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Invested in America

August 11, 2023

Submitted electronically to: pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 2006-1506

Re: Regulatory Notice 23-11 – FINRA Seeks Comment on Concept Proposal for a Liquidity Risk Management Rule

Dear Ms. Mitchell:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to provide comments to the Financial Industry Regulatory Authority ("FINRA") with respect to FINRA's concept proposal regarding liquidity risk management that would apply to FINRA members meeting the criteria specified in Regulatory Notice 23-11 (the "Proposal").[2]

SIFMA understands the underlying policy objectives of the Proposal to strengthen the liquidity risk management practices of FINRA members, and we appreciate FINRA's past efforts to foster best practices through its publications to members and bilateral dialogues as part of member supervision. However, by going beyond those measures to impose particular liquidity risk management requirements, assumptions and rebuttable presumptions, the Proposal seems likely to have far-reaching unintended consequences. In particular, the Proposal does not provide sufficient clarity regarding how its new liquidity risk standard should be applied to certain members, nor does it provide justification regarding how the proposed rebuttable presumptions indicate a liquidity risk management issue. Significant clarity and engagement with member firms is required before a proposed liquidity risk standard is finalized to ensure the

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's 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 FINRA RN 23-11 (June 12, 2023), available here: https://www.finra.org/rules-guidance/notices/23-11.

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standard does not conflict with existing liquidity risk management practices and regulatory requirements to which member firms are subject.

For members that are subsidiaries of holding companies subject to prudential regulation by the Federal Reserve and related non-U.S. supervisors, the Proposal would lead to unworkable inconsistencies and complications vis-à-vis substantially similar but not identical liquidity risk management requirements and standards imposed by those other regulatory authorities, which the limited exception from the Proposal's rebuttable presumptions would not remediate because it would not cover other aspects of the Proposal. In addition, firms not subject to the Federal Reserve's enhanced prudential standards would face a suite of rebuttable presumptions which, in many cases, are defined ambiguously and broadly, thus capturing certain normal-course business activities and creating unjustified operational burdens.

More generally, the Proposal would run counter to the prudent practice of managing liquidity cushions on a group-wide basis, which helps to mitigate the impact of liquidity stresses and fosters effective resolution and recovery of firms. We are not aware of any firm failures or other market events that would justify upending this practice or otherwise implementing the significant changes that the Proposal would require.

For those reasons, we think FINRA should identify specific, widespread events or issues (beyond a few isolated, firm-specific incidents) before adopting additional regulations in the liquidity risk area. If FINRA nonetheless decides to proceed with the Proposal, it should at a minimum remove the ambiguously defined liquidity standard and rebuttable presumptions provided in the Proposal. With respect to the remaining aspects of the Proposal (i.e., adoption of a liquidity risk management program, including liquidity stress testing and a contingency funding plan), SIFMA also supports providing exceptions with respect to all members that are subject directly or indirectly to prudential standards for liquidity risk management.

EXECUTIVE SUMMARY

SIFMA's comments regarding the Proposal can be summarized as follows:

(i) ***The Proposal would duplicate existing regulatory requirements and supervisory processes without sufficient justification*** – As discussed in Part I below, FINRA has not provided adequate justification for imposing a new liquidity risk management standard in light of the existing regulations and supervisory processes that overlap with the Proposal.

(ii) ***The scope of the Proposal is overbroad, particularly as applied to members that are subject to liquidity requirements on a consolidated basis*** – As discussed in Part II below, the Proposal should not apply to members with parent companies subject to prudential liquidity requirements. Other aspects of the scope of the Proposal relating to broker-dealer subsidiaries of a member firm and the criterion for outstanding borrowings should be modified as well.

(iii) ***The general liquidity requirement in the Proposal lacks specificity, resulting in uncertain application and overbroad FINRA discretion*** – As discussed in Part III below, the general liquidity requirement in the Proposal needs additional specificity, and FINRA should incorporate a safe harbor for firms with reasonably designed liquidity risk management processes, which would reduce inconsistent application and enhance regulatory certainty.

(iv) ***Application of the rebuttable presumptions raises significant issues*** – As discussed in Part IV below, the rebuttable presumption and FINRA notification construct in the Proposal would lead to unintended consequences. If FINRA retains some form of rebuttable presumption approach, the presumptions should not apply to members with parent companies subject to prudential liquidity requirements, and many additional aspects of the individual presumptions should be revised and clarified.

