

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MEMX-2022-07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MEMX-2022-07. This file number should be included on the subject line if email 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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-MEMX-2022-07 and should be submitted on or before May 5, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94654; File No. SR-FINRA-2022-009]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of 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

April 8, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 6, 2022, 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. 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 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 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

Several of FINRA's rules regarding 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.³ These temporary amendments pertain to disciplinary proceedings before the Office of Hearing Officers (OHO), and to appeals before the National Adjudicatory Council (NAC), among other types of administrative proceedings.⁴ However, the temporary amendments do not permit electronic service of an initial complaint on a respondent. FINRA did not temporarily change the method of serving the initial complaint due to heightened fair process concerns.⁵ Likewise, the proposed rule change would not change how initial complaints are served. The only permissible methods of serving the

³ 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); 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); 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).

⁴ The filings to establish and extend the temporary amendments involving electronic service and filing also included additional temporary amendments to provide extensions of time to FINRA staff, respondents and other parties in connection with certain adjudicatory and review processes. 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). For example, under original Rule 6490(e), the time to appeal was seven calendar days, and a subcommittee was required to convene once each calendar month to consider all appeals received during the prior month. Under the temporary amendments to Rule 6490(e), the time to appeal was extended to 30 calendar days, and the time for the subcommittee to convene was extended to once every 90 days. The time frames under the proposed rule change are reverting back to their original form, so the timing requirements under the proposed rule change are the same as they were under the original rule.

⁵ See 85 FR 31832, *supra* note 3.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹ 17 CFR 200.30-3(a)(12).

initial complaint are by hand, mail or courier.⁶

FINRA is proposing to make the temporary amendments regarding electronic service and filing permanent, with some modifications. FINRA believes that advances in technology and its availability have made filing and service more efficient under the temporary amendments than under the original rules.⁷ In addition, FINRA believes that operating under the temporary amendments since May 2020 has demonstrated that electronic service and filing is beneficial for parties, panelists and FINRA staff. FINRA further notes that the SEC also amended its rules in November 2020 to require electronic filing and service of documents in its administrative proceedings.⁸ FINRA further believes that the proposed rule change will similarly improve and modernize FINRA's operations.

Background

The FINRA Rule 1000, 6400, 9100, 9300, 9520, 9550 and 9600 Series contain filing, service and other procedural requirements. The temporary amendments to these rules allowed, and in some instances 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.⁹

The proposed rule change includes provisions to allow, and in some instances require, FINRA to serve certain documents on parties by email and require parties to file or serve documents by email, unless another method of service is ordered by the Adjudicator. Several of the proposed rule changes differ from the temporary amendments, which required email service unless the parties agreed to an alternative method.¹⁰ FINRA has observed that a more effective approach would be to require email service unless

the Adjudicator orders otherwise. As discussed further below, the proposal will 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. But unlike 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.

In addition, to support the transition to email service and filing, FINRA proposes to require parties in OHO proceedings to file and serve all parties with their current email address and contact information at the time of their first appearance, and to file and serve any change in email address or contact information during the course of the proceeding.

Proposed Rule Change To Allow or Require Email Filing and Service

FINRA rules, with few exceptions, do not provide for service by email.¹¹ The proposed rule change would permit FINRA to serve documents other than the initial complaint by email among various other methods of service, such as personal service, mail and courier, and to provide that service by email is deemed complete upon sending.¹²

FINRA has elected email service whenever possible while the temporary amendments have been in effect, and it is FINRA's intention to continue to do so under the proposed rule change. If FINRA has knowledge that the address used for service is not current or not functional (*i.e.*, FINRA receives a bounce back or other message indicating that 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.¹³ FINRA notes that, in most cases, FINRA and the relevant party, or their counsel, will have already engaged in communications prior to the service of

documents or other information. Accordingly, in most cases, FINRA will already have information regarding the relevant party, or their counsel's, preferred method of service.

Further, 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. 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.¹⁴ If a party shows good cause, the Adjudicator will order that filing or service occur by hard copy.

