

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92098; File No. SR-FINRA-2021-013)

June 3, 2021

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Supplemental Inventory Schedule Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information)

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 May 26, 2021, 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. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 the Supplemental Inventory Schedule (“SIS”) pursuant to FINRA Rule 4524 (Supplemental FOCUS Information) so that members that are filers of FOCUS Report Part II will not be required to file the SIS. The proposed rule change does not make any other change to the SIS or the instructions thereto.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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

FINRA Rule 4524 provides in part that, as a supplement to filing FOCUS Reports required pursuant to SEA Rule 17a-5<sup>4</sup> and FINRA Rule 2010, each member, as FINRA shall designate, shall file such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest. In general, members with a FOCUS filing requirement must either file a

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<sup>4</sup> 17 CFR 240.17a-5 (hereinafter cited as SEA “Rule 17a-5”). SEA Rule 17a-5 governs financial and operational reporting by brokers and dealers. Members are required to file with FINRA, through the eFOCUS System, reports concerning their financial and operational status using SEC Form X-17A-5 (the “FOCUS Report”). See, e.g., Information Notice, November 23, 2020 (2021 and First Quarter of 2022 Report Filing Due Dates); Regulatory Notice 18-38 (November 2018) (Amendments to the SEC’s Financial Reporting Requirements – eFOCUS System Updates and Annual Audit Requirements). “FOCUS” stands for Financial and Operational Combined Uniform Single.

FOCUS Report Part II if they clear transactions or carry customer accounts<sup>5</sup> or file a FOCUS Report Part IIA if they do not.<sup>6</sup> Members that are government securities broker-dealers registered under SEA Section 15C<sup>7</sup> do not file a FOCUS Report and instead are required to file reports concerning their financial and operational status using the Report on Finances and Operations of Government Securities Brokers and Dealers (“FOGS Report”).<sup>8</sup> FINRA established the SIS requirement pursuant to Rule 4524 in 2014.<sup>9</sup> Pursuant to this requirement, the SIS must be filed by a member that is required to file FOCUS Report Part II, FOCUS Report Part IIA or the FOGS Report Part I, with inventory positions as of the end of the FOCUS or FOGS reporting period, unless the member has (1) a minimum dollar net capital or liquid capital requirement of less than \$100,000; or (2) inventory positions consisting only of money market mutual funds. A member with inventory positions consisting only of money market mutual funds must affirmatively indicate through the eFOCUS system that no SIS filing is required for the reporting period. As FINRA noted in establishing the SIS, the purpose of the SIS

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<sup>5</sup> Currently, members that calculate net capital using Appendix E to SEA Rule 15c3-1 file FOCUS Report Part II CSE, rather than FOCUS Report Part II. Such members are referred to as “alternative net capital” or “ANC” broker-dealers.

<sup>6</sup> SEA Rule 17a-5.

<sup>7</sup> 15 U.S.C. 78o-5.

<sup>8</sup> Department of the Treasury Form G-405.

<sup>9</sup> See Securities Exchange Act Release No. 73192 (September 23, 2014), 79 FR 58390 (September 29, 2014) (Order Approving Proposed Rule Change; File No. SR-FINRA-2014-025); see also Regulatory Notice 14-43 (October 2014) (SEC Approves Supplemental Inventory Schedule).

requirement is to provide more detailed information of inventory positions held by members.<sup>10</sup>

The Commission, as part of its rulemakings pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)<sup>11</sup> to establish a regulatory framework for security-based swaps (“SBS”), has adopted among other things amendments to the FOCUS reporting requirements, including amendments to FOCUS Report Part II<sup>12</sup> designed to elicit additional information about the SBS activities of broker-dealers that file FOCUS Report Part II, including broker-dealers that will also be registered as SBS dealers and major SBS participants.<sup>13</sup>

FINRA believes that Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions (“Schedule 1”) to FOCUS Report Part II, as amended, includes substantially all the information that is required by the SIS, including, among other things, information on the following types of positions:

- U.S. Treasury securities;
- U.S. government agency and U.S. government-sponsored enterprise securities;

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<sup>10</sup> See note 9 supra.

<sup>11</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>12</sup> See Securities Exchange Act Release No. 87005 (September 19, 2019), 84 FR 68550 (December 16, 2019) (Final Rule: Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers) (“Reporting Requirements Release”).

<sup>13</sup> See Reporting Requirements Release, 84 FR at 68573. Pursuant to the SEC’s rule change, ANC broker-dealers that currently file FOCUS Report Part II CSE will file new FOCUS Report Part II.