(v) ***The liquidity stress testing and contingency funding plan requirements are overbroad and duplicative as applied to members subject to prudential regulation*** - As discussed in Part V below, the liquidity stress testing assumptions of a member subject to prudential liquidity requirements on a consolidated basis should be presumed to be reasonable. Similarly, these members should be presumed to satisfy the contingency funding plan requirements in the Proposal.

(vi) ***The Proposal's FINRA notification and reporting requirements would raise unintended consequences and operational burdens*** – As discussed in Part VI below, the Proposal should incorporate a cure period prior to requiring FINRA notification and reporting, which would reduce unintended consequences and operational burdens.

(vii) ***Additional specificity is needed regarding the restriction and suspension of business provisions in the Proposal*** – As discussed in Part VII below, enhanced specificity is needed regarding the potential actions FINRA may take—along with proposed timing—in the event of a FINRA determination of insufficient liquidity, in light of the severe consequences of restrictions and suspensions of business on members, their parent companies and the financial system more broadly.

DISCUSSION

I. The Proposal would duplicate existing regulatory requirements and supervisory processes without sufficient justification

The Proposal would impose a broad set of liquidity risk management requirements on FINRA member firms. As the Proposal recognizes, however, broker-dealers currently are subject to a number of regulatory requirements that overlap with the areas covered by the Proposal, most notably (i) net capital requirements (Exchange Act Rule 15c3-1), (ii) margin regulations (the Federal Reserve's Regulation T) and (iii) customer protection requirements (Exchange Act Rule 15c3-3). In addition, as referenced in the Proposal, a broker-dealer is subject to notification requirements upon the occurrence of specified events relating to its financial condition under Exchange Act

Rule 17a-11 and, under Exchange Act Rule 17a-3(a)(23), certain broker-dealers must make and keep current records regarding liquidity risk management controls (among other things). FINRA also receives detailed information regarding the liquidity profile of certain FINRA members under the Supplemental Liquidity Schedule ("SLS"). Members with market access or that provide customers with access to an exchange or alternative trading system are generally subject to a range of risk management controls under Exchange Act Rule 15c3-5.

In addition, the SEC and FINRA maintain examination and monitoring processes with respect to broker-dealers' liquidity risk management practices, as outlined in the Proposal and FINRA Regulatory Notices 10-57 and 15-33. Notably, FINRA Regulatory Notice 10-57 outlines a range of sound practices for broker-dealer funding and liquidity risk management, including governance, stress testing, monitoring for early warnings signs of funding and liquidity issues, inventory valuation and contingency funding planning considerations. FINRA Regulatory Notice 15-33 articulates liquidity risk management practices based on FINRA liquidity stress tests and outlines FINRA's expectations regarding member liquidity risk planning and risk management. More recently, FINRA addressed effective liquidity management practices in Regulatory Notice 21-12 in light of market volatility. Furthermore, as referenced in the Proposal, FINRA routinely reviews liquidity risk management practices under its examination and risk monitoring program.[3] The SEC also receives information from certain broker-dealers regarding liquidity stress tests.

The Proposal would go beyond these steps to impose a wide range of prescriptive liquidity risk management requirements, but it does not provide adequate justification, in terms of risks not addressed by this existing regulatory framework, for implementing the proposed requirements on subject broker-dealers. Other than a generalized discussion of liquidity risks that a broker-dealer may face in the abstract—which can be adequately addressed through existing regulatory requirements and supervisory processes—the primary rationale for the Proposal seems to relate to market volatility arising from the COVID-19 pandemic, retail trading activities in "meme stocks" and the stress in the banking sector in the first quarter of 2023. These events did not pertain to broker-dealer liquidity risk management or practices and did not materially affect the viability of members from a liquidity perspective. In fact, the only example specific to a broker-dealer cited in the Proposal relates to a firm with a long history of risk management and internal controls issues and that has withdrawn its broker-dealer registration with, as far as SIFMA is aware, no material market effects.[4] Any final rule in

