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Invested in America

June 2, 2021

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Security-Based Swaps (SR-FINRA-2021-008)

Dear Ms. Countryman:

The Securities and Financial Markets Association ("**SIFMA**")[1] appreciates this opportunity to provide the Securities and Exchange Commission (the "**Commission**" or "**SEC**") with comments in response to the above-captioned release[2] (the "**Proposal**") by the Financial Industry Regulatory Authority, Inc. ("**FINRA**") to clarify the application of its rules to security-based swaps ("**SBS**") following the Commission's completion of its rulemaking regarding SBS dealers ("**SBSDs**") and major SBS participants ("**MSBSPs**") (collectively, "**SBS Entities**").

Overall, SIFMA supports many aspects of the Proposal. We have concerns in two main areas, however. First, to avoid unnecessary market disruption and unfair disadvantages for broker-dealers that plan to register as SBSDs, the compliance date for the proposed application of FINRA rules to SBS should align better with the timing for SBSD registration, which may not take place until November 1, 2021, as opposed to the October 6, 2021 compliance date that FINRA has proposed. Second, to avoid undermining (without appropriate justification) the Commission's carefully calibrated margin and capital regime for SBS, FINRA should better align its proposed SBS margin rule with the Commission's margin rule for SBSDs, SEC Rule 18a-3, particularly for FINRA members already subject to heightened capital requirements as alternative net capital ("**ANC**")

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry, nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry-coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] Securities Exchange Act of 1934 ("**Exchange Act**") Release No. 34–91789 (May 7, 2021), 86 Fed. Reg. 26084 (May 12, 2021).

firms. Our comments below address these topics, as well as certain more technical matters.

1. Compliance Date for the Proposal

FINRA proposes to extend its existing exemptions contained in FINRA Rule 0180, as well as the interim credit default swap ("**CDS**") margining program in FINRA Rule 4240, to October 6, 2021, which is the earliest date by which an SBS Entity may register as such with the Commission (*i.e.*, the "**Registration Compliance Date**"). At such time, existing FINRA Rules 0180 and 4240 would be replaced by the amended rules reflected by the Proposal, and the other rule changes reflected by the Proposal would also take effect.

As Commission staff have explained, however, the earliest date by which an SBS Entity will be *required* to register will be November 1, 2021; specifically, a person is not required to begin counting SBS transactions towards the SBSD *de minimis* threshold until August 6, 2021, *i.e.*, the counting date, and then is not deemed to be an SBSD (and hence will not be required to register) until two months after the end of the month in which the person crosses the *de minimis* threshold, which makes November 1, 2021 the date when a person that crosses the *de minimis* threshold on August 6, 2021 must register as an SBSD.[3]

Notwithstanding this Commission staff guidance, FINRA proposed October 6, 2021 as the compliance date for the Proposal, in order to "avoid unnecessary confusion" and because FINRA expects SBSDs to register on that date, so as to align with the expiration of existing, temporary exemptions from certain Commission rules. In our view, it is the misalignment of the expiration of these exemptions, as well as, under the Proposal, existing FINRA Rules 0180 and 4240, with the October 6, 2021 Registration Compliance Date, which is not the date on which SBS Entities are expected to register, that is the source of confusion. The expiration of the Commission's exemptions, as well as existing FINRA Rules 0180 and 4240, should instead align with registration requirements as reflected in the Commission's SBS Entity definitional rules.

Continued misalignment will encourage firms to register three and a half weeks early, eliminating a critical period of time for implementing the SBSD ruleset. In this regard, the misalignment reflected in the Proposal would have a disproportionate impact on the subset of prospective SBSDs that are broker-dealers because failing to register early would subject those firms to a broad range of FINRA requirements addressing communication standards, customer confirmations, supervision, "pay-to-play" restrictions, know your customer, suitability, customer account statements, customer account information, and associated person registration and continuing education. In contrast, prospective SBSDs that are not broker-dealers would not be subject to any of

[3] *See* Commission Staff, *Key Dates for Registration of [SBSDs] and [MSBSPs]* (Feb. 13, 2020), https://www.sec.gov/page/key-dates-registration-security-based-swap-dealers-and-major-security-based-swap-participants.

these rules, as they are not FINRA members. Nor would those prospective SBSDs be subject to some of the key Commission rules (such as SEC Rule 10b-10) for which exemptions are scheduled to expire on the Registration Compliance Date. These other prospective SBSDs, which include U.S. banks, standalone derivatives dealing entities, and foreign entities, would have an undue advantage over U.S. broker-dealers engaged in SBSD business.

