

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92713; File No. SR-FINRA-2021-010)

August 20, 2021

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc., Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Requirements for Covered Agency Transactions under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR-FINRA-2015-036

I. Introduction

On May 7, 2021, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-FINRA-2021-010 (“Proposed Rule Change”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder, to amend the margin requirements for covered agency transactions under FINRA Rule 4210.³ The Proposed Rule Change was published for public comment in the Federal Register on May 25, 2021.⁴ On June 30, 2021, FINRA consented to an extension of 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 approve or disapprove the Proposed Rule Change to August 23, 2021.⁵ On August 9, 2021, FINRA responded to the comment letters received in response to the Notice and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 91937 (May 19, 2021), 86 FR 28161 (May 25, 2021) (File No. SR-FINRA-2021-010) (“Notice”).

⁴ See id.

⁵ See letter from Adam Arkel, Associate General Counsel, Office of General Counsel, FINRA, to Sheila Swartz, Division of Trading and Markets, Commission, dated June 30, 2021.

filed an amendment to modify the Proposed Rule Change (“Amendment No. 1”).⁶ The Commission is publishing this notice and order to solicit comment on the Proposed Rule Change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act⁷ to determine whether to approve or disapprove the Proposed Rule Change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

FINRA is proposing revisions to the margin requirements for Covered Agency Transactions in FINRA Rule 4210 as approved pursuant to SR-FINRA-2015-036.⁸ Broadly, the Proposed Rule Change, as modified by Amendment No. 1 would: (1) eliminate the two percent maintenance margin requirement that applies to non-exempt accounts under FINRA Rule 4210; (2) subject to specified conditions and limitations, permit FINRA members to take a capital charge in lieu of collecting margin for excess net mark to market losses on Covered Agency Transactions; and (3) make revisions designed to streamline, consolidate and clarify the Covered Agency Transaction rule language.⁹

⁶ See Amendment No. 1. The comment letters received in response to the Notice and the full text of Amendment No. 1 are available on the Commission’s website at: <https://www.sec.gov/comments/sr-finra-2021-010/srfinra2021010.htm>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR-FINRA-2015-036). FINRA has extended the implementation date of the margin requirements (other than the risk limit determination requirements that became effective on December 15, 2016) pursuant to SR-FINRA-2015-036 on several occasions, most recently to October 26, 2021. See Notice, 86 FR at 28162.

⁹ See Notice, 86 FR at 28163.

Amendment No. 1 would make the following changes to the Proposed Rule Change: (1) modify the definition of “non-margin counterparty” to exclude small cash counterparties and other exempted counterparties; and (2) define a FINRA member’s “specified net capital deductions” as the net capital deductions required by paragraph (e)(2)(H)(ii)d.1. of FINRA Rule 4210 with respect to all unmargined excess net mark to market losses of its counterparties, except to the extent that the member, in good faith, expects such excess net mark to market losses to be margined by the close of business on the fifth business day after they arose.¹⁰ In addition, Amendment No. 1 states that, if the Commission approves the Proposed Rule Change, as modified by Amendment No. 1, FINRA will announce the effective date of the Proposed Rule Change, as modified by Amendment No. 1, in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date would be between nine and ten months following the Commission’s approval.

III. Proceedings to Determine Whether to Approve or Disapprove SR-FINRA-2021-010 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the Proposed Rule Change, as modified by Amendment No. 1, should be approved or disapproved.¹¹ Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change, as modified by Amendment No. 1. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the Proposed Rule Change, as modified by Amendment No. 1.

¹⁰ Amendment No. 1 also contains some conforming changes to paragraph numbering to accommodate the proposed modifications to the rule text. See Exhibit 4 to Amendment No. 1.

¹¹ 15 U.S.C. 78s(b)(2)(B).

Pursuant to Section 19(b)(2)(B) of the Exchange Act,¹² the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning whether the Proposed Rule Change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Exchange Act,¹³ any request for an opportunity to make an oral presentation.¹⁴

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change, as modified by Amendment No. 1, should be approved or

¹² Id.

¹³ 17 CFR 240.19b-4.

¹⁴ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

disapproved by [insert date 15 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 21 days from publication in the Federal Register].

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. Please include File Number SR-FINRA-2021-010 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-2021-010. 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, as modified by Amendment No. 1, that are filed with the Commission, and all written communications relating to the Proposed Rule Change, as modified by Amendment No. 1, 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 10:00 a.m. and 3:00 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-2021-010, and should be submitted on or before [insert date 15 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Jill M. Peterson
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).