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.

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 to seek approval of a change in ownership, control or business operations, and (iii) an applicant to request that FINRA's appellate body, the NAC, review a FINRA decision rendered under the Rule 1000 Series. In connection with these processes, applicants and FINRA are required to file or serve certain documents using the prescribed methods set forth in FINRA Rule 1012(a), which do not include email.¹⁵ FINRA proposes to permanently amend Rule 1012(a)(4) to permit FINRA to serve documents under the Rule 1000 Series by email and to amend Rule 1015(f)(1),¹⁶ which requires the NAC to serve a notice of a hearing before the NAC by facsimile or overnight courier, to allow service of the notice by email.¹⁷ The proposed rule

¹⁴ When the 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 OHO. In addition, once OHO receives an initial complaint, it sends a Code and Guide letter to each respondent to notify them of the complaint. That letter also includes instructions on how to file with OHO.

¹⁵ FINRA Rule 1012(a) (General Provisions; Filing by Applicant or Service by FINRA) governs the filing and service requirements for the Rule 1000 Series.

¹⁶ FINRA Rule 1015(f) (Review by National Adjudicatory Council; Hearing).

¹⁷ In an effort to streamline processes and avoid duplication, FINRA is also proposing to amend Rule 1015(a) to eliminate the requirement that the applicant simultaneously file by first-class mail a copy of the request for review pursuant to Rule 1015(a) to the district office where the applicant filed its application.

⁶ See FINRA Rule 9134(a).

⁷ For ease of reference in this filing, FINRA refers to the pre-pandemic rules as "original rules" and to the temporary changes to the original rules as "temporary amendments." Some of the original rules were amended while the temporary amendments were in effect. Those amendments to the original rules have been incorporated into the temporary amendments. See, *e.g.*, FINRA Rule 9321 (amended by SR-FINRA-2020-011, eff. April 15, 2021).

⁸ See Amendments to the Commission's Rules of Practice, Securities Exchange Act Release No. 90442 (November 17, 2020), 85 FR 86464 (File No. S7-18-15) (December 30, 2020) (codified at 17 CFR 201 (2020)).

⁹ See *supra* note 3.

¹⁰ See FINRA Rules 6490(e), 9133(b), 9146(l), 9524(a)(3) and 9559(h).

¹¹ 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 that provision to be issued by facsimile or email, or pursuant to Rule 9134. Rule 9134 does not permit service by email, however.

¹² FINRA sometimes serves documents in its capacity as the Adjudicator. In other instances, FINRA is a party, for example, in its capacity as the Department of Enforcement.

¹³ As indicated in the proposed rule text, FINRA will consider service by email complete upon sending of the relevant document or other information. This is consistent with service by mail under the original rules and service by email under the temporary amendments.

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, while permitting the applicant to also file a requested document or information by another method if the Department and the Applicant agree.¹⁸

FINRA Rule 6490 codifies the requirements in Exchange Act Rule 10b-17 for issuers of a class of publicly traded securities to provide timely notice to FINRA of certain corporate actions (e.g., dividend or other distribution of cash or securities, stock split or reverse split, rights or subscription offering). FINRA reviews related documentation and, under certain circumstances, the documentation may not be processed if it is deemed deficient. Rule 6490(e) sets forth the process for appealing such a determination.¹⁹ The proposed rule change would require the requesting party to file an appeal by email unless an alternative method of service is ordered by the Adjudicator.²⁰

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. The Rule 9100 Series is of general applicability to all proceedings set forth in the Rule 9000 Series, unless a rule specifically provides otherwise. Rules 9132(b),²¹ 9133(b),²² and 9146(l)²³ provide that the documents and other information governed by those rules be served pursuant to Rule 9134, which permits service on the parties using the following methods: (1) Personal service, (2) mail, or (3) courier. Rule 9134 does not permit service by email. The

proposed rule change would amend Rule 9132(b) to allow FINRA to serve the relevant documents or information by email, and Rules 9133(b) and 9146(l) to require parties to serve documents by email, unless an alternative method of service is ordered by the Adjudicator.