To address these issues, FINRA should extend the expiration dates of existing FINRA Rules 0180 and 4240 until the earlier of (a) the date on which a FINRA member firm registers with the Commission as an SBS Entity or (b) November 1, 2021. We are also discussing a similar clarification with Commission staff in relation to the expiration of temporary exemptions from certain Commission rules for SBS activities.

2. Exceptions from Presumption of Applicability

We support FINRA's proposal to except certain rules from the general presumption of applicability of FINRA rules to SBS, including Rule 6000 Series (Quotation, Order, and Transaction Reporting Facilities), Rule 7000 Series (Clearing, Transaction and Order Data Requirements, and Facility Charges), and Rule 11000 Series (Uniform Practice Code). We agree that providing exceptions for these rules will promote clarity, considering that these rules are not designed to apply to SBS, and arguably overlap with some of the SEC's SBS rules (such as reporting and public dissemination under Regulation SBSR).

3. Exception for SBS Entities and Associated Persons

We generally support FINRA's proposal to provide exceptions from certain rules for a member that is registered as an SBS Entity as well as an associated person of a member acting in his or her capacity as an associated person of an SBS Entity, including an associated person "dual-hatted" as an associated person of an affiliated SBS Entity. Such rules include Rule 2030 (Engaging in Distribution and Solicitation Activities with Government Entities), Rule 2090 (Know Your Customer), Rule 2111 (Suitability), Rule 2210(d) (Communications with the Public—Content Standards), Rule 2231 (Customer Account Statements), Rule 2232 (Customer Confirmations), Rule 3110 (Supervision), Rule 3120 (Supervisory Control System), Rule 3130 (Annual Certification of Compliance and Supervisory Processes), and Rule 4512 (Customer Account Information). We also support FINRA's proposal that a person associated with a FINRA member whose functions are related solely and exclusively to SBS undertaken in such person's capacity as an associated person of an SBS Entity would not be required to register with FINRA and comply with Rules 1210 (Registration Requirements), 1220 (Registration Categories), and 1240 (Continuing Education Requirements). As FINRA observes, these rules would unnecessarily duplicate certain of the Commission's SBS rules if they applied to SBS Entities or their associated persons.

In connection with these proposed exceptions, it would also be beneficial for FINRA to provide the clarifications described below.

A. Customer Confirmations

The Commission has adopted an exemption from a broker-dealer's requirement to give or send to a customer the disclosures required by SEC Rule 10b-10(a) at or before completion of the transaction in connection with such broker-dealer or its associated persons arranging, negotiating or executing an SBS transaction on behalf of an affiliated SBSD, provided that the broker-dealer gives or sends the customer written notification containing such disclosures in accordance with the time and form requirements for an SBSD's trade acknowledgment under SEC Rule 15Fi-2(b) and (c) and, as applicable SEC Rule 10b-10(c).[4] FINRA should clarify that, to the extent a member would be eligible for this exemption but not the proposed FINRA Rule 0180(c) exception from FINRA Rule 2232's customer confirmation requirements, it can satisfy Rule 2232 by giving or sending a written notification to its customer in accordance with the timing reflected by this exemption.

B. Customer Account Statements and Information

Proposed FINRA Rule 0180(f) would provide an exception from Rules 2231 and 4512 to the extent a member is acting in its capacity as a registered SBS Entity and a customer's account solely holds SBS and collateral posted as margin in connection with SBS, provided that the member complies with the portfolio reconciliation requirements of SEC Rule 15Fi-3 with respect to such account and that such portfolio reconciliations include collateral posted as margin in connection with SBS in the account. This exception appropriately recognizes the fact that the Commission's SBS Entity portfolio reconciliation and recordkeeping rules address the same objectives as FINRA Rules 2231 and 4512.