3 FINRA, 2023 Report on FINRA's Examination and Risk Monitoring Program, pp. 64-67 (Jan. 2023).

4 See, e.g., *In the Matter of the Application of Lek Securities Corporation For Review of Action Taken by National Securities Clearing Corporation and The Depository Trust Corporation*, Securities Exchange Act Release No. 95014 (May 31, 2022) ("Lek had been on NSCC's 'Watch List' since 2006 and under 'Enhanced Surveillance' as an enhanced credit risk since 2013."). See also Securities and Exchange Commission, *SEC Obtains Final Judgments Against Lek Securities and CEO in Layering, Manipulation Case* (Oct. 2, 2019), *available at* https://www.sec.gov/news/press-release/2019-205.

this area should explain the gaps in the current regulatory and supervisory framework that the rulemaking would address and should be more narrowly tailored to address specific liquidity risks that FINRA has observed.

Notwithstanding the existing FINRA and SEC requirements and supervisory processes to which members are subject and the lack of justification described above, the Proposal would impose a broad set of requirements on a large number of member firms without proper definition and clarity. One overarching issue is the Proposal's application to members who are part of a banking organization subject to enhanced prudential standards under Section 165 of the Dodd-Frank Act. These firms are already subject to stringent liquidity risk management and resolution planning requirements on a consolidated basis that substantially overlap with the Proposal and ensure appropriate liquidity risk management in business-as-usual, stress and resolution scenarios.

For those reasons, SIFMA does not believe that additional regulation in this area is warranted at this time. However, in case FINRA nonetheless decides to proceed with the Proposal, we have suggested below more specific changes to address the issues that the Proposal would raise.

II. The scope of the Proposal is overbroad, particularly as applied to members that are subject to liquidity requirements on a consolidated basis

The Proposal would apply to any member meeting the criteria for filing the SLS (i.e., a carrying member with $25 million or more in free credit balances or a member whose aggregate amount outstanding under repurchase agreements, securities loan contracts and bank loans is at least $1 billion) or a member that carries the customer accounts of other broker-dealers on an omnibus or fully disclosed basis.

A. The Proposal should not apply to members with parent companies subject to prudential liquidity requirements

Member firms that are consolidated by a U.S. bank holding company, U.S. IHC or foreign banking organization subject to the enhanced prudential standards provided in Regulation YY, or a savings and loan holding company subject to the enhanced prudential standards in the Federal Reserve's Regulation LL, should not be subject to the Proposal. The Proposal overlaps with the enhanced prudential standards to which these parent companies are already subject and would result in burdensome, duplicative, preemptive and possibly inconsistent requirements with no additional benefit to liquidity risk management standards.

Specifically, U.S. bank holding companies and covered savings and loan holding companies with total consolidated assets of at least $100 billion are subject to a broad range of liquidity risk management requirements under the Federal Reserve's enhanced prudential standards under Regulation YY and Regulation LL, respectively.[5] These enhanced prudential standards specifically include, in addition to governance and related risk management requirements, requirements to perform liquidity stress testing under multiple scenarios with respect to several planning horizons and to maintain a liquidity buffer—comprised of "highly liquid" assets—sufficient to meet the projected net stressed cash-flow need over a 30-day planning horizon.[6] These firms also must establish and maintain a contingency funding plan that provides strategies to address liquidity needs during liquidity stress events.[7] In addition, many larger foreign banking organizations with broker-dealer subsidiaries are subject to similar liquidity requirements with respect to their combined U.S. operations under the Federal Reserve's Regulation YY.[8] With respect to a foreign banking organization that has combined U.S. assets of at least $100 billion and 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.[9] Certain U.S. bank holding companies, U.S. IHCs and savings and loan holding companies also are subject to standardized liquidity requirements (namely, the liquidity coverage ratio and net stable funding ratio) under the Federal Reserve's Regulation WW.[10]

More broadly, many non-U.S. parent companies of other member firms 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 *Principles for Sound Liquidity Risk Management and Supervision* published by the Basel Committee on Banking Supervision (the "Basel Liquidity Standards"). Imposing separate liquidity requirements on member firms would be duplicative and costly given

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5 12 C.F.R. Part 252 (Regulation YY), Part 238 (Regulation LL). The enhanced prudential standards that apply to U.S. bank holding companies and covered savings and loan holding companies under Regulation YY and Regulation LL are tailored based on the total consolidated assets of the banking organization and other factors in accordance with the categorization thresholds specified in 12 C.F.R. § 252.5 and 12 C.F.R. § 238.10.

