and review processes that are not being adopted in this proposed rule change.<sup>16</sup> For example, under the original rules, the time to appeal under FINRA Rule 6490(e) was seven calendar days, and a subcommittee was required to convene once each calendar month to consider all appeals received during the prior month.<sup>17</sup> Under the temporary amendments to FINRA Rule 6490(e), the time to appeal was temporarily extended to 30 calendar days, and the time for the subcommittee to convene was temporarily extended to once every 90 calendar days.<sup>18</sup> As discussed in the Notice, the timing requirements in FINRA Rule 6490(e) that were extended by the temporary amendments are not being adopted permanently by FINRA in this proposed rule change.<sup>19</sup> Therefore, when this proposed rule change becomes effective, the timing requirements in FINRA Rule 6490(e) will revert back to the original rule.<sup>20</sup>

<sup>5</sup> See Notice at 22265.

<sup>6</sup> See *id.* at 22264. See also 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), 84 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); 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. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–031); and 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).

<sup>7</sup> For ease of reference, and to be consistent with the language FINRA used in its filing, the pre-pandemic rules will be referred to herein as the “original rules” and, as noted above, the temporary changes to the original rules will be referred to as the “temporary amendments.” See Notice at 22265 n.7. Some of the original rules were amended while the temporary amendments were in effect. See, e.g., FINRA Rule 9321 (amended by SR–FINRA–2020–011, eff. April 15, 2021). As such, any prior amendments to the original rules have already been incorporated into the rule text of this proposed rule change, which is available on FINRA’s website. See FINRA website, File No. SR–FINRA–2022–009 (Exhibit 5), available at <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2022-009>.

<sup>8</sup> See Notice at 22265.

<sup>9</sup> See *id.* See also note 6 *supra*. As discussed in the Notice, FINRA’s temporary amendments did not permit electronic service of an initial complaint on a respondent due to what FINRA viewed as heightened fair process concerns. As such, FINRA states that the proposed rule change would also not permit electronic service of initial complaints. Under FINRA’s existing rule, the only permissible methods of serving the initial complaint are by hand, mail, or courier. See Notice at 22264–65. See also FINRA Rule 9134(a).

<sup>10</sup> See Notice at 22265.

<sup>11</sup> See *id.*

<sup>12</sup> See *id.* See also FINRA Rules 6490(e), 9133(b), 9146(l), 9524(a)(3), and 9559(h).

<sup>13</sup> See Notice at 22265.

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

<sup>16</sup> See *id.* at 22264, n.4.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> See *id.*

<sup>20</sup> See *id.*

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Exchange Act Release No. 94654 (April 8, 2022), 87 FR 22264 (April 14, 2022) (File No. SR–FINRA–2022–009) (“Notice”). The Commission received one comment letter in connection with the Notice, which does not relate to the substance of the proposed rule change.

<sup>4</sup> See Letter from Ilana Reid, Assistant General Counsel, OGC Regulatory Practice and Policy, FINRA (May 25, 2022) available at <https://www.finra.org/sites/default/files/2022-05/sr-finra-2022-009-extension1.pdf>.

In an effort to support the transition to email service and filing, the proposed rule change also would require parties in OHO proceedings to include their current email address and contact information at the first occurrence of filing a complaint, answer, or other paper, and to file and serve any change in email address or contact information on all other parties during the course of the proceeding as well as file it with the Adjudicator.<sup>21</sup>

#### *B. Proposed Rule Change To Allow or Require Email Filing and Service*

FINRA stated that the original rules, with few exceptions, do not provide for service by email.<sup>22</sup> However, in response to the COVID-19 pandemic, FINRA filed temporary amendments to permit, and in some instances require, electronic filing and service during the period in which FINRA's operations have been impacted by the pandemic.<sup>23</sup> FINRA stated that the proposed rule change is intended to make these temporary amendments, with some modifications, permanent considering FINRA's positive experience with operating while the temporary amendments have been in effect, since May of 2020.<sup>24</sup> As detailed more fully below, FINRA stated that technological advancements and their widespread use have made filing and service more efficient under the temporary amendments than under the original rules.<sup>25</sup> The proposed rule change would permit, and in some instances require, FINRA to serve documents,<sup>26</sup> other than an initial complaint,<sup>27</sup> by email and to provide that service by email is deemed complete upon

<sup>21</sup> See *id.* at 22265. See also proposed Rule 9135(d).