In addition, to support the transition to email service and filing, FINRA proposes to amend 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 time of their first appearance, and to file and serve any change in email address or contact information during the course of the proceeding. Based on the experience of operating under the temporary amendments, FINRA believes this proposed rule change, which was not part of the temporary amendments, will help ensure that documents are successfully sent from and received at a valid email address. It will also ensure that all participants, including FINRA, applicants, respondents and any other parties, have accurate contact information for all parties.

The FINRA Rule 9300 Series sets forth the procedures for review of disciplinary proceedings by the NAC and FINRA Board and for applications for SEC review. FINRA Rules 9321,²⁴ 9341(c),²⁵ 9349(c),²⁶ and 9351(e)²⁷ require FINRA to serve documents in connection with those proceedings. Service under those rules is governed by Rule 9134, which does not permit email as a method of service. FINRA proposes to permanently amend Rules 9321, 9341(c), 9349(c), and 9351(e) to allow for email as a method of service.

The FINRA Rule 9520 Series sets forth the procedures for eligibility proceedings and review of those proceedings by the NAC and FINRA Board. Rules 9522(a)(4),²⁸ 9524(a)(3)(A) and (B),²⁹ 9524(b)(3),³⁰ and 9525(e)³¹ require FINRA to serve documents in

connection with those proceedings, but do not allow for email as a method of service. The proposed rule change would permanently amend those rules to allow for email as a method of service. Further, under the proposed change to Rule 9524(a)(3)(A) and (B), the disqualified member or sponsoring member would be required to serve documents and the exhibit and witness lists by email unless an alternative method of service is ordered by the Adjudicator.³²

The FINRA Rule 9550 Series sets forth the procedures for expedited proceedings and the ability of the NAC to call for review a proposed decision prepared under the Rule 9550 Series. Rule 9559(h)(2)³³ 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.³⁴ Rule 9559(q)(2)³⁵ requires the NAC to serve its decision when it issues one and Rule 9559(q)(5) requires the NAC to serve the decision on the parties and all members with which the respondent is associated. Rule 9559(q)(2) and (5) do not allow for email as a method of service. FINRA proposes to permanently amend Rule 9559(h)(2) to require FINRA to serve its exhibit and witness lists by email, unless an alternative method of service is ordered by the Adjudicator. The proposed rule change would amend Rule 9559(q)(2) and (5) to allow for email as a method of service.

The FINRA Rule 9600 Series sets forth the procedures for members to seek exemptive relief from a variety of FINRA rules. Rule 9630(e)(1) and (2)³⁶ require the NAC to serve its decision pursuant to Rule 9134, which does not allow for email as a method of service. The proposed rule change would amend Rule 9630(e) to allow for email as a method of service.

As discussed in detail in Item 3(b), FINRA believes the proposal will modernize the rules and make service

¹⁸ FINRA is also proposing a non-substantive change to delete the word "electronic" from the description of the "alternative filing process" because it is superfluous.

¹⁹ FINRA Rule 6490(e) (Processing of Company-Related Actions; Request for an Appeal to Subcommittee of Uniform Practice Code Committee).

²⁰ FINRA is also proposing several non-substantive, technical changes including, for example, deleting the parenthetical references to the numerals "3" and "7," which originally followed those words in FINRA Rule 6490(e). As noted *supra* note 4, 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.

²¹ FINRA Rule 9132(b) (Service of Orders, Notices, and Decisions by Adjudicator; How Served).

²² FINRA Rule 9133(b) (Service of Papers Other Than Complaints, Orders, Notices or Decisions; How Served).

²³ FINRA Rule 9146(l) (Motions; General).

²⁴ FINRA Rule 9321 (Transmission of Record).

²⁵ FINRA Rule 9341(c) (Oral Argument; Notice Regarding Oral Argument).