6 12 C.F.R. §§ 252.34-35; 12 C.F.R. §§ 238.123-124.

7 12 C.F.R. § 252.34(f); 12 C.F.R. § 238.123(f).

8 A foreign banking organization with combined U.S. assets of $100 billion or more is subject to liquidity risk management requirements and liquidity stress testing and buffer requirements with respect to its combined U.S. operations under Section 252.156 and Section 252.157 of Regulation YY. Under Section 252.145 of Regulation YY, a foreign banking organization with total consolidated assets of at least $250 billion and combined U.S. assets of less than $100 billion is subject to liquidity risk management requirements based on the *Principles for Sound Liquidity Risk Management and Supervision* published by the Basel Committee on Banking Supervision.

9 12 C.F.R. § 252.153(e)(4). Under 12 C.F.R. § 252.153(a)-(b), a foreign banking organization with average U.S. non-branch assets of $50 billion or more must establish or designate a U.S. IHC and generally hold its entire ownership interest in U.S. subsidiaries through its U.S. IHC.

10 12 C.F.R. Part 249.

that the parent companies of such member firms are already subject to broad liquidity requirements on a consolidated basis.

Relatedly, U.S. bank holding companies with at least $250 billion in average total consolidated assets or at least $100 billion in average total consolidated assets that also meet additional criteria are subject to resolution planning requirements in the United States that have been promulgated by the Federal Reserve and the FDIC under Section 165(d) of the Dodd-Frank Act. Foreign banking organizations with at least $250 billion in total consolidated assets are also subject to resolution planning requirements with respect to their U.S. operations. The resolution strategies employed by these parent companies—including with respect to resolution of a material broker-dealer subsidiary—have been developed in close coordination with prudential supervisors and vary depending on the structure and size of the individual firm.[11] In general, firms subject to these requirements have calculated the level of liquidity resources that a material operating entity, such as a broker-dealer, must hold in accordance with the resolution strategy of the parent company (or, in the case of a foreign banking organization, its U.S. operations), which take into account, among other factors, which aspects of the firm's business are critical to overall market operations. Firms subject to enhanced prudential standards and resolution planning, as a result, are already subject to liquidity risk management requirements, including to maintain appropriate liquidity resources under a range of scenarios.

In addition, a member firm that is consolidated by a non-U.S. company subject to home-country liquidity requirements also should not be subject to the Proposal for the same reason.

For these firms subject to prudential liquidity oversight, a better approach would be for FINRA to use its existing supervisory processes to engage with the firm to understand how it complies with these preexisting prudential liquidity risk management standards, given that those standards overlap substantially with FINRA's objectives. Only to the extent FINRA identifies specific gaps should the firm need to take any additional actions relating to liquidity risk management. This approach would eliminate redundant costs to relevant members and reduce monitoring burdens for FINRA. It also

[11] Under a so-called "single point of entry" strategy, the parent company would enter an insolvency proceeding and many of the material entities would be wound down or sold. In contrast, a "multiple point of entry" strategy involves several entities within a corporate structure entering separate insolvency proceedings. See, e.g., Resolution-Related Resource Requirements for Large Banking Organizations, 87 Fed. Reg. 64,170, 64,172 (Oct. 24, 2022) (advance notice of proposed rulemaking) ("As described in the public sections of their resolution plans, the U.S. [global systemically important bank holding companies] have all adopted a single-point-of-entry (SPOE) resolution strategy, in which only the top-tier holding company would enter a resolution proceeding (bankruptcy) and in which losses would be passed up from subsidiaries to the parent company shareholders and long-term debt holders…As described in the public sections of the resolution plans filed by Category II and III large banking organizations, a multiple-point-of-entry (MPOE) resolution strategy is generally contemplated by these firms, in which the parent holding company would enter bankruptcy and the insured depository institution subsidiary would undergo FDIC-led resolution under the Federal Deposit Insurance Act.").

would reduce the risk of inconsistent regulation (e.g., if FINRA were to direct the firm to curtail or suspend a business deemed a critical operation by other regulators).

