

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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-CboeEDGX-2023-016 and should be submitted on or before May 25, 2023. Rebuttal comments should be submitted by June 8, 2023.

## VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(3)(C) of the Act,<sup>64</sup> that File Number SR-CboeEDGX-2023-016 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>65</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

[FR Doc. 2023-09448 Filed 5-3-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97403; File No. SR-FINRA-2023-008]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rules 1015, 9261, 9341, 9524, 9830 and Funding Portal Rule 900 (Code of Procedure) To Permit Hearings Under Those Rules To Be Conducted by Video Conference

April 28, 2023.

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 April 26, 2023, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, 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 1015, 9261, 9341, 9524 and 9830 and Funding Portal Rule 900 to allow for video conference hearings before the Office of Hearing Officers ("OHO") and the National Adjudicatory Council ("NAC") under specified conditions.

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

Due to the COVID-19 global health crisis, FINRA administratively postponed in-person hearings for over six months beginning in March of 2020, which resulted in an expanding backlog of cases that could have compromised FINRA's ability to provide timely adjudicatory processes and fulfill its statutory obligations to protect investors and maintain fair and orderly markets. To address that backlog and mitigate the consequences of a stalled adjudicatory system, FINRA adopted temporary rules that allow OHO and the NAC to order, without a motion, hearings to proceed by video conference based on public health risks related to COVID-19.<sup>3</sup> These were extended several times due to the continuing public health risks and logistical challenges related to COVID-19, including whether hearing participants could safely travel and abide by state or local quarantine requirements.<sup>4</sup>

FINRA is proposing to make the temporary amendments regarding video conference hearings permanent, with some modifications that would allow for the use of video conference for reasons in addition to COVID-19.<sup>5</sup> The use of

<sup>3</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) and Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-027).

<sup>4</sup> See Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-042); Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-006); Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-019); Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-031); Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-004); Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-018); Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-029); and Securities Exchange Act Release No. 96746 (January 25, 2023), 88 FR 6346 (January 31, 2023) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2023-001); see also *supra* note 3.

<sup>5</sup> For ease of reference in this filing, FINRA refers to the pre-pandemic rules as "original rules" and

Continued

<sup>64</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>65</sup> 17 CFR 200.30-3(a)(57) and (58).

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

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

video conference technology in OHO and NAC hearings under the temporary amendments has demonstrated that video is an effective and efficient alternative to in-person hearings.<sup>6</sup> FINRA has used high quality, secure and user-friendly technology to allow for hearings conducted by video conference to parallel the experience of conducting hearings in person.<sup>7</sup> This technology was crucial in enabling OHO and the NAC to timely resolve pending cases when it was unsafe to conduct hearings in person.

FINRA believes that the use of video conference technology has improved FINRA's operations during the COVID-19 pandemic, and the proposed rule change will continue to improve and modernize FINRA's operations so that parties, panelists, and FINRA staff may proceed expeditiously by video conference in the event of certain circumstances, including where unforeseen events make appearing in person difficult or impracticable. As described below, impracticability is intended to account for an uncommon situation or extraordinary circumstance.

#### Background

OHO conducts hearings in disciplinary proceedings<sup>8</sup> and hearings for temporary and permanent cease and desist orders ("TCDOs" and "PCDOs").<sup>9</sup>

to the temporary changes to the original rules as "temporary amendments."

<sup>6</sup> Since the temporary amendments were implemented, OHO and the NAC have conducted numerous hearings by video conference. As of March 31, 2023, OHO has conducted 18 disciplinary hearings by video conference (decisions have been issued in all but one of these cases). Also, as of March 31, 2023, the NAC, through the relevant Subcommittee, has conducted 19 oral arguments by video conference in connection with appeals of FINRA disciplinary proceedings pursuant to FINRA Rule 9341(d), as temporarily amended. Furthermore, the NAC has conducted via video conference a one-day evidentiary hearing in a membership application proceeding pursuant to FINRA Rule 1015, as temporarily amended. The NAC also has conducted via video conference three evidentiary hearings in eligibility matters pursuant to FINRA Rule 9524, as temporarily amended.

