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August 11, 2023

BY ELECTRONIC SUBMISSION

Jennifer Piorko Mitchel
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

VIA Electronic Mail: pubcom@finra.org

Re: Regulatory Notice 23-11: Liquidity Risk Management Program

Dear Ms. Mitchell:

The Institute of International Bankers ("IIB") appreciates the opportunity to provide comments to the Financial Industry Regulatory Authority ("FINRA") in connection with its concept proposal to establish a liquidity risk management rule (proposed Rule 4610) for certain FINRA member firms, as set out in Regulatory Notice 23-11 (the "Concept Proposal").[1]

The IIB represents internationally headquartered financial institutions from over thirty-five countries around the world doing business in the United States. The membership consists principally of international banks that operate branches, agencies, bank subsidiaries, and broker-dealer subsidiaries in the United States. The IIB works to ensure a level playing field for these institutions, which are an important source of credit for U.S. borrowers and comprise the majority of U.S. primary dealers. These institutions enhance the depth and liquidity of U.S. financial markets and contribute greatly to the U.S. economy through direct employment of U.S. citizens, as well as through other operating and capital expenditures.

We generally support FINRA's goal of promoting prudent liquidity risk management practices, and we appreciate FINRA's efforts to foster those practices through its notices to members and its examination and risk monitoring program. However, as discussed below, proposed Rule 4610 would improperly go beyond these measures to impose extensive, prescriptive requirements on how a large number of firms manage liquidity risk. These requirements would overlap with requirements that banking regulators apply to IIB members at the consolidated entity level. If FINRA moves forward with the Concept Proposal, then, in order to avoid undue burdens on competition and regulatory overlaps and conflicts, FINRA should clarify and expand exceptions for firms already subject to such consolidated liquidity risk requirements.

[1] FINRA RN 23-11 (June 12, 2023), available at https://www.finra.org/rules-guidance/notices/23-11.

Summary of the Concept Proposal

Proposed Rule 4610 would require specified FINRA member firms[2] ("subject firms") to at all times have and maintain sufficient liquidity on a current basis, *i.e.*, available cash or liquid collateral sufficient to meet its funding obligations as they come due. Subject to the exception discussed below for so-called "EPR firms," the rule would further establish eight conditions under which a subject firm is rebuttably presumed not to have sufficient liquidity. Such a firm would be required to notify FINRA on the occurrence of any of those conditions and submit a written rebuttal of the presumption. The rule would also require all subject firms, including EPR firms, to establish and maintain a liquidity risk management program ("LRMP"). The LRMP would include monthly liquidity stress tests meeting assumptions acceptable to FINRA (with notifications to FINRA of stress tests results reflecting a liquidity shortfall) and a written contingency funding plan. If FINRA determined that a subject firm did not have sufficient liquidity on a current basis, then it could direct the firm to take measures to restore the sufficiency of its liquidity, including restricting or suspending all or part of its business.

Proposed Rule 4610 would include an exception from the rebuttable presumption component of the rule for an "EPR firm," defined as a FINRA member that is controlled by a bank holding company that is subject to enhanced prudential regulation and complies with the Federal Reserve Board's most stringent liquidity risk management requirements. The Concept Proposal does not further define which Federal Reserve Board liquidity risk management requirements would be considered "most stringent," but estimates that there would be approximately 40 EPR firms. Notably, however, these firms would remain subject to the rest of proposed Rule 4610, including the overarching requirement to have and maintain sufficient liquidity on a current basis, the requirement to establish and maintain an LRMP (including monthly stress tests and a contingency funding plan), and the ability for FINRA to impose business restrictions if the firm did not have sufficient liquidity on a current basis.

Discussion

As drafted, the Concept Proposal's exception for EPR firms is too narrow, both in terms of the scope of firms that qualify for the exception and in terms of the requirements of proposed Rule 4610 that would be covered by the exception. As described in greater detail below, in order to avoid undue burdens on competition and regulatory overlaps and conflicts, FINRA should expand the scope of the exception.[3]

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[2] Specifically, proposed Rule 4610 would apply to (i) a carrying member with $25 million or more in free credit balances or whose aggregate amount outstanding under repurchase agreements, securities loan contracts and bank loans is at least $1 billion or (ii) a member that carries the customer accounts of other broker-dealers on an omnibus or fully disclosed basis. FINRA estimates that approximately 125 member firms would satisfy these criteria and be subject to the rule.

[3] In addition to the comments below, which focus on aspects of the Concept Proposal that have a particular impact on internationally headquartered financial institutions, our members also generally support the comments submitted by the Securities Industry and Financial Markets Association.

A. FINRA Should Expand the EPR Firm Exception to Cover All Subject Firms That Are Subsidiaries of Holding Companies Subject to Group-Wide Liquidity Regulation by a Prudential Regulator

FINRA proposed the EPR firm exception because such firms are controlled by a holding company that "is highly regulated for liquidity by their prudential regulator."[4] However, the Concept Proposal defines the EPR firm term too narrowly to capture the full range of U.S. broker-dealers whose holding companies are subject to such prudential liquidity regulation on a consolidated basis. In particular, the proposed definition could be interpreted to cover only the broker-dealer subsidiaries of certain U.S. bank holding companies, when in fact many U.S. broker-dealer subsidiaries of foreign banks or non-U.S. financial holding companies are subject to similar regulation.