B. The Proposal should not apply to wholly owned broker-dealer subsidiaries of a broker-dealer subject to the Proposal

SIFMA seeks clarification that the Proposal would not apply separately to members that are wholly owned subsidiaries of a broker-dealer that is also subject to the Proposal to the extent the parent broker-dealer takes into account the assets, liabilities and funding profile of the subsidiary broker-dealer for purposes of liquidity risk management. When these firms manage liquidity on a consolidated basis, applying the requirements of the Proposal to multiple firms would, in addition to introducing unnecessary duplication, in fact reduce the resilience of each firm in a liquidity stress scenario. In particular, requiring each broker-dealer to hold a predefined level of liquidity resources would limit the range of actions a broker-dealer could take when liquidity stresses manifest for one entity but not the other.

C. The criterion regarding outstanding borrowings should be revised

The criterion with respect to aggregate amounts outstanding under repurchase agreements, securities loan contracts and bank loans of at least $1 billion should be revised because this metric is a poor indicator of underlying liquidity risk of a broker-dealer.

The underlying securities of these repurchase agreements generally are short-term and highly liquid assets, such as U.S. Treasury securities and agency securities. Many of these instruments also are subject to netting in accordance with the *Best Practices for Treasury, Agency Debt and Agency Mortgage-Backed Securities Markets* published by the Treasury Market Practices Group under the auspices of the Federal Reserve Bank of New York. The aggregate amount of repurchase agreements, securities loan contracts and bank loans outstanding should, as a result, take into account offsetting positions with a single counterparty, which is generally consistent with accounting standards and regulatory capital requirements.

In addition, this criterion regarding outstanding borrowings should be revised to subject a firm to the Proposal only if it both (i) has aggregate amounts outstanding under repurchase agreements, securities loan contracts and bank loans of at least $1 billion and (ii) is a carrying member. A member should be a carrying member in order to be subject to the Proposal. The guidance to the Proposal appropriately focuses on the potential risks to customers in the event of a liquidity event affecting a member. These issues are not present when the member is not a carrying member. Although such a firm could present credit risk to its counterparties, that risk is best addressed by the margining and other credit risk management practices of those counterparties.

III. The general liquidity requirement in the Proposal lacks specificity, resulting in uncertain application and overbroad FINRA discretion

The Proposal would require a member subject to the Proposal to "at all times have and maintain sufficient liquidity on a current basis." Neither the term "sufficient liquidity" nor the concept of "on a current basis" is defined in the Proposal. The guidance accompanying the rules text provides some additional explanation—members "must have available cash and liquid assets sufficient to meet their funding obligations as they come due." However, it is unclear how a member should determine whether cash and liquid assets are considered "available" or whether "funding obligations" should be calculated on the basis of a stressed or unstressed environment. Without more specificity, the requirement would lead to uncertainty and variation in application. There is also the risk that similarly situated firms could be subject to different treatment of the rule due to the lack of transparency. We appreciate that FINRA has sought to add further specificity and transparency through its proposed rebuttable presumptions. However, for the reasons we discuss below, that aspect of the Proposal would lead to its own difficulties.

This requirement differs from how other regulators, such as the Federal Reserve, have addressed the same policy objectives. To promote regulatory consistency and a level competitive playing field, FINRA should harmonize the Proposal more closely with those other regulators' requirements. Specifically, FINRA should reframe its general liquidity requirement to provide that a member should have liquid assets sufficient to cover anticipated liquidity outflows, using the definition of "highly liquid asset" in the Federal Reserve's Regulation YY and Regulation LL. Under these regulations, a "highly liquid asset" includes cash or assets meeting the general criteria for high quality liquid assets under the liquidity coverage ratio rules.

Additionally, with respect to members that would not otherwise be exempt from the Proposal consistent with SIFMA's comments described in Section II, the Proposal should be amended to provide that a member has sufficient liquidity if it has established, implemented and followed reasonably designed liquidity risk management program policies and procedures (including liquidity stress tests and a contingency funding plan) and FINRA has not determined that the member's liquidity risk management program policies and procedures are not reasonably designed, either on its own initiative or upon the member triggering a liquidity risk notification to FINRA, as described by SIFMA's comments in Section IV below. This safe harbor would reduce inconsistent application of the liquidity requirements and enhance regulatory certainty.