To further avoid duplication of those Commission rules, FINRA should clarify that a member may rely on the Rule 0180(f) exception in circumstances where the member's SBS account for the customer also includes non-securities positions, such as swaps. This clarification would address situations in which a member portfolio margins its SBS with non-securities positions such as uncleared swaps. We note that these situations may take place where, for example, a broker-dealer/SBSD is also registered as a swap dealer and relies on Commodity Futures Trading Commission ("**CFTC**") relief to portfolio margin uncleared swaps and SBS under CFTC rules[5] while simultaneously applying relevant aspects of SEC Rule 18a-3 to the portfolio.

We also request that FINRA clarify that a member may rely on the Rule 0180(f) exception when, in addition to a customer's SBS account, the member carries a non-SBS securities account for the customer and there is no portfolio margining or other commingling between the two accounts. This situation can arise where a customer has a non-SBS securities trading or clearing relationship with a member and separately trades

[4] *See* Exchange Act Release No. 90308 (Nov. 2, 2020).

[5] *See* CFTC No-Action Letter No. 16-71 (Aug. 23, 2016).

SBS with the member. It is frequently the case in these situations for the parties to document the two different relationships separately, maintain separate margining and settlement arrangements, and receive an account statement for the non-SBS securities accounts while engaging in portfolio reconciliation for the SBS account. It would be costly and unnecessary to require the member to supplement the account statement with information about the parties' SBS positions and related collateral when those positions and collateral are managed separately by the customer, including through portfolio reconciliation processes.

C. Associated Person Registration and Continuing Education Requirements

Proposed FINRA Rule 0180(g) would provide that persons associated with a member whose functions are related solely and exclusively to SBS undertaken in such person's capacity as an associated person of a registered SBS Entity are not required to be registered with FINRA. This exception is warranted because FINRA's existing registration (including proficiency testing) and continuing education requirements are not tailored to SBS. As a result, it would seem to provide little if any benefit to apply those requirements to a person associated with a member solely in connection with the member's status as an SBS Entity. Further, associated persons of an SBS Entity are subject to separate requirements under the Exchange Act and Commission rules designed to prevent a statutorily disqualified person from associating with an SBS Entity.

We further request that FINRA clarify that an associated person relying on this exception may, in addition to his or her SBS activities, also engage in non-securities activities on behalf of the member, such as soliciting or accepting swaps in the capacity as an associated person or a swap dealer. This activity would not otherwise trigger FINRA registration or continuing education requirements and so should not prevent reliance on the proposed exception. FINRA Rule 0180(g) should accordingly provide that the person's "securities-related functions" must be related solely and exclusively to SBS undertaken in such person's capacity as an associated person of a registered SBS Entity.

4. Exceptions in Connection With the Commission's Cross-Border Exception

Proposed FINRA Rule 0180(e) would provide an exception from FINRA Rules 2111 (Suitability), 2210(d) (Communications with the Public—Content Standards), and 2232 (Customer Confirmations) in connection with a member's activities and positions with respect to SBS, to the extent the member or its associated person is arranging, negotiating, or executing SBS on behalf of a non-U.S. affiliate in compliance with the conditions of the exception in SEC Rule 3a71-3(d)(1) from that affiliate counting those SBS towards its SBSD *de minimis* threshold. We support this exception, which appropriately avoids overlaps between FINRA's suitability, communication standards, and confirmation requirements, on the one hand, and SEC Rules 15Fh-3(f)(1), 15Fh-3(g), and 15Fi-2, on the other hand, which the FINRA member would be required to satisfy when acting for its non-U.S. affiliate pursuant to SEC Rule 3a71-3(d)(1)(ii).

