SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92561; File No. SR-FINRA-2021-009)

August 4, 2021

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Adopt a Supplemental Liquidity Schedule, and Instructions Thereto, Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information)

I. Introduction

On April 30, 2021, the Financial industry Regulatory Authority ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act ("Exchange Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt a Supplemental Liquidity Schedule, and Instructions thereto, pursuant to FINRA Rule 4524 (Supplemental FOCUS Information).

The proposed rule change was published for comment in the Federal Register on May 18, 2021.[3] The comment period closed on June 8, 2021. The Commission received one comment letter in response to the Notice.[4] On June 22, 2021, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change to August 16, 2021. On July 7, 2021, FINRA responded to the

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4

3 See Exchange Act Release No. 91876 (May 12, 2021), 86 FR 27005 (May 18, 2021) (File No. SR-FINRA-2021-009) ("Notice").

4 See Letter from Kevin Zambrowicz, Managing Director & Associate General Counsel, the Securities Industry and Financial Markets Association ("SIFMA"), dated June 8, 2021 ("SIFMA Letter").

comment letter received in response to the Notice.[5] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change[6]

FINRA Rule 4524 provides in part that FINRA may require certain members to file supplements to the Financial and Operational Combined Uniform Single Report ("FOCUS Report"), which is filed pursuant to Rule 17a-5 under the Exchange Act[7] and FINRA Rule 2010. These supplements may include 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. FINRA Rule 4524 further requires FINRA to file a proposed schedule or report with the Commission pursuant to section 19(b) of the Exchange Act. Pursuant to FINRA Rule 4524, FINRA proposed to adopt a Supplemental Liquidity Schedule ("SLS"), and Instructions thereto.

A FINRA member that would be required to file the Form SLS would report detailed information relating to the member's:

- reverse repurchase and repurchase agreements;
- securities borrowed and securities loaned;

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5 See Letter from Adam Arkel, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, dated July 7, 2021 ("FINRA Letter"). The FINRA Letter is available on FINRA's website at https://www.finra.org/sites/default/files/2021-07/sr-finra-2021-009-response-to-comments.pdf, on the Commission's website at https://www.sec.gov/comments/sr-finra-2021-009/srfinra2021009.htm, and at the Commission's Public Reference Room.

6 The subsequent description of the proposed rule change is substantially excerpted from FINRA's description in the Notice. See Notice, 86 FR at 27005-06.

7 17 CFR 240.17a-5 ("Rule 17a-5"). Paragraph (a) of Rule 17a-5 requires a broker-dealer to file a version of the FOCUS Report.

- non-cash reverse repurchase and securities borrowed transactions;
- non-cash repurchase and securities loaned transactions;
- bank loan and other committed and uncommitted credit facilities;
- total available collateral in the member's custody;
- margin and non-purpose loans;
- collateral securing margin loans;
- deposits at clearing organizations; and
- cash and securities received and delivered on derivative transactions not cleared through a central clearing counterparty ("CCP").

According to FINRA, the SLS is tailored to apply only to members with the largest customer and counterparty exposures. Unless otherwise permitted by FINRA in writing, each carrying member with $25 million or more in free credit balances, as defined under Exchange Act Rule 15c3-3(a)(8),[8] and each member whose aggregate amount outstanding under repurchase agreements, securities loan contracts and bank loans is equal to or greater than $1 billion, as reported on the member's most recently filed FOCUS report, would be required to file the SLS. The SLS would be required to be completed as of the last business day of each month and filed within 24 business days after the end of the month. A member would not need to file the SLS for any period where the member does not meet the $25 million or $1 billion thresholds.

III. Comment Summary

[8] 17 CFR 240.15c3-3 ("Rule 15c3-3").

As noted above, the Commission received one comment letter in response to the Notice.[9] In its comment letter, SIFMA asked that the implementation timing of the SLS be aligned with the implementation of the Federal Reserve Board's "6G" reporting framework with respect to the FR 2052a reports required to be filed by FINRA member firms that have bank holding company affiliates,[10] or that additional time be allotted for the implementation of the SLS.[11]

Additionally, noting that some of the reporting requirements for the SLS may be duplicative of information that must be reported to the Federal Reserve Board on FR 2052a reports, SIFMA has asked that the SLS contain an "overlay" that is mapped to the 5G/6G reporting frameworks of the Federal Reserve Board. According to SIFMA, this would have the effect of consolidating certain reporting categories where the respective categories and definitions align for the FINRA and the Federal Reserve Board reports, which would in turn streamline the reporting process for firms that are required to file with both FINRA and the Federal Reserve Board. Firms that are not required to file with both FINRA and the Federal Reserve Board would not be impacted, according to SIFMA.[12]

In response, FINRA reiterated that the proposed SLS is designed to improve FINRA's ability to monitor for events that signal an adverse change in the liquidity risk of broker-dealers that that file the schedule. FINRA also noted the extensive prior

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9 See supra note 4.

10 According to SIFMA, member firms are expected to be working on the implementation of the Federal Reserve 6G reporting through the end of 2022.