IV. Application of the rebuttable presumptions raises significant issues

A. The requirement to notify FINRA and provide a written rebuttal on the basis of specified conditions would create unintended consequences

The Proposal provides a list of rebuttable presumptions that a member has insufficient liquidity on a current basis in Rule 4610(b)(1) through 4610(b)(8). Under this framework, if a presumption is triggered, the member is required to notify FINRA within two business days and provide FINRA a written rebuttal within five business days after the required notification. If FINRA determines the member does not have sufficient liquidity on a current basis notwithstanding the rebuttal, FINRA may direct the member to restrict or suspend all or part of its business.

As a conceptual matter, this approach is flawed. If the trigger event for a presumption does in fact indicate that the firm is experiencing liquidity stress, the inherently backward-looking nature of the trigger means that it will likely be too late for the firm or FINRA to take adequate steps to prevent further deterioration in the firm's liquidity position. If the event does not in fact indicate such stress, which we think will more often be the case, then the firm and FINRA will expend significant resources unnecessarily.

Moreover, SIFMA is concerned that member firms effectively will need to modify their business models and practices *ex ante* in light of the serious consequences that may result if a member firm is unable to rebut a presumption of insufficient liquidity. In other words, rather than risk the significant business disruption resulting from a FINRA determination of insufficient liquidity, members may rationally decide to restructure their existing operations, which would adversely interfere with certain business models and practices that do not inherently pose material liquidity risks.

This is particularly concerning in light of the fact that each of the presumptions listed in the Proposal may arise through events that have little (or nothing) to do with the particular member or that do not indicate a level of liquidity stress with respect to the member. This construct risks diverting FINRA and member resources to monitoring presumptions that may not in practice relate to the liquidity risk of a member. If a member faces actual liquidity issues, precious time and resources would need to be devoted to producing reports to FINRA, as opposed to focusing efforts on addressing any underlying liquidity concern.

In lieu of defining the types of events that trigger a rebuttable presumption, a better approach would focus on the specific member's level of liquidity based on its own liquidity stress tests. When the liquidity stress tests are conceptually sound and well designed—which FINRA would have the authority to review as a supervisory matter—the stress tests would include the range of liquidity risks to which a member firm is subject, including risks that the presumptions are intended to address.

If FINRA does retain its proposed, event-specific triggers, it should treat them solely as events triggering a notification to FINRA, not as a rebuttable presumption that the firm has insufficient liquidity and must potentially face a restriction or suspension of its business. Given the significant consequences of business restriction or suspension, FINRA should in all cases bear the burden of showing that a firm has insufficient liquidity.

B. The scope of the EPR exception should be expanded to cover any member consolidated by a company subject to consolidated liquidity requirements consistent with the Basel framework

Under the Proposal, "a 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*" (emphasis added) is not subject to these rebuttable presumptions, referred to in the Proposal as an "EPR firm."

The Proposal does not reference specific Federal Reserve liquidity risk management requirements, leading to uncertainty regarding the scope of the term "most stringent liquidity risk management requirements." As described above, (i) U.S. bank holding companies and savings and loan holding companies with total consolidated assets of at least $100 billion, (ii) U.S. IHCs of a foreign banking organization with combined U.S. assets of at least $100 billion and (iii) foreign banking organizations with combined U.S. assets of at least $100 billion, are each subject to a range of liquidity governance, risk management, stress testing and liquidity buffer requirements under Regulation YY and Regulation LL. Foreign banking organizations with combined U.S. assets of less than $100 billion and total consolidated assets of at least $250 billion also are subject to certain liquidity risk management requirements under Regulation YY consistent with the Basel Liquidity Standards with respect to their combined U.S. operations.

More fundamentally, to the extent EPR firms are not exempted entirely from the Proposal, as SIFMA recommends, the exception for EPR firms should be expanded to cover any firm that is consolidated by a parent company subject to and in compliance with liquidity requirements on a consolidated basis that are consistent with the Basel framework. The logic for applying the exception to firms subject to and in compliance with the Federal Reserve's enhanced prudential standards under Regulation YY and Regulation LL on a consolidated basis extends with equal force to non-U.S. liquidity risk management requirements consistent with the Basel framework.

