

SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-88866]

May 14, 2020

Order Designating Financial Industry Regulatory Authority, Inc., to Receive Form X-17A-5 (FOCUS Report) from Certain Security-Based Swap Dealers and Major Security-Based Swap Participants

I. Introduction

Currently, broker-dealers are required to file on a monthly or quarterly basis various parts (Part II, Part IIB, Part II CSE, or Part IIA) of Form X-17A-5 (“FOCUS Report”), a form which is used to report financial and operational information. On September 19, 2019, the Commission adopted recordkeeping, reporting, and notification requirements for security-based swap dealers and major security-based swap participants (collectively, “security-based swap entities” or “SBSEs”) and additional recordkeeping and reporting requirements for broker-dealers to account for their security-based swap activities.¹ In adopting these requirements, the Commission amended Part II of the FOCUS Report to elicit additional information about the security-based swap activities of broker-dealers that file Part II, including broker-dealers that will also be registered as SBSEs. In addition, the Commission adopted amendments that will require the broker-dealers that currently file Part IIB and Part II CSE to file revised Part II. Further, the Commission adopted a rule (“Rule 18a-7”) pursuant to Section 15F of the Securities Exchange Act of 1934 (“Exchange Act”) that will require SBSEs that are not also registered with the Commission as broker-dealers or regulated by a prudential regulator (“stand-alone SBSEs”) to file Part II of the FOCUS Report on a monthly basis and SBSEs for which there is a prudential

¹ See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers*, Securities Exchange Act Release No. 87005 (Sept. 19, 2019), 84 FR 68550 (Dec. 16, 2019) (“Recordkeeping Adopting Release”).

regulator (“bank SBSEs”) to file new Part IIC of the FOCUS Report on a quarterly basis.² The compliance date for these entities to file revised Part II or new Part IIC of the FOCUS Report is October 6, 2021.³

Most broker-dealers currently file the FOCUS Report electronically on the eFOCUS system⁴ developed by the Financial Industry Regulatory Authority, Inc. (“FINRA”). These broker-dealers file the FOCUS Report pursuant to a plan established by the broker-dealer’s self-regulatory organization (“SRO”), the procedures and provisions of which have been submitted to and declared effective by the Commission pursuant to paragraph (a)(3) of Exchange Act Rule 17a-5.⁵ Because stand-alone SBSEs and bank SBSEs will not be dually registered as broker-dealers, they will not be supervised by SROs and therefore are not subject to the SRO plans requiring the FOCUS Report to be filed on FINRA’s eFOCUS system. Rule 18a-7 requires stand-alone SBSEs and bank SBSEs to file the FOCUS Report with “the Commission or its designee”⁶ to provide the Commission with the option of requiring that these registrants file the FOCUS Report with a third party.⁷ By this order, the Commission is designating FINRA as the organization with which stand-alone SBSEs and bank SBSEs must file revised Part II and new Part IIC of the FOCUS Report, respectively, on and after the October 6, 2021, compliance date.

² See 17 CFR 240.18a-7(a)(1) (applicable to stand-alone SBSEs); 17 CFR 240.18a-7(a)(2) (applicable to bank SBSEs). Revised Part II of the FOCUS Report is available on pages 68672-68721 of the Recordkeeping Adopting Release. New Part IIC of the FOCUS Report is available on pages 68722-68733 of the Recordkeeping Adopting Release.

³ See *Recordkeeping Adopting Release*, 84 FR at 68600-601; *Cross-Border Application of Certain Security-Based Swap Requirements*, Exchange Act Release No. 87780 (Dec. 18, 2019), 85 FR 6270 (Feb. 4, 2020).

⁴ FINRA’s eFOCUS system is available at <https://www.finra.org/filing-reporting/efocus>.

⁵ See 17 CFR 240.17a-5(a)(3).

⁶ See 17 CFR 240.18a-7(a).

⁷ See *Recordkeeping Adopting Release*, 84 FR at 68572.

II. Discussion

FINRA is uniquely qualified to provide the Commission with a familiar and consolidated platform for stand-alone SBSEs and bank SBSEs to file the FOCUS Report, uniform ancillary ongoing services associated with these filings, and a consolidated platform for transmitting this data to the Commission.

First, FINRA-supervised broker-dealers currently file the FOCUS Report through the eFOCUS system owned and operated by FINRA. The Commission anticipates many firms that register as stand-alone SBSEs and bank SBSEs will be affiliated with broker-dealers that currently use the eFOCUS system. FINRA's eFOCUS system is unique in that it would enable the broker-dealer and non-broker-dealer entities to file both entities' FOCUS Reports on the same platform using the same preexisting templates, software, and procedures currently used by the broker-dealer.

Second, FINRA is uniquely able to transmit the data in the FOCUS Report filings by broker-dealers and non-broker-dealer SBSEs in a consolidated data transmission to the Commission. Thus, Commission staff will be able to compare data between these different types of entities in a consistent manner and in the same database, which will allow staff to monitor these registrants more effectively.

Third, if FINRA is not designated to receive FOCUS Report filings from stand-alone and bank SBSEs, a separate, parallel filing system would need to be created only for non-FINRA supervised filers, which would create complexity and redundancy because the same information for required filers would be located on two different filing systems. This, in turn, could create unnecessary confusion and uncertainty for filers. It might also inadvertently result in different available services simply based on which filing system the entity is assigned to use.

III. Conclusion

IT IS HEREBY ORDERED that FINRA is designated as the organization with which stand-alone SBSEs must file Part II of FOCUS Report and bank SBSEs must file Part IIC of the FOCUS Report in accordance with the requirements of those filings, Section 15F of the Exchange Act, and Rule 18a-7.⁸

By the Commission.

J. Matthew DeLesDernier,
Assistant Secretary.

⁸ Technical instructions for filing the FOCUS Report with FINRA will be made available on the Commission's or FINRA's website before the October 6, 2021, compliance date.