<sup>7</sup> Under the temporary amendments, FINRA has conducted video conference hearings using Zoom, which has been vetted by FINRA's information technology staff. The platform and procedures for conducting video conference hearings under the temporary amendments are described in SR-FINRA-2020-027, *supra* note 3.

<sup>8</sup> See FINRA Rule 9261. The FINRA Rule 9200 Series sets forth the procedures for disciplinary proceedings initiated by the Department of Enforcement against any FINRA member or associated person for alleged violation of any rule, regulation, or statutory provision that FINRA has jurisdiction to enforce, including the federal securities laws and the regulations thereunder.

<sup>9</sup> See FINRA Rule 9830. The FINRA Rule 9800 Series sets forth the procedures for TCDO and PCDO proceedings. These provide a mechanism to take necessary remedial action against a member or

When orders in disciplinary proceedings are appealed, the NAC holds hearings on oral argument.<sup>10</sup> The NAC also conducts hearings in membership proceedings,<sup>11</sup> eligibility proceedings,<sup>12</sup> and Funding Portal eligibility proceedings.<sup>13</sup>

Under the original rules, such hearings were generally conducted in person.<sup>14</sup> The temporary amendments give OHO and the NAC authority<sup>15</sup> to conduct hearings, in whole or in part, by video conference if warranted by the current public health risks presented by an in-person hearing.<sup>16</sup> Since 2020, such public health risks have related to the COVID-19 pandemic.

Under the proposed rule change, OHO and the NAC's authority to order hearings by video conference would extend beyond the public health risks posed by COVID-19 to other similar situations in which proceeding in person may endanger the health or safety of the participants or would be impracticable. For example, appearing

associated person where there is a significant risk that the alleged misconduct could cause continuing harm to the investing public, if not addressed expeditiously.

<sup>10</sup> See FINRA Rule 9341. The FINRA Rule 9300 Series sets forth the procedures for review of disciplinary proceedings by the NAC.

<sup>11</sup> See FINRA Rule 1015. The FINRA Rule 1000 Series 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 the NAC review a FINRA decision rendered under the Rule 1000 Series.

<sup>12</sup> See FINRA Rule 9524. The FINRA Rule 9520 Series sets forth the procedures for eligibility proceedings and review of those proceedings by the NAC and FINRA Board.

<sup>13</sup> See FINRA Funding Portal Rule 900. Funding portal members are subject to the FINRA Rule 9000 Series, except for the FINRA Rule 9520 Series, FINRA Rule 9557, FINRA Rule 9561, and the FINRA Rule 9700 Series and specified provisions, as set forth under Funding Portal Rule 900, written specifically for funding portals. See Securities Exchange Act Release No. 76970 (January 22, 2016), 81 FR 4931 (January 28, 2016) (Order Approving File No. SR-FINRA-2015-040). Paragraph (b) of Funding Portal Rule 900 was established as a streamlined version of the FINRA Rule 9520 Series and sets forth the procedures for funding portal eligibility proceedings. Although paragraph (b) was not temporarily amended, FINRA includes it in this filing so that the procedures for funding portal eligibility proceedings are aligned with eligibility proceedings under the FINRA Rule 9520 Series. The proposed rule change would allow for both of those types of hearings to be conducted by video conference.

<sup>14</sup> Telephonic testimony and hearings are explicitly permitted in expedited proceedings. See FINRA Rule 9559(d)(5) (expedited proceedings "shall be held by telephone conference, unless the Hearing Officer orders otherwise for good cause shown").

<sup>15</sup> For OHO hearings, the Chief or Deputy Chief Hearing Officer has such authority; for NAC hearings, the NAC or relevant Subcommittee has such authority.

<sup>16</sup> See *supra* note 3.

in person may be impracticable in the event of a natural disaster or terrorist attack that caused travel to be cancelled for a period of time.