SIFMA also seeks clarification that, to the extent the rebuttable presumption construct is retained, a member that satisfies this exception for EPR firms is not required to monitor the rebuttable presumptions in Rule 4610(b)(1) through (b)(8) of the Proposal and that FINRA will not, on its own initiative, necessarily view triggering those presumptions as meriting a business restriction absent some other indication of imminent, firm-specific distress or liquidity mismanagement. Otherwise, requiring EPR firms to monitor these rebuttable presumptions when they are already subject to the liquidity risk management requirements of Regulation YY will result in significant operational burdens without meaningful benefit to enhancing liquidity risk management or supervision.

C. Many of the individual presumptions in the Proposal are unworkable or need significant clarification

As noted above, the rebuttable presumption construct provided in the Proposal does not provide justification regarding how each event indicates a liquidity risk management issue, and may lead to unintended consequences. FINRA assessment of appropriate liquidity risk management across member firms should be based on an underlying assessment of the amount of liquidity a firm holds to meet its liquidity requirements in a stress scenario, rather than based on individual events. But to the extent this approach is retained, SIFMA raises the following specific points with respect to the individual presumptions.

1. The presumption with respect to borrowing funds from a nonbank affiliate should be modified to exclude other intercompany borrowings that do not present heightened liquidity risks

As drafted, a member would trigger a rebuttable presumption under the Proposal if the member borrows any amount from any nonbank affiliate, regardless of the nature of the affiliate or borrowing arrangement. This broad approach would encompass numerous arrangements that do not present heightened liquidity risks, necessitating firms to discuss a variety of ordinary course activities with FINRA in advance and lead FINRA to review the financial resources and liquidity position of affiliates that are not FINRA members, which goes beyond FINRA's jurisdiction. The presumption also raises tensions with resolution planning strategies that may involve nonbank affiliate provision of liquidity to broker-dealer subsidiaries in a stress scenario.

a. *Borrowings from affiliates with highly rated debt or that are publicly traded companies or regulated entities should be excluded*

At a minimum, this presumption should exclude borrowings by a member from an affiliate that either (i) has highly rated debt, (ii) access to public capital markets (i.e., is a publicly traded company) or (iii) is a regulated entity that is subject to capital requirements, including a U.S. or non-U.S. banking organization, a U.S. IHC, a foreign broker-dealer, a swap dealer, or a security-based swap dealer. These entities would not raise the concerns FINRA addressed in the Proposal regarding a member borrowing funds from a thinly capitalized or unregulated affiliate with limited operations.

In addition, as noted above, many U.S. bank holding companies and other entities subject to resolution planning requirements have commitments to provide liquidity to material subsidiaries—including broker-dealer subsidiaries—in the event of stress. These types of intercompany arrangements should not subject a member to a presumption of insufficient liquidity.

b. *The Proposal should clarify the presumption to exclude routine borrowings*

Although the Proposal suggests that FINRA does not intend to cause "multiple triggers" of the presumption when a member engages in recurring transactions with a nonbank affiliate, a requirement to discuss every intercompany transaction (or group of recurring intercompany transactions) with FINRA would result in significant operational burdens and costs, including diverting FINRA regulatory resources. To address this issue, FINRA should modify the presumption to exclude borrowing activities that take place on a routine, regularly recurring basis.

c. *The Proposal should reference satisfactory subordination agreements and other guidance*

If this presumption is retained, the text should be revised to make clear that satisfactory subordination agreements under Exchange Act Rule 15c3-1d would not be considered a borrowing from a nonbank affiliate that is subject to the presumption given that these subordination agreements are subject to FINRA approval.

The text of the presumption also should specifically include the other factors that FINRA stated it would consider in rebutting the presumption.[12] Including these factors directly in the text of the presumption would reduce the operational and related burdens that members would face in submitting this information to FINRA to rebut the presumption.

