

# Regulatory Notice

## 22-16

### Code of Procedure

#### FINRA Amends Its Rules Regarding Electronic Service and Filing of Documents in Disciplinary and Other Proceedings and Appeals

Effective Date: August 22, 2022

#### Summary

FINRA has adopted changes to its rules to permit, and in some instances require, electronic service and filing of documents in disciplinary and other proceedings and appeals.<sup>1</sup> FINRA has also amended its rules to require parties in proceedings before the Office of Hearing Officers (OHO) 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. These amendments will become effective August 22, 2022.

Questions concerning this *Notice* should be directed to:

- ▶ Philip Shaikun, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8451 or [Philip.Shaikun@finra.org](mailto:Philip.Shaikun@finra.org); or
- ▶ Ilana Herscovitz Reid, Assistant General Counsel, OGC, at (202) 728-8268 or [Ilana.Reid@finra.org](mailto:Ilana.Reid@finra.org).

#### Background & Discussion

FINRA has amended its rules regarding method of service and filing of documents in disciplinary proceedings and appeals to make permanent changes that were temporarily adopted during the period in which FINRA's operations have been impacted by the COVID-19 pandemic.<sup>2</sup> The temporary amendments allowed, and in some instances required, FINRA to serve certain documents on parties by email and required parties to file or serve documents by email, unless the parties agreed to an alternative method of service.<sup>3</sup> These temporary amendments pertain to disciplinary proceedings before OHO, and to appeals before the National Adjudicatory Council (NAC), among other types of administrative proceedings.<sup>4</sup>

July 22, 2022

#### Notice Type

- ▶ Rule Amendment

#### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Registered Representatives
- ▶ Senior Management

#### Key Topics

- ▶ Code of Procedure
- ▶ National Adjudicatory Council
- ▶ Office of Hearing Officers

#### Referenced Rules & Notices

- ▶ Rule 1012
- ▶ Rule 1015
- ▶ Rule 6490
- ▶ Rule 9132
- ▶ Rule 9133
- ▶ Rule 9135
- ▶ Rule 9146
- ▶ Rule 9321
- ▶ Rule 9341
- ▶ Rule 9349
- ▶ Rule 9351
- ▶ Rule 9522
- ▶ Rule 9524
- ▶ Rule 9525
- ▶ Rule 9559
- ▶ Rule 9630

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. 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. FINRA further notes that the SEC amended its rules in November 2020 to require electronic filing and service of documents in its administrative proceedings.<sup>5</sup>

Thus, FINRA has amended Rules 1012, 1015, 6490, 9132, 9133, 9146, 9321, 9341, 9349, 9351, 9522, 9524, 9525, 9559 and 9630 to make the temporary amendments regarding electronic service and filing permanent, with some modifications. More specifically, the amendments include 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 the Adjudicator orders an alternative method.<sup>6</sup> This differs from the temporary amendments, which require email service unless the parties agree to an alternative method.

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 will provide reasonable accommodations to them. FINRA will post the process for requesting an alternative method of service or filing to the FINRA website and explain it in the Notice of Complaint and in the Code and Guide letter.<sup>7</sup> If a party shows good cause, the Adjudicator will order that filing or service occur by an alternative method.

In addition, to facilitate the transition to electronic service and filing, FINRA has amended Rule 9135 to require parties in OHO proceedings to provide their contact information, including their email address, at the time of their first appearance and to keep their contact information up to date during the course of the proceeding. This rule change, which was not part of the temporary amendments, will help ensure that all documents are successfully sent from and received at a valid email address, while simultaneously helping to ensure that FINRA and all parties have accurate contact information for each other.

While the temporary amendments have been in effect, FINRA has elected email service whenever possible, and it is FINRA's intention to continue to do so. 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. The amended rules indicate that service by email is deemed 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.

FINRA notes that its rules do not allow for electronic service of an initial complaint. The only permissible methods of serving the initial complaint are by hand, mail or courier.<sup>8</sup>

### **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 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.<sup>9</sup>

FINRA Rule 1012(a)(3) has been amended 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 FINRA and the applicant agree.

FINRA Rule 1015(f)(1), which requires the NAC to serve a notice of a hearing before the NAC by facsimile or overnight courier, has been amended to allow service of the notice by email.<sup>10</sup>

### **FINRA Rule 6400 Series**

The 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.<sup>11</sup>

FINRA Rule 6490(e) has been amended to require the requesting party to file an appeal by email unless the Adjudicator orders an alternative method.

### FINRA Rule 9100 Series

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),<sup>12</sup> 9133(b)<sup>13</sup> and 9146(l)<sup>14</sup> provide that the documents and other information governed by those rules be served pursuant to Rule 9134, which permits service on the parties by personal service, mail or courier. Rule 9134 does not permit service by email.

FINRA Rule 9132(b) has been amended to allow FINRA to serve the relevant documents or information by email. FINRA Rules 9133(b) and 9146(l) have been amended to require parties to serve documents by email, unless the Adjudicator orders an alternative method of service.