In addition, the proposed rule change would differ from the temporary amendments in two respects. First, under the proposed rule change, OHO and the NAC would also have authority to order hearings to occur by video conference based on a motion. Second, the proposed rule change would provide more flexibility for using video conference for oral arguments in appeals from disciplinary proceedings than for evidentiary hearings due to the differences between those types of hearings.<sup>17</sup> As explained below, the motion requirements and the standard that the Adjudicator would follow when exercising authority under the proposed rule change differ somewhat depending on the type of hearing involved.

As with the temporary amendments, under the proposed rule change, in-person hearings will remain the default method for hearings before OHO and the NAC, and their exercise of authority under the proposed rule change would be discretionary. In-person hearings may take place where safe and appropriate.

FINRA's protocols for conducting hearings by video conference will be the same as under the temporary amendments. FINRA would, among other things, use a high quality, secure and user-friendly video conferencing service and provide thorough instructions, training, and technical support to all hearing participants.

The proposed rule changes with respect to evidentiary hearings and oral argument are discussed, in turn, below.

#### Evidentiary Hearings Before OHO and the NAC

For evidentiary hearings, the proposed rule change would give OHO or the NAC authority to order an evidentiary hearing to occur by video conference, in whole or in part, if OHO or the NAC determines that proceeding in person may endanger the health or safety of the participants or would be impracticable, as described above. OHO and the NAC would have such authority on their own (*i.e.*, *sua sponte*).<sup>18</sup>

<sup>17</sup> For ease of reference, "evidentiary hearings" refers to hearings conducted before OHO under FINRA Rules 9261 and 9830, and the NAC under FINRA Rules 1015, 9524, and Funding Portal Rule 900. "Oral argument" refers to hearings conducted before the NAC in appeals from disciplinary proceedings under Rule 9341. See *supra* notes 8-13 and accompanying text.

<sup>18</sup> OHO and the NAC would have such authority over the objection of a party. The same is true under the temporary amendments. See SR-FINRA-2020-027, *supra* note 3.

In addition, under the proposed rule change, parties could file a joint motion requesting the hearing to occur, in whole or in part, by video conference based on a showing of good cause. Due to the nature of evidentiary hearings, which often occur over multiple days and generally include numerous documents in evidence and witness testimony, the proposed rule change would require any motions for a hearing by video conference to be joined by all parties, and even joint motions may be denied if the Adjudicator determines that good cause has not been shown.<sup>19</sup>

Whether acting on its own or based on a joint motion of the parties, OHO and the NAC would have reasonable discretion to exercise their authority under the proposed rule change. In deciding whether to schedule a hearing by video conference, OHO and the NAC could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.

#### Oral Argument Before the NAC

The proposed rule change would give the NAC authority to order an oral argument hearing to occur by video conference, in whole or in part, if it determines that proceeding in person may endanger the health or safety of the participants or would be impracticable. The NAC would have such authority on its own.

In addition, under the proposed rule change, the NAC would have authority—on its own or on consideration of a motion by any party—to order oral argument to occur by video conference, in whole or in part, for other reasons (*i.e.*, reasons not limited to public health, safety or impracticability). Under such circumstances, an opposing party would have the opportunity to demonstrate that the hearing should proceed in person because proceeding by video conference would materially disadvantage that party. Whether a party has shown material disadvantage would depend on the facts and circumstances. Considerations may include, for example and without limitation, case

complexity, the issues on appeal, and whether the respondent is *pro se* and desires to appear in person.

Under the proposed rule change, the NAC would have greater flexibility to allow oral argument to occur by video conference than evidentiary hearings, with an additional safeguard for parties who believe that holding oral argument by video conference would materially disadvantage them. The proposal as to NAC oral argument thus differs from the proposal for evidentiary hearings in three respects: (1) it would give the NAC *sua sponte* authority to order oral argument to occur by video conference for reasons other than public health, safety, or impracticability; (2) it would allow for motions by a single party rather than joint; and (3) under either of those circumstances, a party could oppose on grounds that proceeding by video conference would materially disadvantage that party. These proposed differences are due to the nature of oral argument hearings, which are typically shorter than evidentiary hearings in duration (generally two hours or less), contain no presentation of new documentary evidence or witness testimony, and are often conducted by counsel.