- securities issued by states and political subdivisions in the U.S.;
- foreign securities;
- money market instruments;
- private label mortgage backed securities;
- other asset-backed securities;
- corporate obligations;
- stocks and warrants (other than arbitrage positions);
- arbitrage positions;
- spot commodities;
- other securities and commodities; and
- securities with no ready market.

Further, line 11 of the SIS requires specified information on “derivatives including options,” based on whether the positions are centrally cleared or not. On Schedule 1 this information will be reported based on whether the position is a cleared or non-cleared SBS, mixed swap or swap, or will be reported under the category “other derivatives and options.”<sup>14</sup> Schedule 1 will also require information on counterparty netting and cash collateral netting.

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<sup>14</sup> Schedule 1 requires the information for cleared and non-cleared SBS, mixed swaps and swaps in separate categories on Lines, 15, 16 and 17 of Schedule 1, while the SIS requires that SBS and swaps be reported in aggregate under “centrally cleared” and “all other” under Line 11 of the SIS. Further, Schedule 1 requires that other derivatives or options be reported in aggregate on Line 18 of Schedule 1, while the SIS specifies separate categories for “centrally cleared” and “all other” options, “forward settling and delayed delivery transactions,” “futures” and “other” products under Line 11 of the SIS. Also, under Line 13 of the SIS (“securities with no ready market”), the category for “other (include limited partnership interests)” is reflected as “other” under Line 13 of Schedule 1.

Given that substantially all the information required by the SIS is covered by Schedule 1 of FOCUS Report Part II, as amended, FINRA believes that it would be an unnecessary duplication of reporting to require members that file FOCUS Report Part II to continue to submit the SIS after the compliance date<sup>15</sup> for certain of the SEC's SBS rulemakings, including the new FOCUS reporting requirements pursuant to the Reporting Requirements Release. As such, in the interest of avoiding unnecessary duplication, FINRA believes it is appropriate to remove FOCUS Report Part II filers from the scope of members required to file the SIS.<sup>16</sup> Accordingly, the proposed rule change would revise the first paragraph under the General Instructions to the SIS so as to provide, in relevant part, that: "The Supplemental Inventory Schedule (SIS) is to be filed within 20 business days after the end of each firm's FOCUS reporting period by all FOCUS Part

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<sup>15</sup> The Commission has broadly coordinated the compliance date for certain SBS rulemakings by setting October 6, 2021, as the compliance date (the "compliance date" or "SBS compliance date") for the registration requirements that the Commission adopted for SBS dealers and major SBS participants. See Reporting Requirements Release, 84 FR at 68600; see also Key Dates for Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, available on the Commission website at: <<https://www.sec.gov/page/key-dates-registration-security-based-swap-dealers-and-major-security-based-swap-participants>>.

<sup>16</sup> FINRA notes that members that have elected to be treated as capital acquisition brokers ("CABs") would be subject to the proposed rule change to the extent that FINRA Rule 4524, pursuant to CAB Rule 452(b), applies to CABs. To the extent any CABs are FOCUS Report Part II filers, then, pursuant to the rule change, such firms would no longer need to file the SIS.

The proposed rule change would not impact funding portal members because such members are not subject to Rule 4524 and are not subject to the FOCUS reporting requirements.

IIA and FOGS Part I filers . . .”<sup>17</sup> FINRA believes it is appropriate to implement this revision in alignment with the reporting cycle that coincides with the SEC’s SBS compliance date. FINRA is not proposing any other change to the SIS.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be October 31, 2021, for SIS filings that report on the month ending October 31, 2021, and are due by November 30, 2021. Thus, SISs filed on or after October 31, 2021, would reflect the proposed rule change.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>18</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. Consistent with the provisions of the Act, FINRA believes that eliminating the SIS filing requirement for members that file FOCUS Report Part II, as amended by the Reporting Requirements Release, will avoid unnecessary duplication of reporting for such members while ensuring that regulators continue to receive the needed information reflected on these forms, given that Schedule 1 of FOCUS Report Part II, as amended, includes substantially all the information required by the SIS. The proposed rule change

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<sup>17</sup> The SIS, as proposed to be revised pursuant to the rule change, is included as Exhibit 3 to this rule filing.

<sup>18</sup> 15 U.S.C. 78o-3(b)(6).

will thereby reduce unnecessary burdens while also helping to protect investors and serve the public interest.

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. Schedule 1 of FOCUS Report Part II, as amended, requires substantially all the information required by the SIS. Eliminating the SIS filing requirement for members that file FOCUS Report Part II, as amended, would avoid unnecessary duplication of reporting, thereby reducing burdens for such members, while ensuring that regulators continue to receive the needed information reflected on these forms.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).



At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2021-013 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-2021-013. This file number should be included on the subject line if e-mail 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 a.m. and 3 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-2021-013 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).