11 See SIFMA Letter at 3.

12 See SIFMA Letter at 3-4.

outreach and discussions that FINRA conducted regarding the potential burdens on broker-dealers that are subsidiaries of bank holding companies. According to FINRA, this consultation resulted in the alignment of categories in the proposed SLS with reporting required in the Federal Reserve Board's Complex Institution Liquidity Monitoring Report (referred to as "FR 2052a").[13]

FINRA also stated the SLS serves an important regulatory purpose because access to the information that would be reported on the SLS is important for FINRA to efficiently monitor on an ongoing basis the liquidity profile of its members. FINRA stated that the information would facilitate FINRA's efforts to understand and respond to firms that may appear similar based on their balance sheets, but in fact have different liquidity risk profiles which could negatively the ability to fund operations during periods of market stress or other stress events. Absent the reporting set forth in the SLS, FINRA noted that it would need to request such information on a firm-by-firm basis as the need arises, which could, according to FINRA, result in similar or potentially larger costs for some firms.[14]

While acknowledging that some members that would be subject to the proposed SLS could face potential burdens with respect to reporting requirements from other regulators, FINRA stated that it would revisit the reporting categories in the proposed SLS as appropriate with respect to potential alignments of such categories with other reporting requirements, including the FR 2052a, depending on how they evolve in the

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13 See FINRA Letter at 2.

14 Id.

future. Consequently, FINRA stated that it believes it would not be appropriate to delay implementation of the proposed SLS.[15]

Finally, FINRA stated that it believes that the proposed timeframe for implementation of the proposed SLS set forward in the Notice affords members sufficient time to prepare.[16]

IV. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letter, and FINRA's response to the comment letter, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[17] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,[18] which requires, among other things, that the Commission determine any FINRA rule to be designed to protect investors and the public interest.

The Commission believes that the proposed SLS, which will require certain FINRA members, subject to the thresholds described above, to provide detailed information regarding various aspects of the member's liquidity profile will enable more effective monitoring of the liquidity risk of FINRA members by the Commission and FINRA. The Commission believes that regular and ongoing access to such information is important for the purpose of understanding the liquidity risks that member firms face, as

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15 Id. at 3.

16 Id.

17 In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

18 15 U.S.C. 78o-3(b)(6).

well as differences in liquidity risks among firms that otherwise may appear to be similar based on similar characteristics in the firms' balance sheets. By enabling more effective monitoring of liquidity risk, the Commission believes that the information obtained through the SLS will protect investors and the public interest by providing FINRA and the Commission with information needed to better anticipate and respond to the risks that FINRA member firms may face during market or other stress events that could jeopardize their ability to fund their operations. FINRA estimates that between 85 and 100 broker-dealers will be required to file Form SLS, the universe of broker-dealers carrying customer accounts with at least $25 million in free credit balances or with a minimum of $1 billion in repurchase agreements, bank loans or securities loans outstanding. Therefore, the Commission believes that the proposed Form SLS is reasonably designed to apply only to those broker-dealers that have the highest potential to adversely affect investors and the public interest in a liquidity stress event.

Finally, the Commission believes that FINRA has reasonably addressed the concerns raised by SIFMA's comment letter. Specifically, the Commission agrees that the SLS would serve an important regulatory purpose by providing FINRA and the Commission with information useful in evaluating a member firm's liquidity risk profile. While the Commission recognizes that there is the potential for burdens on certain member firms that are subject to the regulatory reporting requirements of other regulators, the Commission believes that the important regulatory purpose served by the SLS justifies the potential burdens. The Commission believes that absent the SLS, FINRA and the Commission would be required to request the information supplied in the SLS repeatedly and on a firm-by-firm basis in order to obtain the information necessary

to monitor member firms for potential liquidity concerns. Such an approach would not only create regulatory inefficiency, but could also result in similar or potentially larger costs for firms, as FINRA noted.

Moreover, in light of the prior outreach that FINRA has conducted including publishing an earlier version of SLS in January 2018 and revising it in response to feedback from industry participants,[19] the Commission believes that FINRA's proposed approach to revisit the reporting categories in the SLS with a view to potential alignments of such categories with other reporting requirements depending on how the they evolve would have the effect of further minimizing the regulatory burdens on member firms subject to the SLS. Consequently, the Commission believes that FINRA has appropriately addressed concerns raised in the comment letter concerning reducing the reporting costs imposed by the SLS.

Finally, the Commission agrees with FINRA that it is not appropriate to delay implementation of the SLS beyond the timeframe set forth in the Notice. Because FINRA previously published a version of the SLS in 2018, and will announce an effective date that will be 180 days following the publication of a Regulatory Notice published no later than 30 days after Commission approval, the Commission believes that member firms will have sufficient time to prepare to implement the SLS. Furthermore, in light of recent events connected to market volatility, which were discussed in the Notice,[20] the Commission believes that further delaying implementation of the SLS will

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19 See Regulatory Notice 18-02 (January 2018) (Liquidity Reporting and Notification). See also Notice, 86 FR at 27006.

20 See Notice, 86 FR at 27005.

undermine the regulatory interest that the Commission and FINRA have in monitoring member firms' liquidity risk profiles.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR-FINRA-2021-009) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier
Assistant Secretary

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21 15 U.S.C. 78s(b)(2).

22 17 CFR 200.30-3(a)(12).