Whether acting on its own or based on a motion of a party, the NAC would have reasonable discretion to exercise its authority under the proposed rule change. In deciding whether to order an oral argument hearing by video conference, the NAC could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns, access to video conference technology, whether a party has delayed or refused to appear in person, and whether proceeding by video conference would materially disadvantage any party.<sup>20</sup>

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>21</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>22</sup> 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 permitting the use of broadly available technology to allow hearings to proceed by video conference under certain circumstances. 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 would encourage the prompt resolution of these cases while preserving fair process.

The proposed rule change promotes efficiency by permitting hearings to occur by video conference in situations where the hearings would otherwise be postponed for an uncertain period of time. As discussed, this occurred in 2020 when in person hearings were postponed for over six months, resulting in a backlog of cases. COVID-19 necessitated FINRA to propose the temporary amendments, which were extended due to the continuing health risks of COVID-19, as well as limitations on travel, quarantine requirements, and other logistical challenges to safely conducting hearings in person.<sup>23</sup> The proposed rule change further promotes efficiency by giving OHO and the NAC authority to act quickly if a future unexpected event impaired their ability to conduct in-person hearings safely.

The proposed rule change also serves to provide a fair procedure for the disciplining of members and persons associated with members by allowing hearings to proceed by video conference not only due to public health or safety reasons, but also at a party or the parties' request for reasons particular to them. The Adjudicator could allow a hearing to proceed by video conference in the exercise of reasonable discretion and subject to procedural safeguards that ensure fairness. For evidentiary hearings, these safeguards include the requirements that any motions be joined

<sup>19</sup> FINRA notes that its current practice is to allow witnesses in an otherwise in-person hearing to appear by video conference. In evidentiary hearings, a party may file a motion to offer witness testimony by telephone or video conference. Further, even prior to the COVID-19 pandemic, Adjudicators have allowed telephone participation by witnesses who are unable or unwilling to appear in person, such as customers over whom FINRA does not have jurisdiction and therefore cannot compel testimony under FINRA Rule 8210.

<sup>20</sup> FINRA notes that the proposed rule change would impact all members, including members that are funding portals or have elected to be treated as capital acquisition brokers ("CABs"), given that the CAB rule set incorporate the impacted FINRA rules by reference and that, under the Funding Portal Rules, funding portal members are subject to the FINRA Rule 9000 Series, with specified exceptions as set forth under Funding Portal Rule 900. *See supra* note 13.

<sup>21</sup> 15 U.S.C. 78o-3(b)(6).

<sup>22</sup> 15 U.S.C. 78o-3(b)(8).

<sup>23</sup> *See supra* notes 3 & 4 and accompanying text.

by all parties and show good cause. For oral argument, these safeguards include the ability of any party to oppose an order or motion to proceed by video conference on grounds that doing so would materially disadvantage that party.

Thus, the proposed rule change represents a significant step toward modernizing FINRA’s procedures in a manner that preserves in-person hearings, but allows for the use of video conference technology under certain circumstances.

*B. Self-Regulatory Organization’s Statement on Burden on Competition*

FINRA does not believe that the proposed rule change would 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 potential economic impacts of the proposed rule change, 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.

1. Regulatory Need

FINRA does not have permanent rules that allow for video conference hearings before OHO and the NAC, even when both parties prefer proceeding by video conference, or doing so would not materially disadvantage any party, or when video conference is the only practicable method. The proposed rule change would create permanent rules that would allow video conference hearings under some of these circumstances, with safeguards. The proposed rule change would allow certain proceedings by video conference where both parties prefer doing so and show good cause, or where neither party would be materially disadvantaged. The proposed rule change would also enable FINRA to respond to serious health, natural disaster, or other unanticipated events more quickly and adeptly in the future, so that hearings can proceed on time without the need for long postponements or cancellations. As discussed above, the use of video conference hearings for approximately two and a half years has demonstrated that this technology can efficiently resolve pending cases and effectively parallel the experience of conducting hearings in person. The proposed rule change would build on this experience.