²⁶ FINRA Rule 9349(c) (National Adjudicatory Council Formal Consideration; Decision; Issuance of Decision After Expiration of Call for Review Period).

²⁷ FINRA Rule 9351(e) (Discretionary Review by FINRA Board; Issuance of Decision After Expiration of Call for Review Period).

²⁸ FINRA Rule 9522(a)(4) (Initiation of Eligibility Proceeding; Member Regulation Consideration; Service).

²⁹ FINRA Rule 9524(a)(3)(A) and (B) (National Adjudicatory Council Consideration; Transmission of Documents).

³⁰ FINRA Rule 9524(b)(3) (National Adjudicatory Council Consideration; Issuance of Decision After Expiration of Call for Review Period).

³¹ FINRA Rule 9525(e) (Discretionary Review by the FINRA Board; Issuance of Decision).

³² FINRA is also proposing a non-substantive, technical change to replace the numeral "10" with the word "ten" in Rule 9524(a)(3)(B).

³³ FINRA Rule 9559(h) (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series; Transmission of Documents). Rule 9559(h) currently permits email as a method of service.

³⁴ As with the proposed rule change to amend Rule 1015(a) noted *supra* note 17, FINRA proposes to amend Rule 9559(h) to also eliminate the requirements in Rule 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.

³⁵ FINRA Rule 9559(q) (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series; Call for Review by the National Adjudicatory Council).

³⁶ FINRA Rule 9630(e) (Procedures for Exemptions; Appeal; Decision).

and filing more efficient and effective. Email technology is widely available, and use of electronic methods of service and filing is common practice in the courts and other regulatory agencies, including the SEC.³⁷ At the same time, the proposal provides for alternative methods of service for parties who lack the ability to use or access technology needed to send or receive documents electronically.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice*.³⁸

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³⁹ 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,⁴⁰ which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members.

FINRA believes that the proposed rule change protects investors and the public interest by requiring use of broadly available technology to make service and filing processes more efficient and effective. FINRA's disciplinary and eligibility proceedings and other review processes serve a critical role in providing investor protection and maintaining fair and orderly markets by, for example, sanctioning misconduct and preventing further customer harm by members and associated persons.

The proposed rule change promotes efficiency in these processes by permitting electronic service and filing in most instances. To ensure that documents are effectively sent and received, FINRA is proposing to require parties to provide and update their contact information, including their email address, during the course of a proceeding. These amendments reduce the reliance on paper documents in favor of more efficient electronic formats. FINRA believes adopting permanent rules on electronic service

and filing is especially important as hybrid and remote work become more common.

At the same time, the proposed rule change includes safeguards to ensure fairness. For example, there are procedures in place for persons who lack the ability to use or access technology necessary to send or receive documents electronically. Such parties will have the ability to request relief from the Adjudicator to file or serve documents by another method. Based on FINRA's experience of operating under the temporary amendments, which have permitted electronic service and filing since mid-2020, FINRA anticipates that requests to use non-electronic methods of service will be rare. In addition, the proposed rule change balances the interests of fairness and efficiency. As discussed, service of the initial complaint will continue to occur by hand, mail or courier, rather than by electronic means, thus ensuring there is satisfactory notice and fair process.

Thus, the proposed rule change represents a significant step toward modernizing the service and filing processes in a manner that will protect investors and the public interest by promoting efficiency while preserving fair process.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA's regulatory objectives.

Regulatory Need

Several of FINRA's rules regarding method of service and filing have been amended temporarily to permit, and in some circumstances require, electronic filing and service during the period in which FINRA's operations have been impacted by the COVID-19 pandemic.⁴¹

As stated earlier, the proposed rule change is intended to make these temporary amendments permanent considering the positive experience of operating while the temporary amendments have been in effect. The implementation of those temporary amendments suggests that advances in technology and its availability have made filing and service more efficient under the temporary amendments than under the original rules.