5. Exemptive Authority

Proposed Rule 0180(i) would provide that, pursuant to the FINRA Rule 9600 Series, FINRA may, taking into consideration all relevant factors, exempt a person unconditionally or on specified terms from the application of FINRA rules (other than an exemption from the general application of paragraph (a) of proposed FINRA Rule 0180) to the person's SBS activities or positions as it deems appropriate consistent with the protection of investors and the public interest. We support this exemptive authority, given that the exceptions reflected in the Proposal are tailored to the existing SBS market, but it is likely that, over time, the market may evolve in respects that justify further exemptions. In particular, as FINRA notes, its quoting and trading rules may become more relevant to SBS in the future if trading or execution of SBS on exchanges or SBS execution facilities becomes prevalent, and at such time it might be appropriate for FINRA to adopt exemptions or otherwise clarify or tailor the application of those rules to SBS.

6. Margin Requirements

The Proposal would amend FINRA Rule 4240 to impose a new margin rules for SBS entered into or guaranteed by a member, unless the member is registered as an SBSD (in which case it will instead comply with SEC Rule 18a-3) or the member carries the SBS in either a portfolio margin account subject to the requirements of FINRA Rule 4210(g) or a commodity account or other account under CFTC jurisdiction in accordance with an SEC rule, order, or no-action letter permitting SBS and swaps to be carried and portfolio margined together in such an account.

Amended FINRA Rule 4240 would require daily posting and collection of variation margin ("**VM**") for uncleared SBS, except for legacy SBS and SBS with certain multilateral organizations, with respect to which a member would be able to take a capital charge in lieu of collecting VM. Further, amended FINRA Rule 4240 would require collection of initial margin ("**IM**") for uncleared SBS as follows: (a) for any "Basic CDS," IM would be computed using the spread and maturity grid set forth in amended SEC Rule 15c3-1(c)(2)(vi)(P); (b) for an uncleared SBS (other than a CDS) that is the economic equivalent of a margin account containing a portfolio of long or short positions in securities or options (a "**Basic SBS**"), IM would be computed by applying Rule 4210 to that equivalent margin account; and (c) for any other types of SBS, a member would need prior FINRA approval of an appropriate IM methodology. These IM requirements would be subject to exceptions for legacy SBS and SBS with certain multilateral organizations, sovereign counterparties, financial market intermediaries, and majority owners of the member, with respect to which members would be permitted to take to a capital charge in lieu of collecting IM. The amount of this capital charge would equal the amount of uncollected IM, except that an ANC firm transacting with a majority owner or an affiliated registered or foreign SBSD could instead take a credit risk capital charge in accordance with SEC Rule 15c3-1e(c).

A. FINRA Should Permit a Member to Apply SEC Rule 18a-3 in Lieu of Amended FINRA Rule 4240 if the Member Satisfies the Higher Capital Requirements Applicable to an SBSD

Amended Rule 4240 would differ in several material respects from SEC Rule 18a-3. In particular, it would (a) not permit a member to use an approved model to calculate IM requirements, (b) require a member to collect IM from affiliates that are not financial market intermediaries or majority owners, (c) not permit a member to apply an IM threshold, (d) not permit a member to apply a minimum transfer amount, and (e) not permit an ANC firm to apply credit risk charges under SEC Rule 15c3-1e(c) in lieu of collecting margin except for SBS with a majority owner or an affiliated registered or foreign SBSD.

These differences would present material issues for members subject to amended Rule 4240, especially in connection with certain inter-affiliate SBS designed to promote centralized, group-wide risk management, as well as SBS entered into with unaffiliated financial market intermediaries for hedging purposes:

- For example, it is common for foreign dealer affiliates of a U.S. broker-dealer, when they enter into SBS based on U.S. securities with their foreign customers, to hedge the risks of those transactions via offsetting SBS with the U.S. broker-dealer, which in turn hedges in the U.S. securities market. Under the Proposal, if such a foreign affiliate is not registered with the Commission as an SBSD or operating in a jurisdiction for which the Commission has made a substituted compliance determination in connection with SBSD capital requirements, then the U.S. broker-dealer would need to deduct the full, standardized (as opposed to model-based) amount of IM for those SBS from its net capital, even if the broker-dealer is an ANC firm otherwise permitted under Commission rules instead to apply risk-weighted credit risk charges. Given that a foreign dealer affiliate will not be required to register as an SBSD or request a capital substituted compliance determination if it does not transact SBS with U.S. persons, through U.S. personnel or with a guarantee from a U.S. person, a U.S. broker-dealer may face this punitive capital treatment for its SBS with several of its foreign dealer affiliates (*e.g.*, affiliates in Asia or Latin America).