2. Economic Baseline

The economic baseline for the proposed rule change consists of the original FINRA Rules 1015, 9261, 9341, 9524 and 9830 and Funding Portal Rule 900. As discussed earlier, these rules govern disciplinary proceedings before OHO, appeals before the NAC, and other types of hearings. Under these rules, oral arguments before the NAC and evidentiary hearings before OHO and the NAC are typically conducted in person at various venues across the country. Due to the COVID–19 pandemic, FINRA temporarily amended its rules to allow OHO and the NAC to order, without a motion, evidentiary hearings to proceed by video conference based on public health risks related to COVID–19. The temporary amendments also allow oral arguments before the NAC to proceed by video conference.

The number of new cases filed in OHO and NAC disciplinary proceedings and the number of respondents in these proceedings in the past five years are presented in Table 1 below. The numbers show that the majority of respondents in OHO filings and NAC appeals consist of associated persons.

TABLE 1—NUMBER OF NEW CASES FILED IN OHO AND NAC DISCIPLINARY PROCEEDINGS AND NUMBER OF RESPONDENTS, 2018–2022

	2018	2019	2020	2021	2022
OHO Disciplinary Proceedings .....	43	40	34	32	24
OHO Respondents: Firms Only .....	0	2	2	0	2
OHO Respondents: Associated Persons Only .....	38	35	30	28	20
OHO Respondents: Both Firms and Associated Persons ..	5	3	2	4	2
NAC Disciplinary Appeals .....	20	16	10	11	6
NAC Respondents: Firms Only .....	1	1	0	1	1
NAC Respondents: Associated Persons Only .....	15	11	8	10	4
NAC Respondents: Both Firms and Associated Persons ...	4	4	2	0	1

FINRA has also collected information on the use of video conference in evidentiary hearings in OHO and NAC proceedings and oral arguments before the NAC in the past five years. The

information is presented in Table 2 below. The numbers show that no evidentiary hearings before OHO and the NAC or oral arguments before the NAC proceeded by video conference in

the two years prior to the pandemic starting in 2020, whereas almost all of those types of hearings proceeded by video conference after 2020.

TABLE 2—USE OF VIDEO CONFERENCE IN OHO AND NAC EVIDENTIARY HEARINGS AND NAC ORAL ARGUMENTS, 2018–2022

	2018	2019	2020	2021	2022
Number of Evidentiary Disciplinary Hearings before OHO	21	12	8	10	5
Number of Evidentiary Disciplinary Hearings before OHO by Video Conference .....	0	0	3	9	5
Number of Oral Arguments before NAC .....	15	11	10	4	6
Number of Oral Arguments before NAC by Video Conference .....	0	0	9	4	6
Number of Evidentiary Hearings before NAC .....	6	0	0	1	3
Number of Evidentiary Hearings before NAC by Video Conference .....	0	0	0	1	3

### 3. Economic Impacts

The proposed rule change will directly impact current and former member firms (including members that are funding portals) and their associated persons. These individuals would be applicants or respondents in proceedings before OHO and the NAC, including appeals from disciplinary proceedings. The proposed rule change is also expected to affect their counsel and other participants, and the proposed rule change may also affect investors associated with the matter, and in some cases, investors more generally.

As described earlier, there have been only a limited number of new cases or appeals filed annually in relevant OHO and NAC proceedings in the past five years. Most of these cases or appeals involved only one respondent. Based on these historical numbers, only a very small fraction of members and associated persons will likely be affected by the proposed rule change.

