

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92617; File No. SR-FINRA-2021-008)

August 9, 2021

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change, as modified by Amendment No. 1, Relating to Security-Based Swaps

I. Introduction

On April 26, 2021, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-FINRA-2021-008 (“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 FINRA Rules 0180, 4120, 4210, 4220, 4240 and 9610 to clarify the application of FINRA rules to security-based swaps (“SBS”) following the SEC’s completion of its rulemaking regarding SBS dealers (“SBSDs”) and major SBS participants (“MSBSPs”) (collectively, “SBS Entities”).³ The Proposed Rule Change was published for public comment in the Federal Register on May 12, 2021.⁴ On June 14, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Exchange Act Release No. 91789, (May 7, 2021), 86 FR 26084 (May 12, 2021) (File No. SR-FINRA-2021-008) (“Notice”).

⁴ See id.

to August 10, 2021.⁵ On August 9, 2021, FINRA responded to the comment letters received in response to the Notice and filed an amendment to modify the Proposed Rule Change (“Amendment No. 1”).⁶ The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act⁷ to solicit comments on Amendment No. 1 from interested persons and to institute proceedings 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 to amend FINRA Rules 0180, 4120, 4210, 4220, 4240 and 9610 to take into account members’ SBS activities once SBS Entities begin registering with the Commission on October 6, 2021. The proposed amendments to these rules generally fall into three categories. First, the Proposed Rule Change, as modified by Amendment No.1, would adopt a new FINRA Rule 0180, to replace expiring current FINRA Rule 0180, that would generally apply FINRA rules to members’ activities and positions with respect to SBS, while providing limited exceptions for those activities and positions in circumstances where FINRA believes such exceptions are appropriate. Second, the Proposed Rule Change, as modified by Amendment No.1, would amend FINRA’s financial responsibility and operational rules for SBSs and broker-dealers to conform to the SEC’s amendments to its capital, margin and

⁵ See letter from Robert McNamee, Assistant General Counsel, Office of General Counsel, FINRA, to Daniel Fisher, Division of Trading and Markets, Commission, dated June 14, 2021.

⁶ See letter from Robert McNamee, Assistant General Counsel, Office of General Counsel, FINRA to Vanessa Countryman, Secretary, Commission, dated August 9, 2021.

⁷ 15 U.S.C. 78s(b)(2)(B).

segregation requirements,⁸ and to otherwise take into account members' SBS activities. Third, the Proposed Rule Change, as modified by Amendment No.1, would adopt a new margin rule specifically applicable to SBS, which would replace the expiring interim pilot program establishing margin requirements for credit default swaps.

Amendment No. 1 would make the following changes to the Proposed Rule Change: (1) extend the effective date of the proposed amendments to FINRA Rules 0180, 4120 and 9610 from October 6, 2021 to February 6, 2022; (2) extend the effective date of the proposed amendments to FINRA Rules 4210, 4220 and 4240 from October 6, 2021 to April 6, 2022; and (3) conform the proposed definition of Legacy Swap in proposed FINRA Rule 4240(d)(12) to reflect the new effective date of April 6, 2022.

III. Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2021-008 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.⁹ 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.

⁸ See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Exchange Act Release No. 86175, (Jun. 21, 2019), 84 FR 43872 (Aug. 22, 2019) (File No. S7-08-12).

⁹ 15 U.S.C. 78s(b)(2)(B).

Pursuant to Section 19(b)(2)(B) of the Exchange Act,¹⁰ 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, any request for an opportunity to make an oral presentation.¹¹

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 disapproved by [insert date 15 days from publication in the Federal Register]. Any person who

¹⁰ Id.

¹¹ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (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 Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 No. SR-FINRA-2021-008 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 No. SR-FINRA-2021-008. 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 No. SR-FINRA-2021-008 and should be submitted on or before [insert date 15 days from publication in the Federal Register]. If comments are received, any rebuttal comments 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.¹²

J. Matthew DeLesDernier
Assistant Secretary

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