

SR-FINRA-2012-050, SEC Release No. 34-68471

Proposed Rule Change to Adopt a Supplementary Schedule for Derivatives and Other Off-Balance Sheet Items Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information)

(OBS=off balance sheet)

Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt a supplementary schedule for derivatives and other off-balance sheet items pursuant to FINRA Rule 4524 (Supplemental FOCUS Information).

To that end, the proposal would require all carrying or clearing firms to file with FINRA the Derivatives and Other Off-Balance Sheet Items Schedule (“OBS”) within 22 business days of the end of each calendar quarter. The proposed OBS is necessary for FINRA to more effectively examine for compliance with, and enforce, its rules on capital adequacy. The proposed OBS enables FINRA to examine on an ongoing basis the potential impact off-balance sheet activities may have on carrying and clearing firms’ net capital, leverage and liquidity, and ability to fulfill their customer protection obligations.

In the aftermath of the financial crisis, FINRA began to closely monitor firms’ levels of leverage and available liquidity to meet their funding needs and began to collect certain additional information from certain carrying and clearing firms with regard to their proprietary positions, financing transactions and certain off-balance sheet transactions. The proposed OBS will allow FINRA to obtain more comprehensive and consistent information regarding carrying and clearing firms’ off balance sheet assets, liabilities and other commitments. The proposed OBS would require firms to report their gross exposures in financing transactions (e.g., reverse repos, repos and other transactions that are otherwise netted under generally accepted accounting principles, reverse repos and repos to maturity and collateral swap transactions), interests in and exposure to variable interest entities, non-regular way settlement transactions (including to be announced or TBA securities and delayed delivery/settlement transactions), underwriting and other financing commitments, and gross notional amounts in centrally cleared and non-centrally cleared derivative contracts involving equities, commodities, interest rates, foreign exchange derivatives and credit default swaps. However, the proposed OBS contains a de minimis off-balance sheet activity exception for each reporting period. If the total of all off-balance sheet items is less than 10% of the firm’s excess net capital on the last day of the reporting period, the firm will not be required to file the proposed OBS for the reporting period.²

so they will begin reporting 22 jan 2013? and will those reports be public? will these "off balance sheet" arrangements be in the 12/31/2012 financials? don't you think investors in these financial firms deserve to know this stuff? this is particularly true also of customers, since, if the financial firm files for bankruptcy, the customers can recover some portion of their portfolios AFTER secured creditors, as if the dealers have taken title to the customers' assets. cash account customers should be in a favored position but don't seem to be favored over customers with margin accounts.

Federal Register /Vol. 77, No. 247 /Wednesday, December 26, 2012 /Notices

SR-FINRA-2012-056

Proposed Rule Change to Extend the Expiration Date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps)

SECURITIES AND EXCHANGE

COMMISSION

**[Release No. 34-68471; File No. SR-FINRA-
2012-056]**

Self-Regulatory Organizations;

Financial Industry Regulatory

Authority, Inc.; Notice of Filing and

Immediate Effectiveness of Proposed

Rule Change To Extend the Expiration

Date of FINRA Rule 0180 (Application

of Rules to Security-Based Swaps)

Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to extend the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps) to July 17, 2013. FINRA Rule 0180 temporarily limits, with certain exceptions, the application of FINRA rules with respect to security-based swaps.

13 In its Exemptive Release, the Commission noted that the relief is targeted and does not include, for instance, relief from the Act’s antifraud and anti-manipulation provisions. FINRA has noted that FINRA Rule 0180 is similarly targeted. For instance, paragraph (a) of FINRA Rule 0180 provides that FINRA rules shall not apply to members’ activities and positions with respect to security-based swaps, except for FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), 3310 (Anti-Money Laundering Compliance Program) and 4240 (Margin Requirements for Credit Default Swaps). See also paragraphs (b) and (c) of FINRA Rule 0180 (addressing the applicability of additional rules) and FINRA Rule 0180 Notice of Filing.

in other words, the other rules stand (principles of trade, fraud and manipulation, anti-money laundering, margin requirements) but the effective date of security-based swaps is July 17, 2013.

but i think this is horse manure:

FINRA believes that, by extending the expiration of FINRA Rule 0180, the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

this exemption puts investors at risk because these security-based swaps are created BECAUSE OF shortselling and not wanting to apply market deadlines to the shortselling.

SR-FINRA-2012-004

Proposed Rule Change to Extend the Implementation of FINRA Rule 0180 (Application of Rules to Security-Based Swaps)

Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to extend to January 17, 2013 the implementation of FINRA Rule 0180 (Application of Rules to Security-Based Swaps). FINRA Rule 0180, filed for immediate effectiveness by FINRA on July 8, 2011, will expire on January 17, 2012. FINRA Rule 0180 temporarily limits, with certain exceptions, the application of FINRA rules with respect to security-based swaps.

they said they had difficulty defining "security", so that was why it was not implemented in a timely fashion. i think the industry had 1.5 year's notice and needs no extension of time. and now they want to extend it for another 6 months. the explanation is only that it wouldn't affect investors? this certainly affects investors if they do not have prompt settlement of securities trades. i don't think this should have qualified for a delay, as in SR-FINRA-2012-056.

i think the SEC and FINRA are applying a formula to certain issues that they are supposed to consider. since the SEC wants to list rules separately, by organization, instead of a master list that lists comment due dates, subject matter, implementation dates, the SEC is limiting input to those people who "find" the rules on their website. the language is getting less descriptive of the rule in the federal register. now they approve rules that refer you to another rule and further refers you to yet another rule. i am beginning to object to the process.

if you saw a crime being committed, would you help the thief get away? this is what the regulators have done. they have prepared the getaway car. that does not lessen the responsibility of the financial firms for the illegal/immoral procedures that were developed. however, the regulators have not yet protected the investors and we are waiting. the market rules appear to be to limit the investors but not the shortsellers or brokers or clearinghouses.

if the SEC cannot figure this out, maybe they need an advisory board of investors. these practices run directly against their mission statement. the SEC should not be concerned with keeping financial firms in business in spite of their practices. fines do not restore the market. disciplinary actions guarantee the firm's survival and do not punish the firm nor force the firm to adhere to the corrective action.

i can tell you, as a private citizen, that if you ask a question about audit procedures, accounting statements, rules, effective dates, that you get no answer.

if the rules seem complicated, it is to accommodate shortselling. the industry does whatever it can to limit or delay rules. this is because they are making \$ from the investors secretly and they do not want this money train to stop. they depend on the ignorance of the regulators, the general public, the legislators.

yes, i am still working on the SEC's 501 page document about clearing and settlement.

[34-68071](#) Oct. 18, 2012 **Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers** (Corrected to conform to *Federal Register* version)
File No.: S7-08-12
Comments Due: January 22, 2013