- Another situation where an issue might arise is when a broker-dealer forms an affiliated special purpose vehicle to issue a structured note that references a security. Frequently that vehicle will hedge the note by entering into an SBS referencing that security with the broker-dealer, which in turn will hedge by buying or selling (as appropriate) the reference security. Other than the note and the SBS, the vehicle's only other assets or liabilities typically consist of low-risk assets, such as U.S. Treasuries, and so the vehicle does not pose a material credit risk to the broker-dealer. The Proposal would make these arrangements uneconomical by subjecting the inter-affiliate SBS to significant IM requirements.

- A further situation where the Proposal would present issues is when a broker-dealer, in order to hedge the risk of its securities inventory, enters into one or more SBS with unaffiliated financial market intermediaries. This hedging strategy can be particularly effective when the relevant SBS market is more liquid than the market for the underlying security (*e.g.*, as is the case for certain CDS relative to some of the bonds they reference). Although the Proposal would not require the broker-dealer to collect IM from the financial market intermediary, the broker-dealer would be required to deduct the full, standardized (as opposed to model-based) amount of IM for those SBS from its net capital, even if the broker-dealer is an ANC firm otherwise permitted under Commission rules instead to apply risk-weighted credit risk charges. This deduction would significantly increase the costs of hedging for the broker-dealer.

Permitting a broker-dealer instead to follow SEC Rule 18a-3 would address these issues. However, FINRA declined to permit this because broker-dealers subject to amended FINRA Rule 4240 would not be subject to the regulatory framework applicable to SBSDs. In this regard, FINRA cited in particular the higher capital requirements applicable to registered SBSDs. FINRA went on to note that firms engaged in a level of SBS dealing below the *de minimis* threshold requiring SBSD registration may nonetheless elect to register as SBSDs voluntarily, and thereby become subject to the SEC's regulatory framework for such entities, including the margin requirements under SEC Rule 18a–3.

Requiring a broker-dealer engaged in *de minimis* SBS dealing activity nonetheless to register voluntarily as an SBSD in order to apply SBS margin requirements consistent with SEC Rule 18a-3 would, in our view, impose a disproportionate burden on such a broker-dealer. The SBSD regulatory framework extends well beyond the financial responsibility area, also covering areas such as external business conduct, supervision, chief compliance officer designation and responsibilities, and transaction reporting. Whether a broker-dealer applies SBSD rules in these areas should not factor into whether the margin requirements of SEC Rule 18a-3 adequately mitigate the credit risks that such a broker-dealer faces on its uncleared SBS.

On the other hand, we appreciate FINRA's concerns regarding a smaller broker-dealer entering into uncleared SBS on margin terms that differ from the requirements that would apply under FINRA Rule 4210 to equivalent securities positions. To address this consideration, we propose that, in order for a member to apply SEC Rule 18a-3 in lieu of amended FINRA Rule 4240, the member must satisfy the higher capital requirements applicable to an SBSD in SEC Rule 15c3-1(a)(10) (or the even higher capital requirements applicable to an ANC firm in SEC Rule 15c3-1(a)(7)). In this connection, in order for such a member to use a model to calculate IM requirements, we would propose that the model be one approved by the Commission for use by an affiliate of the member that is registered as an SBSD.