<sup>22</sup> See Notice at 22265. FINRA also stated that, prior to the temporary amendments, FINRA permitted service by email under some of its original rules. For example, FINRA Rule 6490(d)(5) (Processing of Company-Related Actions; Procedures for Reviewing Submissions; Notice Issuance) permits a notice under the provision to be issued by facsimile or email, or pursuant to FINRA Rule 9134. As FINRA indicated in the Notice, FINRA Rule 9134 permits service on parties using the following methods: (1) personal service, (2) mail, or (3) courier. See *id.* at 22266.

<sup>23</sup> See *id.* at 22264.

<sup>24</sup> See *id.* at 22267.

<sup>25</sup> See *id.* at 22267.

<sup>26</sup> FINRA stated that it sometimes serves documents in its capacity as the Adjudicator, but FINRA may be a party in other instances, such as in its capacity as the Department of Enforcement. See *id.* at n.12.

<sup>27</sup> See note 9 *supra*. As FINRA set forth in the Notice, when the FINRA Department of Enforcement files an initial complaint on a respondent, the Notice of Complaint tells the respondent how to file the answer and other documents with the OHO. See Notice at 22265, n.14.

sending.<sup>28</sup> Further, FINRA stated that if it has knowledge that the address used for service is not current or is not functional (*i.e.*, FINRA receives a bounce-back or other message indicating there was a failure to deliver the email), FINRA will use other permissible methods of service until it can verify the party's email address.<sup>29</sup>

As set forth in the Notice, FINRA believes that the proposed rule change will improve and modernize FINRA's operations.<sup>30</sup> Additionally, FINRA stated that, to the extent an applicant, respondent, or other party lacks the ability to use or access technology needed to file, serve, or accept service by email, FINRA intends to provide reasonable accommodations to them.<sup>31</sup> According to FINRA, the process for requesting an alternative method of service or filing will be posted to FINRA's website, as well as explained in the Notice of Complaint and in the Code and Guide letter.<sup>32</sup> If a party shows good cause, the Adjudicator will order that filing or service occur by hard copy.<sup>33</sup> In addition, FINRA stated that electronic methods of service and filing are common practice in the courts and with other regulatory agencies, noting that the Commission also amended its rules in November 2020 to require electronic filing and service of documents in its administrative proceedings.<sup>34</sup>

According to FINRA, the proposed rule change to amend the FINRA Rule 1000, 6400, 9100, 9300, 9520, 9550, and 9600 Series is substantially the same as the temporary amendments currently in effect unless otherwise noted below.

<sup>28</sup> See Notice at 22265. In addition to email, FINRA stated that various other methods of service would still be permitted, such as personal service, mail, and courier. See *id.* FINRA also stated that, as indicated in the proposed rule text, FINRA will consider service by email complete upon sending of the relevant document or other information. According to FINRA, this is consistent with the treatment of service by mail under the original rules and service by email under the temporary amendments. FINRA further stated that in most cases, it will already have information regarding the relevant party, or their counsel's, preferred method of service since FINRA and the relevant party, or their counsel, will have already engaged in communications prior to service of documents or other information. See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> See *id.*

<sup>31</sup> See *id.*

<sup>32</sup> See *id.* According to FINRA, once OHO receives an initial complaint, it sends a Code and Guide letter to each respondent to notify them of the complaint, along with instructions on how to file with OHO. See *id.* at n.14.

<sup>33</sup> See *id.*

<sup>34</sup> See *id.* at 22265, 22267. See also Amendments to the Commission's Rules of Practice, Securities Exchange Act Release No. 90442 (Nov. 17, 2020), 85 FR 86464 (File No. S7-18-15) (December 30, 2020) (codified at 17 CFR 201 (2020)).