Economic Baseline

The economic baseline for the proposed rule change consists of the original rules together with the experience gained by broker-dealers, their associated persons, and FINRA in complying with the temporary amendments to the original rules. As discussed above, FINRA Rules 1000, 6400, 9100, 9300, 9520, 9550 and 9600 Series set forth filing and service requirements pertaining to expedited and disciplinary proceedings before OHO and to appeals before the NAC, among other types of FINRA proceedings. These rules, with few exceptions, do not allow FINRA to use email or require others to use email to meet certain filing and service requirements. FINRA temporarily amended these rules to permit, and in some instances require, electronic filing and service.

The proposed rule change is expected to affect parties to disciplinary proceedings before OHO and to appeals before the NAC. FINRA thus has collected information detailing the number of new cases filed in OHO and NAC proceedings and the number of respondents in association with these proceedings in the past three years. The numbers are presented below. Note that "Registered Rep" includes both current and former registered representatives and the numbers of new OHO filings include both expedited and disciplinary proceedings before OHO. The numbers show that the majority of respondents in OHO filings and NAC appeals consist of current and former registered representatives.⁴²

⁴² The proposal also amends filing and service requirements for eligibility proceedings under FINRA Rule 9522(a)(4) and for appeals of determinations regarding the documentation of certain corporate actions under FINRA Rule 6490(e). There were 22 eligibility proceedings in 2018 and 14 in 2019; there have been no appeals of determinations under Rule 6490(e) since the temporary requirements came into effect in May 2020.

³⁷ See *supra* note 8.

³⁸ FINRA intends to minimize any gap between the expiration of the temporary amendments on electronic service and filing and the implementation date of this proposed rule change.

³⁹ 15 U.S.C. 78o-3(b)(6).

⁴⁰ 15 U.S.C. 78o-3(b)(8).

⁴¹ See *supra* note 3.

	2020	2019	2018
OHO Filings	69	95	90
OHO Respondents: Firms Only	2	7	9
OHO Respondents: Registered Rep Only	65	85	76
OHO Respondents: Both Firms and Registered Rep	2	3	5
NAC Appeals	13	17	22
NAC Respondents: Firms Only	2	2	3
NAC Respondents: Registered Rep Only	9	11	15
NAC Respondents: Both Firms and Registered Rep	2	4	4

Economic Impacts

The proposed rule change will directly impact current and former member firms and associated persons, including registered representatives. With limited exceptions, these individuals would be applicants, respondents, or other related parties to disciplinary proceedings before OHO and to appeals before the NAC. The proposed rule change will not directly impact the customers of those firms.

Parties in relevant proceedings will benefit from savings on time and money on printing, shipping, and storage of paper documents as filing and serving paper copies will generally not be required following the proposed rule change. The proposed rule change would also improve the overall efficiency of FINRA's operations in collecting, preserving, and distributing documents to parties in these proceedings relative to the original rules. Such benefits are anticipated to accrue to firms and individuals as well as to FINRA in its capacity as an adjudicator. In particular, FINRA believes that the benefits to member firms from the proposal will likely be larger for those using hybrid and remote work models or in situations where access to physical office locations is limited or restricted.

The extent of the cost savings is likely not uniform across parties and cannot be estimated in aggregate for two reasons. First, FINRA does not know the frequencies of filing and service and the size of the documents in association with relevant proceedings. The expected cost savings will likely be greater for parties that file and serve large documents more frequently. Second, FINRA does not know how parties agreed to serve documents, by email, paper, or other alternative methods, during the pre-pandemic period.