B. If FINRA Does Not Permit Members to Apply SEC Rule 18a-3 in Lieu of Amended FINRA Rule 4240, Then It Should Align Rule 4240 More Closely With Rule 18a-3

If FINRA does not adopt our recommendation above, then it should modify amended FINRA Rule 4240 to align more closely with SEC Rule 18a-3, as described below:

- FINRA Should Adopt an IM Exception for All Majority-Owned Affiliates. A member that satisfies the higher capital requirements applicable to an SBSD in SEC Rule 15c3-1(a)(10) (or the even higher capital requirements applicable to an ANC firm in SEC Rule 15c3-1(a)(7)) should not be required to collect IM from any commonly majority-owned affiliate, not just an affiliate that is a financial market intermediary or majority owner of the member. As described above, compliance with higher capital requirements should address the concerns that led FINRA to propose a narrower inter-affiliate exception in amended FINRA Rule 4240 than what the Commission adopted in SEC Rule 18a-3. Other than the differences in capital requirements between broker-dealers not registered as SBSDs and registered SBSDs, FINRA has not articulated any reason why its analysis of the risks posed to a broker-dealer by trading SBS with its affiliates should differ from the Commission's analysis of the same trading engaged in by an SBSD, which also accords with the analysis of the CFTC and the U.S. Prudential Regulators.

- FINRA Should Permit an ANC Firm to Calculate Credit Risk Charges in Accordance with SEC Rule 15c3-1e(c) for Exposures to All Counterparty Types. As noted above, amended FINRA Rule 4240 would essentially override SEC Rule 15c3-1e by requiring an ANC firm relying on an IM exception when trading SBS to deduct the full, standardized (as opposed to model-based) amount of IM for those SBS from its net capital, unless the ANC firm was trading with a majority owner or an affiliated registered or foreign SBSD. Although the credit risk charges calculated under SEC Rule 15c3-1e represent a fraction of this standardized IM amount, the Commission determined that these charges were appropriate for an ANC firm. ANC firms are subject to significantly higher capital requirements than other broker-dealers as well as extensive Commission risk management requirements, which mitigate the risk of permitting lower credit risk charges. Here as well, FINRA has not articulated any reason why its analysis of the risks posed to an ANC firm trading with a counterparty exempted from IM requirements should differ from the Commission's analysis of the same trading engaged in by an SBSD. It seems unnecessary for FINRA to treat an ANC firm more punitively than the Commission treats standalone SBSDs, considering that ANC firms are subject to a net capital requirement 50 times greater than standalone SBSDs. For the reasons described above in Part 6.A, this more punitive treatment will discourage group-wide risk management and hedging activity by ANC firms.

- FINRA Should Permit Use of SEC-Approved IM Models for Non-Equity SBS. A member that satisfies the higher capital requirements applicable to an SBSD in SEC Rule 15c3-1(a)(10) (or the even higher capital requirements applicable to an ANC firm in SEC Rule 15c3-1(a)(7)) should be permitted to calculate IM requirements for non-equity SBS using a model approved by the Commission for use by an affiliate of the member that is registered as an SBSD. Although FINRA preliminarily determined not to permit a member to use such models unless it registers as an SBSD and thereby becomes subject to the SBSD regulatory framework, for the reasons described above in Part 6.A, we do not think this reasoning is valid for a member that satisfies the higher capital requirements applicable to an SBSD in SEC Rule 15c3-1(a)(10) (or the even higher capital requirements applicable to an ANC firm in SEC Rule 15c3-1(a)(7)). In this situation, we do not see an adequate justification for introducing a competitive disparity between broker-dealers engaged in *de minimis* SBS dealing activity and registered SBSDs.