In addition, as discussed, FINRA Rule 9135 has been amended 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.<sup>15</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 SEC review. FINRA Rules 9321,<sup>16</sup> 9341(c),<sup>17</sup> 9349(c)<sup>18</sup> and 9351(e)<sup>19</sup> 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 Rules 9321, 9341(c), 9349(c) and 9351(e) have been amended to allow for email as a method of service.

### 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. Rules 9522(a)(4),<sup>20</sup> 9524(a)(3)(A) and (B),<sup>21</sup> 9524(b)(3)<sup>22</sup> and 9525(e)<sup>23</sup> require FINRA to serve documents in connection with those proceedings, but do not allow for email as a method of service.

FINRA Rule 9522(a)(4), 9522(a)(3)(A) and (B), 9524(b)(3) and 9525(e) have been amended to allow for email as a method of service. Further, under amended 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 the Adjudicator orders an alternative method of service.

### FINRA Rule 9550 Series

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)<sup>24</sup> 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. Although Rule 9559(h)(2) already allowed for email as a method of service, paragraph (h)(2) has been amended to require the exhibit and witness lists to be served by email, unless the Adjudicator orders an alternative method of service.<sup>25</sup>

FINRA Rule 9559(q)(2)<sup>26</sup> 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. FINRA Rules 9559(q)(2) and 9559(q)(5), which do not allow for email as a method of service, have been amended to allow for email as a method of service.

### FINRA Rule 9600 Series

The FINRA Rule 9600 Series sets forth the procedures for members to seek exemptive relief from a variety of FINRA rules. Rules 9630(e)(1) and 9630(e)(2)<sup>27</sup> require the NAC to serve its decision pursuant to Rule 9134, which does not allow for email as a method of service.

FINRA Rule 9630(e) has been amended to allow for email as a method of service.

### Effective Date

The amendments to FINRA Rules 1012, 1015, 6490, 9132, 9133, 9135, 9146, 9321, 9341, 9349, 9351, 9522, 9524, 9525, 9559 and 9630 become effective on August 22, 2022.<sup>28</sup>

## Endnote

1. The Securities and Exchange Commission approved the amendments on June 23, 2022. *See* Securities Exchange Act Release No. 95147 (June 23, 2022), 87 FR 38803 (June 29, 2022) (Order Approving File No. SR-FINRA-2022-009).
2. *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. 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).
3. For ease of reference in this *Notice*, 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).
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* 85 FR 31832, *supra* note 2. On the effective date, the time frames will revert to their original form.
5. *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)).
6. 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.
7. 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.

8. See FINRA Rule 9134(a). Likewise, the temporary amendments do not change the method of service of the initial complaint. See 85 FR 31832, *supra* note 2.
9. FINRA Rule 1012(a) (General Provisions; Filing by Applicant or Service by FINRA) governs the filing and service requirements for the Rule 1000 Series.
10. FINRA Rule 1015(f) (Review by National Adjudicatory Council; Hearing). To streamline processes and avoid duplication, FINRA Rule 1015(a) has been amended 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.
11. FINRA Rule 6490(e) (Processing of Company-Related Actions; Request for an Appeal to Subcommittee of Uniform Practice Code Committee).
12. FINRA Rule 9132(b) (Service of Orders, Notices, and Decisions by Adjudicator; How Served).
13. FINRA Rule 9133(b) (Service of Papers Other Than Complaints, Orders, Notices or Decisions; How Served).
14. FINRA Rule 9146(l) (Motions; General).
15. FINRA Rule 9135 (Filing of Papers with Adjudicator: Procedure).
16. FINRA Rule 9321 (Transmission of Record).
17. FINRA Rule 9341(c) (Oral Argument; Notice Regarding Oral Argument).
18. FINRA Rule 9349(c) (National Adjudicatory Council Formal Consideration; Decision; Issuance of Decision After Expiration of Call for Review Period).
19. FINRA Rule 9351(e) (Discretionary Review by FINRA Board; Issuance of Decision After Expiration of Call for Review Period).
20. FINRA Rule 9522(a)(4) (Initiation of Eligibility Proceeding; Member Regulation Consideration; and Requirements for an Interim Plan of Heightened Supervision; Service).
21. FINRA Rule 9524(a)(3)(A) and (B) (National Adjudicatory Council Consideration; Transmission of Documents).
22. FINRA Rule 9524(b)(3) (National Adjudicatory Council Consideration; Issuance of Decision After Expiration of Call for Review Period).
23. FINRA Rule 9525(e) (Discretionary Review by the FINRA Board; Issuance of Decision).
24. FINRA Rule 9559(h) (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series; Transmission of Documents).
25. As with the amendment to Rule 1015(a) noted *supra* note 10, Rule 9559(h) has also been amended to 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.
26. FINRA Rule 9559(q) (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series; Call for Review by the National Adjudicatory Council).
27. FINRA Rule 9630(e) (Procedures for Exemptions; Appeal; Decision).
28. On the effective date, the temporary amendments to FINRA Rules 1012, 1015(f)(1), 6490, 9132, 9133, 9146, 9321, 9341(c), 9349, 9351, 9522, 9524(a)(3), 9525, 9559, and 9630 will expire. See 87 FR 43335, *supra* note 2.