Certain parties may bear incremental burdens over pre-pandemic filing and service practices. FINRA does not know the extent to which, under the proposed rule change, certain parties will incur some costs to scan documents. Anecdotally, FINRA understands that this group is small. The proposals to have a valid email address and to

require filing by email are not expected to impose significant new costs because anecdotal evidence suggests that this method of filing was already adopted by most parties to OHO and NAC proceedings before the pandemic.⁴³ FINRA notes that OHO and the NAC have not received any complaints regarding the temporary amendments on method of service and filing during the pandemic. FINRA also notes that the SEC recently finalized a rule to require electronic filing and service of documents in SEC administrative proceedings.⁴⁴ The Commission received only seven comments on the proposed rule and reported that commenters generally supported electronic filing.⁴⁵

The proposal will likely impose a higher cost on parties who have limited access to the internet and to any hardware and software that may be involved in processing the documents. For example, it is unlikely that member firms or current registered representatives would face these challenges, but former registered representatives may. There have been a few such individuals in recent proceedings before OHO and the NAC.⁴⁶ The proposal will allow reasonable accommodations for such individuals. Service of an initial complaint on a respondent would not be subject to the proposed rule change on electronic service and filing, mitigating any risk that a respondent would be unaware of the complaint.

The overall benefits and costs of the proposal will depend on the expected volume of the relevant proceedings and the number of respondents associated

with these proceedings. As described earlier, there have been only a limited number of new cases or appeals filed annually in OHO and NAC proceedings in the past three years. The majority of these cases or appeals involved only one respondent. Based on these historical numbers, the overall economic impact is likely to be small.

Alternatives Considered

In developing the proposal, FINRA sought to preserve the efficiencies in filing and service practices that were achieved during the pandemic. No significant alternatives to these requirements were considered.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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

⁴³ It can be difficult to assess potential cost increases following the proposal to require service by email because FINRA does not know the extent to which parties agreed to service by email during the pre-pandemic period.

⁴⁴ See *supra* note 8.

⁴⁵ See *supra* note 8. The comments are available at <https://www.sec.gov/comments/s7-19-15/s71915.shtml>.

⁴⁶ For example, over the year 2020, there were 65 OHO filings with registered representatives as the sole respondents. Among them, 21 OHO filings had former registered representatives as respondents. In addition, there were 27 and 26 OHO filings, respectively, with former registered representatives as respondents in year 2019 and 2018.

• Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2022-009 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2022-009. This file number should be included on the subject line if email 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-2022-009 and should be submitted on or before May 5, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁷

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94645; File No. SR-CboeEDGX-2022-020]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products

April 8, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 1, 2022, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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

Cboe EDGX Exchange, Inc. ("EDGX" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission") a proposed rule change to amend the fees applicable to various market data products. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/) [sic], at the Exchange's Office of the Secretary, 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, the Exchange 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. The Exchange 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

The Exchange proposes to amend the Market Data section of its Fees Schedule for its equities trading platform ("EDGX Equities"). Particularly, the Exchange proposes to adopt a free trial program for Exchange market data products, effective April 1, 2022.

The Exchange proposes a 30-day free trial for any User or Distributor that subscribes to or distributes, respectively, an Exchange real-time market data product ("Product") listed on the Fee Schedule for the first time. As proposed, a first-time User would be any entity or individual that has not previously subscribed to a particular Product and a first-time Distributor would be any entity that has not previously distributed, internally or externally, a particular Product. A first-time User or Distributor of a particular Exchange market data product would not be charged any applicable fees listed in the Fee Schedule for that product for the duration of the 30 days.³ For example, a firm that currently subscribes to EDGX Top would be eligible to receive a free 30-day trial of EDGX Depth, whether in a display-only format or for non-display use. However, a firm that currently receives EDGX Depth for non-display use would not be eligible to receive a free 30-day trial of EDGX Depth in a display-only format. The Exchange would provide the 30-day free trial for each particular product to each first-time User or Distributor once.

The Exchange believes that providing a 30-day free trial to Exchange real-time market data products listed on the Exchange's Fee Schedule would enable potential Users and Distributors to determine whether a particular Exchange market data product provides value to their business models or investment strategies, as applicable, before fully committing to expend development and implementation costs related to the receipt or distribution of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Users or Distributors would ordinarily have to expend before using a product. The

³ For example, if a User that has elected to participate in the free trial program for EDGX Top data is approved on April 15, 2022, that User will not be subject to any applicable fees (*i.e.*, User Fee) through May 14, 2022.

⁴⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.