#### FINRA Rule 1000 Series

The FINRA Rule 1000 Series (Member Application and Associated Person Registration) governs, among other things, the process for (i) applying for FINRA membership; (ii) FINRA members seeking approval of a change in ownership, control, or business operations, and (iii) an applicant requesting that FINRA's appellate body, the NAC, review a FINRA decision rendered under the Rule 1000 Series.<sup>35</sup> As FINRA stated, applicants and FINRA are, in connection with these processes, required under the original rules to file or serve certain documents using the prescribed methods set forth in FINRA Rule 1012(a), which do not include email.<sup>36</sup> The proposed rule change would amend Rule 1012(a)(4) to permit FINRA to serve documents under the Rule 1000 Series by email and amend Rule 1015(f)(1),<sup>37</sup> which requires the NAC to serve a notice of a hearing before the NAC by facsimile or overnight courier, to also allow service of the notice by email.<sup>38</sup> The proposed rule change would amend Rule 1015(a) to eliminate the requirement that the applicant also file, by first-class mail, a copy of the request for review to the district office where the applicant filed its application.<sup>39</sup> FINRA indicated that it was proposing to eliminate this requirement from Rule 1015(a) in an effort to streamline processes and avoid duplication.<sup>40</sup>

The proposed rule change would also amend Rule 1012(a)(3) to require applicants to file an application or any document or information requested under the Rule 1000 Series by email except where FINRA has otherwise prescribed an alternative filing process, or as the FINRA Department of Enforcement and the Applicant otherwise agree.<sup>41</sup>

#### FINRA Rule 6400 Series

FINRA Rule 6490 sets forth the requirements for issuers of a class of publicly traded securities to provide timely notice to FINRA, pursuant to requirements Exchange Act Rule 10b-

<sup>35</sup> See Notice at 22265. See also FINRA Rule 1000 Series.

<sup>36</sup> See Notice at 22265. See also FINRA Rule 1012(a), which governs the filing and service requirements for the Rule 1000 Series. See Notice at 22265, n.15.

<sup>37</sup> See Notice at 22265. See also FINRA Rule 1015(f).

<sup>38</sup> See Notice at 22265.

<sup>39</sup> See *id.* at n.17.

<sup>40</sup> See *id.*

<sup>41</sup> See *id.* at 22266. See also FINRA Rule 1012(a). FINRA is additionally proposing a non-substantive change to delete the word "electronic" from the description of the "alternative filing process" because it is superfluous. See Notice at 22266, n.18.

17, of certain corporate actions.<sup>42</sup> FINRA stated that it reviews related documentation accompanying such notifications and, under certain circumstances, the documentation may not be processed if it is deemed deficient, with Rule 6490(e) setting forth the process for appealing such a determination.<sup>43</sup> As set forth in the Notice, the proposed rule change would, among other things,<sup>44</sup> require a party appealing a deficiency determination to file the appeal by email unless an alternative method of service is ordered by the Adjudicator.<sup>45</sup>

#### FINRA Rule 9100 Series

The FINRA Rule 9100 Series is of general applicability to all proceedings set forth in the FINRA Rule 9000 Series,<sup>46</sup> unless a rule specifically provides otherwise.<sup>47</sup> More specifically, the FINRA Rule 9100 Series sets forth, among other things, requirements pertaining to service of orders, notices, and decisions under the FINRA Rule 9000 Series, as well as requirements for filing of various papers, motions, and other related issues.<sup>48</sup> As stated in the Notice, FINRA Rules 9132(b), 9133(b), and 9146(l) provide that the documents and other information governed by those rules must be served pursuant to FINRA Rule 9134, which permits service on the parties using the following methods: (1) personal service, (2) mail, or (3) courier.<sup>49</sup> Since FINRA Rule 9134 does not permit service by email, the proposed rule change would amend FINRA Rule 9132(b) to allow FINRA to serve relevant documents or information by email, and amend FINRA Rules 9133(b) and 9146(l) to require parties to serve documents by

<sup>42</sup> See FINRA Rule 6490. For example, certain corporate actions that would require timely notice under this rule include dividend or other distribution of cash or securities, a stock split or reverse stock split, and rights or subscription offerings. See Notice at 22266.

