

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89036; File No. SR-FINRA-2020-016)

June 10, 2020

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 2, 2020, 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 and II 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,³ 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 extend to September 1, 2021 the implementation of FINRA Rule 4240. FINRA Rule 4240 implements an interim pilot program with respect to margin requirements for certain transactions in credit default swaps that are security-based swaps.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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

On May 22, 2009, the Commission approved FINRA Rule 4240,⁴ which implements an interim pilot program (the "Interim Pilot Program") with respect to margin requirements for certain transactions in credit default swaps ("CDS").⁵ On May 21, 2019, FINRA filed a proposed rule change for immediate effectiveness extending the

⁴ See Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Order Approving File No. SR-FINRA-2009-012) ("Approval Order").

⁵ In March 2012, the SEC approved amendments to FINRA Rule 4240 that, among other things, limit at this time the rule's application to credit default swaps that are security-based swaps. See Securities Exchange Act Release No. 66527 (March 7, 2012), 77 FR 14850 (March 13, 2012) (Order Approving File No. SR-FINRA-2012-015).

implementation of FINRA Rule 4240 to July 20, 2020.⁶

As explained in the Approval Order, FINRA Rule 4240, coterminous with certain Commission actions, was intended to address concerns arising from systemic risk posed by CDS, including, among other things, risks to the financial system arising from the lack of a central clearing counterparty to clear and settle CDS.⁷ On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) was signed into law.⁸ Title VII of the Dodd-Frank Act established a comprehensive new regulatory framework for swaps and security-based swaps,⁹ including certain CDS. The legislation was intended, among other things, to enhance the authority of regulators to implement new rules designed to reduce risk, increase transparency, and promote market integrity with respect to such products.

The Commission has finalized a majority of its rulemakings pursuant to Title VII

⁶ See Securities Exchange Act Release No. 85981 (May 31, 2019), 84 FR 26486 (June 6, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2019-016).

⁷ See Approval Order, 74 FR at 25588-89.

⁸ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

⁹ The terms “swap” and “security-based swap” are defined in Sections 721 and 761 of the Dodd-Frank Act. The Commodity Futures Trading Commission (“CFTC”) and the Commission jointly have approved rules to further define these terms. See Securities Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48208 (August 13, 2012) (Joint Final Rule; Interpretations; Request for Comment on an Interpretation: Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping). See also Securities Exchange Act Release No. 66868 (April 27, 2012), 77 FR 30596 (May 23, 2012) (Joint Final Rule; Joint Interim Final Rule; Interpretations: Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”).

of the Dodd-Frank Act (the “Title VII rulemakings”).¹⁰ Further, the Commission has specified an extended compliance period for these new rules and guidance so as to permit sufficient time to prepare for and come into compliance with the new requirements.¹¹ In tandem with the Commission’s action, FINRA extended, to September 1, 2021, the

¹⁰ See Securities Exchange Act Release No. 75611 (August 5, 2015), 80 FR 48964 (August 14, 2015) (Final Rule: Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants) (“Registration Process Release”); Securities Exchange Act Release No. 77617 (April 14, 2016), 81 FR 29960 (May 13, 2016) (Final Rule: Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants) (the “Business Conduct Standards Release”); Securities Exchange Act Release No. 78011 (June 8, 2016), 81 FR 39808 (June 17, 2016) (Final Rule: Trade Acknowledgment and Verification of Security-Based Swap Transactions) (“Trade Acknowledgment and Verification Release”); Securities Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872 (August 22, 2019) (Final Rule: Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers) (“Capital, Margin, and Segregation Release”); 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) (“Recordkeeping Release”); Securities Exchange Act Release No. 87780 (December 18, 2019), 85 FR 6270 (February 4, 2020) (Final Rules; Guidance: Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements) (“Cross-Border Release”); Securities Exchange Act Release No. 87782 (December 18, 2019), 85 FR 6359 (February 4, 2020) (Final Rule: Risk Mitigation Techniques for Uncleared Security-Based Swaps) (“Risk Mitigation Release”).

¹¹ Except as otherwise specified by the Commission, the Commission has broadly coordinated the compliance date for the Title VII rulemakings with the compliance date for registration (the “Registration Compliance Date”), pursuant to the Registration Process Release, of security-based swap dealers and major security-based swap participants (together, referred to as “SBS Entities”). See Cross-Border Release, 85 FR at 6345 through 6346; see also Capital, Margin, and Segregation Release, 84 FR at 43954; Recordkeeping Release, 84 FR at 68600; and Risk Mitigation Release, 85 FR at 6381. For further information regarding the Registration Compliance Date, see Key Dates For Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, available on the SEC website at: <https://www.sec.gov/page/key-dates-registration-security-based-swap-dealers-and-major-security-based-swap-participants>.

expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps).¹²

FINRA believes it is appropriate to extend the Interim Pilot Program for a limited period, to September 1, 2021, in light of the extended compliance period that the Commission has specified with respect to the Title VII rulemakings, and in alignment with the expiration date of FINRA Rule 0180. FINRA believes that extending the implementation of Rule 4240 will permit FINRA additional time to consider any potential amendments to the Interim Pilot Program in light of the Commission's finalized Title VII rulemakings, in particular the Capital, Margin, and Segregation Release, thereby helping to promote stability in the financial markets and regulatory certainty for members.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be July 20, 2020. The proposed rule change will expire on September 1, 2021.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹³ 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. FINRA believes that the proposed rule change is consistent with the Act

¹² Rule 0180 temporarily limits, with certain exceptions including Rule 4240, the application of FINRA rules with respect to security-based swaps. See Securities Exchange Act Release No. 88023 (January 23, 2020), 85 FR 5261 (January 29, 2020) (Notice of Filing and Immediate Effectiveness of File No: SR-FINRA-2020-001).

¹³ 15 U.S.C. 78o-3(b)(6).

because extending the implementation of FINRA Rule 4240 will permit FINRA additional time to consider any potential amendments to the Interim Pilot Program in light of the Commission's finalized Title VII rulemakings, in particular the Capital, Margin, and Segregation Release, thereby helping to promote stability in the financial markets and regulatory certainty for members.

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. FINRA believes that extending the implementation of FINRA Rule 4240 for a limited period, to September 1, 2021, will permit FINRA additional time to consider any potential amendments to the Interim Pilot Program in light of the Commission's finalized Title VII rulemakings, in particular the Capital, Margin, and Segregation Release, thereby helping to promote stability in the financial markets and regulatory certainty for members.

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 Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

¹⁴ 15 U.S.C. 78s(b)(3)(A).

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. Please include File Number SR-FINRA-2020-016 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-2020-016. This file number should be included on the subject line if e-mail is used. To help the Commission process

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

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-2020-016 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).