The primary impact of the proposed rule change would be to reduce delay in resolving relevant matters in extraordinary circumstances (*e.g.*, a serious public health situation, natural disaster, or other unanticipated emergency event), or when the parties jointly move for an evidentiary hearing to proceed virtually and establish good cause for doing so, or when neither party would be materially disadvantaged by holding oral argument by video conference for reasons other than health, safety or impracticability. Depending on the matter and the amount of delay that can potentially be avoided, the proposed rule change may have a significant economic impact on affected parties and relevant stakeholders.

Under the baseline, a serious public health situation, natural disaster, or other unanticipated emergency event may either delay proceedings, prevent travel, or require parties to consider traveling and appearing in person despite the elevated risk. As discussed, until the temporary amendments were in effect, FINRA administratively postponed hearings for over six months due to concerns about the safety of conducting hearings in person, travel restrictions, quarantine requirements, and other logistical challenges.<sup>24</sup> Where delay may occur, as it did in 2020, the proposed rule change would allow FINRA to conduct video conference hearings, thereby reducing delay in resolving matters before OHO and the NAC. As FINRA's adjudicatory

functions are essential to deterring and providing redress in cases of investor harm, and for protecting market integrity, reducing delay will broadly benefit investors and the markets. Members and associated persons may also benefit from reduced delay in resolving their matters.

Participants in relevant proceedings who, under the baseline, are required to travel and attend hearings in person despite elevated risk will benefit from reduced health and safety risk under the proposed rule change. By allowing video conference hearings and oral arguments either by order of the Adjudicator on its own or on motion of the parties, the proposed rule change would result in reduced travel time and costs for all participants. The cost reductions may vary depending on the nature and length of the proceedings, the number of individuals who must travel, and the distance of the required travel.

Parties may incur additional costs relative to the pre-pandemic baseline. These additional costs may arise from technological challenges such as bandwidth or connectivity issues and concerns related to presenting arguments and evidence in a virtual environment. FINRA believes that cost increases will likely be limited for most parties, after considering the overall positive experience of conducting video conference evidentiary hearings and appellate oral arguments under the temporary amendments.

Parties who are required to participate by video conference under the proposed rule change and believe that they cannot present their arguments and evidence as well as in person, may perceive the potential costs associated with the proposed rule change as large compared with the potential benefits. They may thus prefer a delayed in-person hearing under the above circumstances to a video conference hearing. These potential costs will depend on how Adjudicators define and apply the "impracticable" and "health or safety" standards as well as the "good cause" and "materially disadvantage" standards, among other factors.

### 4. Alternatives Considered

FINRA considered applying the same standards to NAC oral argument as to evidentiary hearings. Under this alternative, the NAC could order a scheduled in-person oral argument hearing to occur by video conference for health, safety or impracticability reasons only, and when considering a motion, would require the motion to be joined by all parties and show good cause. Parties who prefer to appear in-person

due to concerns about technical or other difficulties to presenting their case by video conference may perceive a lower cost from the less flexible alternative relative to the proposed rule change. This perceived cost reduction, however, should be limited since the proposed rule change would allow such parties to oppose an order or motion to proceed by video conference on grounds that doing so would materially disadvantage them. Further, any cost reduction relative to the proposed rule change would likely be bounded because, as discussed, NAC oral arguments are typically short in duration, contain no presentation of new evidence, and are often conducted by counsel. The alternative would also likely lead to more potential delays in resolving appeals of disciplinary matters. Thus, FINRA believes that the proposed rule change strikes the appropriate balance between preserving the efficiencies in OHO and NAC proceedings that were achieved during the pandemic and ensuring a fair process for parties in evidentiary hearings and appeals.

### 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 (<https://www.sec.gov/rules/sro.shtml>); or

<sup>24</sup> See *supra* notes 3 & 4 and accompanying text.

• Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2023-008 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-FINRA-2023-008. 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-FINRA-2023-008 and should be submitted on or before May 25, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97399]

### Order Granting Application by Long-Term Stock Exchange, Inc. for an Exemption, Pursuant to Section 36(a) of the Exchange Act, From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

April 28, 2023.