<sup>43</sup> See Notice at 22266. See also FINRA Rule 6490(e).

<sup>44</sup> See Notice at 22266. FINRA has also proposed several non-substantive, technical changes including, for instance, deleting the parenthetical references to the numerals “3” and “7,” which originally followed the words “three” and “seven” in FINRA Rule 6490(e). See *id.* at n.20. See also FINRA Rule 6490(e). Additionally, the time frames under the proposed rule change are reverting back to their original form, so the time to appeal and for appellate review under the proposed rule change are the same as they were under the original rule. See notes 6–7 *supra*. See also Notice at 22266 n.20.

<sup>45</sup> See Notice at 22266.

<sup>46</sup> The FINRA Rule 9000 Series, among other things, sets forth the procedure for FINRA proceedings for disciplining a member, associated person, or formerly associated person. See *id.*

<sup>47</sup> See *id.*

<sup>48</sup> See FINRA Rule 9100 Series.

<sup>49</sup> See FINRA Rules 9132(b), 9133(b), and 9146(l).

email, unless an alternative method of service is ordered by the Adjudicator.<sup>50</sup>

In addition, in an effort to support the transition to email service and filing, the proposed rule change would amend FINRA Rule 9135 to add paragraph (d), which would require parties in OHO proceedings to file and serve the parties with their current email address and contact information at the first occurrence of filing a complaint, answer, or other paper, and to file and serve any changes in email address or contact information on all other parties during the course of the proceeding and file this information with the Adjudicator.<sup>51</sup> This aspect of the proposed rule change was not part of the temporary amendments, but FINRA stated that it should help ensure that all documents are successfully sent from and received at a valid email address, while simultaneously helping to ensure that FINRA, applicants, respondents, and any other parties all have accurate contact information for each other.<sup>52</sup>

#### FINRA Rule 9300 Series

The FINRA Rule 9300 Series sets forth the procedures for review of disciplinary proceedings by the NAC and FINRA Board and for applications for review of a final disciplinary action by the Commission.<sup>53</sup> As stated in the Notice, FINRA Rules 9321, 9341(c), 9349(c), and 9351(e) require that FINRA serve documents in connection with proceedings under those rules pursuant to FINRA Rule 9134.<sup>54</sup> While FINRA Rule 9134 permits various methods of service,<sup>55</sup> it is silent on email. The proposed rule change would amend FINRA Rule 9321, 9341(c), 9349(c), and 9351(e) to allow for email as a method of service in connection with those specific rules.<sup>56</sup>

#### FINRA Rule 9520 Series

The FINRA Rule 9520 Series sets forth the procedures for eligibility proceedings and review of those proceedings by the NAC and FINRA Board.<sup>57</sup> As set forth in the Notice, FINRA Rules 9522(a)(4), 9524(a)(3)(A) and (B), 9524(b)(3), and 9525(e) require FINRA to serve documents in

<sup>50</sup> See FINRA Rule 9134. See also Notice at 22266.

<sup>51</sup> See Notice at 22266.

<sup>52</sup> See *id.*

<sup>53</sup> See FINRA Rule 9300 Series. See also Notice at 22266.

<sup>54</sup> See FINRA Rules 9321, 9341(c), 9349(c), and 9351(e). See also Notice at 22266.

<sup>55</sup> See FINRA Rule 9134. As FINRA indicated in the Notice, FINRA Rule 9134 permits service on parties using the following methods: (1) personal service, (2) mail, or (3) courier. See Notice at 22266.

<sup>56</sup> See FINRA Rule 9134. See also Notice at 22266.