- FINRA Should Adopt an IM Threshold. Amended FINRA Rule 4240 would not include an IM threshold, whereas SEC Rule 18a-3 includes a $50 million threshold, applicable on a group-wide basis across an SBSD and all its affiliates with a counterparty and all its affiliates. In this regard, SEC Rule 18a-3 is aligned with the margin rules of the CFTC, U.S. Prudential Regulators, and international regulators. Failing to provide the same IM threshold would put broker-dealers engaged in a *de minimis* amount of SBS dealing activity at a significant competitive disadvantage relative to registered SBSDs. It also would complicate compliance for groups that contain both broker-dealers engaged in *de minimis* SBS dealing as well as registered SBSDs, given the group-wide application of the IM threshold for SBSDs. Again here, FINRA cited the absence of the SBSD regulatory framework, including higher capital requirements, as its justification for departing from SEC Rule 18a-3. So we similarly propose that a member that satisfies the higher capital requirements applicable to an SBSD in SEC Rule 15c3-1(a)(10) (or the even higher capital requirements applicable to an ANC firm in SEC Rule 15c3-1(a)(7)) be permitted to apply a $50 million IM threshold consistent with SEC Rule 18a-3. We do not think that adopting such a threshold would materially incentivize restructuring of margin account as SBS because it would merely level the playing field between a broker-dealer engaged in *de minimis* SBS dealing activity and registered SBSDs.

- FINRA Should Adopt a $500,000 Minimum Transfer Amount. Amended FINRA Rule 4240 would not permit a member to adopt any minimum transfer amount for SBS margin. In contrast, SEC Rule 18a-3, like the margin rules of the CFTC, U.S. Prudential Regulators, and international regulators, includes a $500,000 minimum transfer amount. Although we recognize that FINRA Rule 4210 does not include any similar minimum transfer amount, the operational processes that firms use to exchange collateral for uncleared derivatives differ significantly from the processes used for margin accounts; for example the parties exchange VM on

a two-way basis (instead of one-way collection of maintenance margin by a broker-dealer under Rule 4210) and it is not common for a counterparty to leave excess margin on deposit as a buffer against mark-to-market changes. We further note that FINRA has previously permitted similar minimum transfer amounts in connection with its margin requirements for covered agency transactions, which raised similar issues.[6] Accordingly, FINRA should adopt a $500,000 minimum transfer amount for amended Rule 4240, consistent with SEC Rule 18a-3.

- FINRA Should Align Rule 4240's Collateral Haircuts With SEC Rule 18a-3. Amended FINRA Rule 4240 would provide that, at a member's election, it could value securities collected or posted as margin for SBS based on the current market value of those securities reduced ("haircut") by the margin requirement that would apply to such securities under FINRA Rule 4210 if held in a margin account. In contrast, SEC Rule 18a-3 provides for an SBSD to haircut securities margin using either the haircuts applicable to those securities under the Commission's net capital rules or the CFTC's uncleared swap margin rule. In order to facilitate a common compliance mechanism and avoid competitive disparities vis-à-vis registered SBSDs, FINRA should likewise permit use of these other haircut methods.

- FINRA Should Extend the Deadline for Posting or Collecting Margin for Counterparties in Distant Time Zones. Amended FINRA Rule 4240 would require a member to collect or deliver margin no later than the close of business on the business day after the date on which the member was required to compute the margin requirement. SEC Rule 18a-3 imposes a similar margin deadline, but extends that deadline by a second business day if the counterparty is located in another country and four time zones away. To align with SEC Rule 18a-3 and address the logistical issues associated with transacting across distant time zones, FINRA should provide the same extension for these more distant counterparties.

C. FINRA Should Extend the Compliance Date for Amended FINRA Rule 4240 by Six Months

The Commission provided SBSDs with over 18 months to implement SEC Rule 18a-3. In contrast, by the time FINRA adopts amendments to Rule 4240, members will likely have only 3 months or less to implement comprehensive new margin requirements for SBS. This very short transition period will not be sufficient. To address this issue, FINRA should extend the compliance date for these new requirements by six months until April 6, 2022. As a conforming change, FINRA should also modify its proposed definition of Legacy SBS to mean an uncleared SBS entered before April 6, 2022.

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[6] *See* Regulatory Notice 16-31 (Aug. 2016) (adopting a $250,000 *de minimis* transfer amount).

SIFMA appreciates the opportunity to comment on the Proposal. SIFMA looks forward to continuing dialogue with FINRA and the Commission on the treatment of SBS under FINRA's rules. If you have questions or would like additional information, please contact the undersigned at 212-313-1280 or kbrandon@sifma.org.

Very truly yours,

Kyle L Brandon
Managing Director, Head of Derivatives Policy
SIFMA