The Long-Term Stock Exchange, Inc. ("LTSE" or "Exchange") filed with the Securities and Exchange Commission (the "Commission" or "SEC") an application<sup>1</sup> for an exemption under Section 36(a) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>2</sup> and Rule 0-12 thereunder<sup>3</sup> from the rule filing requirements of Section 19(b) of the Exchange Act<sup>4</sup> with respect to the rules of the Exchange relating to continuing education. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

LTSE has requested that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to LTSE Rule 2.154 (Continuing Education) effected solely by virtue of changes to Financial Industry Regulatory Authority, Inc. ("FINRA") Rule 1240 (Continuing Education) that are incorporated by reference into LTSE Rule 2.154. Specifically, the Exchange requests that it be permitted to incorporate by reference a change made to FINRA Rule 1240 without the need for the Exchange to separately file a similar proposed rule change pursuant to Section 19(b) of the Exchange Act. The Exchange believes that this exemption is appropriate because it will promote consistency between LTSE and FINRA rules

pertaining to continuing education, which are not trading rules.<sup>5</sup>

As a condition of the requested exemption, LTSE has agreed to provide written notice to its members whenever a change is proposed to FINRA continuing education rules that are incorporated by reference into LTSE's continuing education rules.<sup>6</sup> Such notice would alert the Exchange's members to the FINRA proposed rule change and give them an opportunity to comment on the proposal.<sup>7</sup> The Exchange would similarly inform members in writing when the Commission approves any such proposed rule change.<sup>8</sup>

The Commission has issued exemptions similar to LTSE's request.<sup>9</sup> In granting one such exemption in 2022, the Commission repeated an earlier Commission statement that it would consider similar future exemption requests from other SROs, provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in

<sup>5</sup> Exemptive Request, *supra* note 1, at pp. 1-2. A self-regulatory organization ("SRO") wishing to incorporate rules of another SRO by reference may submit a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, if, among other things, the rules to be incorporated are categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration). See also Exchange Act Release No. 49260 (Feb. 17, 2004), 69 FR 8500 (Feb. 24, 2004).

<sup>6</sup> LTSE will provide such notice via a posting on the same website location where it posts its own rule filings pursuant to and within the timeframe required by Rule 19b-4(1) under the Exchange Act. The website posting will include a link to the location on FINRA's website where the applicable proposed rule change is posted. Exemptive Request, *supra* note 1, at p. 2, n.7.

<sup>7</sup> Exemptive Request, *supra* note 1, at p. 2.

<sup>8</sup> *Id.*

<sup>9</sup> See, e.g., Exchange Act Release No. 94707 (Apr. 12, 2022), 87 FR 22962 (Apr. 18, 2022) (order granting The Nasdaq Stock Market LLC and five affiliated national securities exchanges an exemption under Section 36(a) of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference FINRA rules); Exchange Act Release No. 83040 (Apr. 12, 2018), 83 FR 17198 (Apr. 18, 2018) (order granting MIAx PEARL, LLC, an exemption under Section 36(a) of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference rules of the Miami International Securities Exchange, LLC); Exchange Act Release No. 61534 (Feb. 18, 2010), 75 FR 8760 (Feb. 25, 2010) (order granting BATS Exchange, Inc., an exemption under Section 36(a) of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference rules of the Chicago Board Options Exchange, Inc., FINRA, and the New York Stock Exchange, LLC).

<sup>1</sup> See Letter from James G. Buckley, Chief Regulatory Officer, LTSE, to Vanessa Countryman, Office of the Secretary, SEC, dated April 19, 2023 ("Exemptive Request").

<sup>2</sup> 15 U.S.C. 78mm.

<sup>3</sup> 17 CFR 240.0-12 (Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act).

<sup>4</sup> 15 U.S.C. 78s(b).

<sup>25</sup> 17 CFR 200.30-3(a)(12).