For example, the Federal Reserve Board's Regulation YY subjects many foreign banking organizations with U.S. broker-dealer subsidiaries to governance, liquidity stress testing, contingency funding planning, liquidity buffer requirements and related liquidity risk management requirements with respect to their combined U.S. operations, which are similar to those applicable to large U.S. bank holding companies. In addition, with respect to a foreign banking organization with combined U.S. assets of at least $100 billion that is required to form or designate a U.S. intermediate holding company ("U.S. IHC"), the U.S. IHC is separately subject to liquidity risk management and related requirements. Certain U.S. IHCs also are subject to liquidity coverage ratio and net stable funding ratio requirements under the Federal Reserve Board's Regulation WW.

In addition, a foreign banking organization with at least $250 billion in total consolidated assets is subject to resolution planning requirements with respect to its combined U.S. operations, including its U.S. broker-dealer. Many of these firms calculate the level of liquidity resources that their U.S. broker-dealer must hold in a manner designed to be consistent with the resolution strategy of the combined U.S. operations of the foreign banking organization. These resolution strategies vary by firm, including whether the broker-dealer would itself enter into insolvency proceedings or would be wound down or sold outside of such proceedings.

More generally, many non-U.S. parent companies of U.S. broker-dealers are subject to consolidated liquidity requirements imposed by home-country regulators. These requirements include governance, liquidity stress testing, contingency funding plan requirements and related liquidity risk management requirements consistent with the <u>Principles for Sound Liquidity Risk Management and Supervision</u> published by the Basel Committee on Banking Supervision.

In each of these instances, liquidity risk management requirements (including related aspects of resolution planning) at the U.S. IHC, the combined U.S. operations or the ultimate parent company level would both take into account the potential liquidity needs of the U.S. broker-dealer and help ensure adequate liquidity resources are available to satisfy those needs, in similar fashion to the requirements that apply to U.S. bank holding companies. Treating a U.S. broker-dealer subsidiary of a U.S. IHC, foreign banking organization, or other foreign bank or financial holding company subject to Basel-compliant liquidity regulation more stringently than a broker-dealer subsidiary of a U.S. bank holding company would create an un-level playing field, imposing greater burdens on foreign-owned U.S. broker-dealers than their U.S.-owned competitors even though both are subject to comparable prudential regulation of their combined U.S. operations and parent holding companies. To avoid this unfair treatment, FINRA should

[4] Concept Proposal at p. 11.

expand the EPR firm exception to cover any subject firm that is a subsidiary of a holding company subject to group-wide liquidity regulation by a prudential regulator, whether under the Federal Reserve Board requirements summarized above or Basel-compliant home-country regulations.

B. FINRA Should Expand the EPR Firm Exception to Cover LRMP Requirements

The proposed EPR firm exception would apply only to proposed Rule 4610's provisions setting forth rebuttable presumptions for when a subject firm does not have sufficient liquidity. It would not apply to FINRA's proposed LRMP requirements, including requirements to perform monthly stress tests and establish and maintain a contingency funding plan.

As described above, however, liquidity stress tests and contingency funding plans are already components of the liquidity requirements that apply to the parent companies, U.S. IHCs and combined U.S. operations of many subject firms under relevant Federal Reserve Board and Basel-compliant home-country regulations. As a result, subjecting firms already subject to those requirements at the consolidated entity level to proposed Rule 4610's LRMP requirements would result in duplication. Worse still, to the extent that the stress test and contingency funding assumptions developed by firms based on feedback from their prudential regulators differed from the assumptions prescribed by FINRA, firms would face the prospect of conflicting requirements regarding the types of liquidity stresses they need to manage. Firms would also face the risk of conflicts around whether to hold liquidity resources at their U.S. broker-dealer versus a holding company that manages those resources centrally through intercompany funding arrangements with the U.S. broker-dealer and other affiliates.

In order to address these issues, FINRA should modify proposed Rule 4610 to include an exception from the rule's LRMP requirements for EPR firms (as more broadly defined in accordance with our comments above), so long as those firms were complying with LRMP requirements at the consolidated entity level. Such a firm would remain obligated, however, to provide FINRA, upon request, with a copy of its consolidated entity level LRMP and liquidity stress test results, as well as to notify FINRA of consolidated entity level liquidity stress test results reflecting a liquidity shortfall encompassing the U.S. broker-dealer.

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We appreciate the opportunity to provide these comments to you for your consideration and stand ready to answer any questions or provide further information. Please contact the undersigned (646-213-1147, bzorc@iib.org) if we can be of assistance.

Sincerely,

Beth Zorc

Beth Zorc
Chief Executive Officer
Institute of International Bankers