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January 18, 2022

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

Comments on FINRA Regulatory Notice 21-40

Dear Ms. Mitchell,

Loop Capital Markets LLC (“Loop Capital or the “Firm”) is pleased to comment on FINRA Regulatory Notice 21-40, “FINRA Requests Comment on Amendments to Rule 11880 Shortening the Settlement of Syndicate Accounts” (the “Notice”) and fully supports adoption of the proposed Amendment set forth in the Notice. Loop Capital, formed in 1997, is the largest minority owned investment bank, and has been an active participant in the equity and debt capital markets since its establishment 25 years ago.

In 2019, Loop Capital, in evaluating its financial statements identified that a substantial portion of its financial receivables were being treated as non-allowable capital and creating a hinderance on the Firm’s ability to engage in capital markets activities including underwriting and fixed income sales and trading in secondary markets. Upon further analysis, the Firm determined that the vast majority of these receivables were due from syndicate managers in capital markets transactions in which the Firm participated as a co-manager. In this process, the Firm discovered that Rule 11880, which regulates the settlement of syndicate accounts, had not been updated since 1987 and that the reduction of time to settle the syndicate accounts would result in earlier payment of the receivables and improve the Firm’s capital position. In June 2019, the Firm initiated communications with FINRA’s Corporate Finance Department to engage in a discussion regarding amendments to Rule 11880 and the negative impact that the 90-day settlement cycle has on smaller member firms who serve as syndicate members in capital markets transactions.

The Firm further engaged in discussions with the Bond Dealers Association (“BDA”) and supports and reiterates the positions stated in the BDA’s comment letter filed in support of the proposed amendment to Rule 11880.

Economic costs and benefits

The reduction in the time period to settle syndicate accounts to 30 days would result in economic benefits to the Firm. First, the Firm would benefit from the ability to count funds earned in an underwriting transaction as regulatory capital. The earlier payment of syndicate compensation would allow the Firm to commit additional capital to underwriting opportunities and allow the Firm to participate in additional secondary trading activity, adding liquidity to the trading markets. In addition, more timely closing of the syndicate would allow syndicate members, rather than the syndicate manager, to earn interest on their share

of the syndicate proceeds. Under the current structure, the syndicate manager receives 100% of the interest earned on the syndicate proceeds.

In addition to the direct financial benefit, the proposed 30-day deadline for closing syndicate accounts would significantly reduce counterparty risk. Under the current rule, the syndicate member would be at risk of default by the syndicate manager for 90 days. Reducing this counterparty risk exposure to 30 days or less would reduce the duration of this counterparty risk exposures by two-thirds. While the risk of default is small, it is not zero, as the bankruptcy of Lehman Brothers demonstrated in 2008. The reduction of counterparty risk as a key focus of Chairman Gensler when Loop Capital and the BDA met with him in the Summer of 2021 to discuss Rule 11880 and the Net Capital Rule. In 1985, the then-NASD adopted the first syndicate closing rule establishing a deadline for settling accounts and paying comanagers, stating in the adopting release “delays in settling these [syndicate] accounts can result in unnecessary outlays of time and money by syndicate participants.” (NASD NTM 85-59). What was true in 1985, continues to remain true today.

Definition of corporate debt security

Loop Capital agrees with the definition of “corporate debt security” in the Notice as “a type of ‘TRACE-Eligible Security’ that is United States dollar-denominated and issued by a U.S. or foreign private issuer.” We believe this definition generally captures the universe of corporate bonds—investment grade and high yield—for which a move to a 30-day syndicate closing deadline would be easily achievable. However, Loop Capital also believes that securities covered by the proposed amendments to Rule 11880 should also include Securitized Products as defined in Rule 6710(m). The process for managing the syndicate account, paying vendors, and releasing deal revenue to comanagers is virtually the same for both corporate bonds and publicly offered securitized products.

Closing of Syndicate Accounts

As the Notice states, the time allotted to settle syndicate accounts in Rule 11880 is designed to allow bookrunners to “aggregate and bill expenses related to the offering, including due diligence, legal, marketing and distribution costs.” Over the past 18 months, Loop Capital has served as the syndicate manager in two offerings which would be covered by the amended Rule. In discussions with our team who handled the settlement of the syndicate, they did not identify any issues which would have precluded settlement in the 30 day time period proposed. Loop Capital fully supports the proposed amendment to shorten the settlement period to 30 days and does not believe this time period will present substantive challenges to firms who serve as syndicate managers.

Syndicate deadline for equity underwriting

Loop Capital further supports reducing the time period for settling equity syndicate accounts from 90 days. Although we understand that there may be some differences in process for equity offerings (over-allotment options for one), we believe that these differences do not justify the 90-day time frame and that a shorter time frame is appropriate. To this end, Loop Capital supports the applying the two-stage approach referenced in the Notice to equity offerings. This will result in a faster payout of a significant percentage of the syndicate profits and reduce counterparty exposure in equity offerings.

Loop Capital thanks FINRA listening to its concerns regarding the syndicate closing process and setting for the proposal to reduce the time frame from for settlement the accounts to 30 days. We urge FINRA to quickly seek approval for this amendment, and we look forward to working with regulators and stakeholders to implement this change. Please do not hesitate to call or write if you have any questions.

Sincerely,

Loop Capital Markets LLC

Stephen Berkeley
Chief Compliance Officer and Regulatory Counsel