<sup>57</sup> See FINRA Rule 9520 Series. See also Notice at 22266.

connection with those proceedings, but do not allow for email as a method of service.<sup>58</sup> The proposed rule change would amend those rules to allow for email as a method of service, as well as amending FINRA Rule 9524(a)(3)(A) and (B) such that the disqualified member or sponsoring member under those rules would be required to serve documents and any exhibit and witness lists by email unless an alternative method of service is ordered by the Adjudicator.<sup>59</sup>

#### FINRA Rule 9550 Series

The FINRA Rule 9550 Series sets forth the rules that govern certain expedited actions, and the ability of the NAC to call for review of a proposed decision prepared under the FINRA Rule 9550 Series.<sup>60</sup> As set forth in the Notice, FINRA Rule 9559(h)(2) sets forth the timing and method of service requirements for the parties' exchange of proposed exhibit and witness lists in advance of an expedited proceeding.<sup>61</sup> Even though FINRA Rule 9559(h)(2) allows for email as a method of service, the proposed rule change would amend FINRA Rule 9559(h)(2) to require FINRA to serve its exhibit and witness lists exclusively by email, unless an alternative method of service is ordered by the Adjudicator.<sup>62</sup> The Notice and FINRA's Rulebook also sets forth that FINRA Rule 9559(q)(2) requires the NAC to serve its decision when it issues one under the FINRA Rule 9550 Series, and FINRA Rule 9559(q)(5) requires the NAC to serve that decision on all the parties and all members with which the respondent is associated.<sup>63</sup> Since FINRA Rules 9559(q)(2) and (5) do not allow for email as a method of service, the proposed rule change would amend these rules to allow for email as a method of service.<sup>64</sup>

<sup>58</sup> See FINRA Rules 9522(a)(4), 9524(a)(3)(A) and (B), 9524(b)(3), and 9525(e). See also Notice at 22266.

<sup>59</sup> See Notice at 22266. FINRA is also making a non-substantive, technical change to replace the numeral “10” with the word “ten” in FINRA Rule 9524(a)(3)(B).

<sup>60</sup> See the FINRA Rule 9550 Series. See also Notice at 22266.

<sup>61</sup> See FINRA Rule 9559(h)(2). See also Notice at 22266.

<sup>62</sup> See Notice at 22266. As set forth in the Notice, and described above in the context of the proposed rule change to amend FINRA Rule 1015(a), FINRA is also proposing to amend FINRA Rule 9559(h) to eliminate the requirements in 9559(h)(1) and (2) that, if the specified documents are served by facsimile or email, they must also be served by either overnight courier or personal delivery. See *id.* at n.34.

<sup>63</sup> See FINRA Rules 9559(q)(2) and (5). See also Notice at 22266.

<sup>64</sup> See Notice at 22266.

### FINRA Rule 9600 Series

The FINRA Rule 9600 Series sets forth the procedures related to exemptive relief from a variety of FINRA rules, including appeals stemming from decisions under FINRA Rule 9620.<sup>65</sup> As stated in the Notice and as set forth in FINRA's Rulebook, FINRA Rules 9630(e)(1) and (2) require the NAC to serve its decision as to an appeal issued under FINRA Rule 9620 pursuant to FINRA Rule 9134.<sup>66</sup> Since FINRA Rule 9134 does not allow for email as a method of service, the proposed rule change would amend FINRA Rule 9630(e) to allow for email as a method of service.<sup>67</sup>

### Purpose of the Proposed Rule Change

FINRA stated that the proposed rule change to amend the FINRA Rule 1000, 6400, 9100, 9300, 9520, 9550, and 9600 Series would modernize the rules and make service and filing more efficient and effective.<sup>68</sup> Specifically, FINRA stated that adopting permanent rules on electronic service and filing should, among other things, reduce reliance on paper documents in favor of more efficient electronic formats and may benefit member firms if there are situations where access to physical office locations is limited or otherwise restricted.<sup>69</sup> FINRA also stated that its experience operating under the temporary amendments since May of 2020 has demonstrated that electronic service and filing is beneficial for parties, OHO panelists, and FINRA staff.<sup>70</sup>

### C. Effective Date

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published by FINRA. FINRA stated that it intends to avoid or, at least, minimize any gap between the expiration of the temporary amendments on electronic service and filing and the implementation date of this proposed rule change.<sup>71</sup> However, FINRA also stated that if the temporary amendments are set to expire before the effective date, it may seek to extend the temporary amendments so that FINRA can provide continuity and avoid any lapse in the temporary amendments

during the period before the effective date of the proposal.

### III. Discussion and Commission Findings

After careful review of the proposed rule change, and considering that the Commission did not receive any comments that relate to the substance of the proposed rule change<sup>72</sup> or to the relevant aspects of the temporary amendments that are being made permanent in this proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.<sup>73</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,<sup>74</sup> which requires, among other things, that FINRA rules 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.

As discussed in greater detail in the Notice and outlined in Section II above, the FINRA Rule 1000, 6400, 9100, 9300, 9520, 9550, and 9600 Series contain filing, service and other procedural requirements, as described above. Since May of 2020, temporary amendments have been in effect that permit, and in some instances require, electronic filing and service connected to disciplinary proceedings before the OHO, appeal proceedings before the NAC, and other types of administrative proceedings. As noted above, the Commission has not received any comments in response to the notices issued in connection with the temporary amendments, and the extensions of the same, that address electronic service and filing.<sup>75</sup> The proposed rule change would make the electronic service and filing aspects of the temporary amendments permanent, with some modifications, as also described above. As a result, the proposed rule change would permit, and in some instances require, FINRA to serve documents (other than an initial complaint by FINRA) by email and would also provide that service by email is deemed complete upon sending. The proposed rule change would also

require parties to file or serve documents by email, unless the parties obtain an order from an Adjudicator permitting the use of an alternative method of service.

The use of widely-available electronic methods of service and filing—like FINRA's proposal to use email to serve and file certain documents—is common practice in the courts and at other regulatory agencies, including the Commission.<sup>76</sup> The proposed rule change, among other things, is reasonably designed to protect investors and the public interest as it should make service and filing of certain documents in disciplinary and other proceedings and appeals more efficient and effective.<sup>77</sup> In turn, the proposed rule change should help facilitate FINRA's important role in sanctioning misconduct and preventing customer harm.<sup>78</sup> Furthermore, the proposed rule change reasonably addresses issues of fairness and notice in connection with FINRA's disciplinary and other proceedings and appeals by providing a mechanism for persons who lack the ability to use or access email or other necessary technology to request relief from their use and by continuing to require service of FINRA's initial complaint by hand, mail, or courier.

For these reasons, the Commission finds the proposed rule change is consistent with the protection of investors and in the public interest.

### IV. Conclusion

*It is therefore ordered* pursuant to Section 19(b)(2) of the Exchange Act<sup>79</sup> that the proposed rule change (SR-FINRA-2022-009) be, and hereby is, approved.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>65</sup> See FINRA Rule 9600 Series. See also Notice at 22266.

<sup>66</sup> See FINRA Rules 9630(e)(1) and (2). See also Notice at 22266.

<sup>67</sup> See FINRA Rule 9134. See also Notice at 22266.

<sup>68</sup> See Notice at 22266-67.

<sup>69</sup> See *id.* at 22267-68.

<sup>70</sup> See *id.* at 22265.

<sup>71</sup> See *id.* at 22267, n.38.

<sup>72</sup> See note 3 *supra* (explaining that the Commission received one comment letter in connection with the Notice, which does not relate to the substance of the proposed rule change).

<sup>73</sup> In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>74</sup> 15 U.S.C. 78o-3(b)(6).

<sup>75</sup> See note 6 *supra*.

<sup>76</sup> See Notice at 22267. See also note 34 *supra* and appended text.

<sup>77</sup> See Notice at 22267-68.

<sup>78</sup> See *id.*

<sup>79</sup> 15 U.S.C. 78s(b)(2).