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[12] Below are the factors listed in the guidance: (i) the member can demonstrate that the amounts it borrows from a nonbank affiliate are immaterial relative to its total available financing sources and such amounts are not critical to meeting its funding obligations; (ii) the member records liabilities to an affiliate that relate to arrangements for shared expenses or similar obligations and the amount payable is not material to the member's liquidity (i.e., the member is not reliant on the affiliate to continue funding its business activities and can easily repay the amount without hardship); (iii) the nonbank affiliate can secure funding via issuance of highly rated commercial paper or has access to public capital markets; (iv) the nonbank affiliate has permanent capital that is available and sufficient to fund the member; and (v) the member can show in its liquidity risk management program that the member does not rely on the amount borrowed from the nonbank affiliate. We note that some of these factors would already be addressed by our recommendation above to permit borrowings from certain types of affiliates without triggering the presumption.

d. *Loan agreements meeting the criteria for initial margin collateral pursuant to SEC no-action relief should be excluded from the presumption*

A loan agreement that meets the following conditions set forth in the SEC staff no-action letter to FINRA with respect to initial margin collateral that the member posts to a counterparty for a non-cleared swap should be excluded from this presumption:

- The initial margin is funded by a fully executed written loan agreement with an affiliate of the member;
- The loan agreement provides that the lender waives repayment of the loan until the initial margin is returned to the member; and
- The member's liability to the lender can be fully satisfied by delivering the collateral serving as initial margin to the lender.[13]

Under this no-action relief, a broker-dealer is not required to deduct the value of the collateral when calculating its net capital if the criteria referenced above are satisfied. Given that the SEC staff has recognized the propriety of these arrangements through this net capital no-action relief, a loan agreement satisfying the applicable conditions similarly should not give rise to a FINRA presumption of insufficient liquidity.

2. *The presumption regarding borrowing in excess of 70% of customer debit balances secured by customer property raises several issues*

A member would face a presumption of insufficient liquidity under the Proposal if it borrows an amount in excess of 70% of its customer debit balances and the amount is secured by assets that are the property of its customers. This presumption raises several issues.

Most prominently, obtaining funding that is secured by customer assets is not indicative of liquidity stress. A broker-dealer may obtain stable funding secured by customer assets pursuant to contractual term agreements, which may be recognized as available stable funding under the net stable funding ratio regulations promulgated by the U.S. prudential regulators.[14] Although financing on the basis of customer free credits may be unstable given that clients with free credit balances may withdraw them, that

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13 Letter from Michael A. Macchiaroli, Associate Director of the Division of Trading and Markets of the Securities and Exchange Commission to Kris Dailey, Vice President of Risk Oversight & Operational Regulation of FINRA (Aug. 19, 2016).

14 See, e.g., 12 C.F.R. § 249.104(d) (assigning a 50% available stable funding factor to certain categories of secured funding transactions).

concern does not apply to customer debits, which in turn are what authorize a member to borrow against customer securities under Exchange Act Rule 15c3-3.

As an example, if a member makes a margin loan to a customer and the member subsequently lends the customer's pledged securities, there would be an increase in the reserve requirement equal to the excess of the market value of the loaned securities over the customer's borrowings from the broker-dealer, which protects the broker-dealer's customers. In this circumstance, however, the Proposal would create an incentive for the member to fund the margin loan using sources other than customer securities, which itself could be a source of stress by artificially limiting the ability to fund customer facilitation business through hypothecation of customer margin securities.[15] To the extent the concern relates to limits on using customer margin securities to finance lending, as indicated in the Proposal, that concern should be addressed by the SEC in a direct manner through revisions to its customer collateral hypothecation rules (Exchange Act Rules 8c-1 and 15c2-1) or customer protection rule (Exchange Act Rule 15c3-3), rather than through this Proposal.

Additionally, the presumption as drafted does not take into account the respective maturities of the customer asset and the funding transaction. When these maturities are matched, there should not be a liquidity concern.

To the extent some form of this presumption is retained, the Proposal should clarify that this presumption is assessed relative to the member's most recent reserve formula calculation and the Proposal should specify the particular line item under Exchange Act Rule 15c3-3 that corresponds to "customer debt balances."

3. *The presumption regarding ad-hoc reserve formula calculations is unwarranted and, if adopted, should not apply to members performing calculations on a daily basis and routine events that trigger an ad-hoc calculation should not result in a presumption of insufficient liquidity*

The Proposal generally would presume a member has insufficient liquidity if the member performs a reserve formula computation on an *ad-hoc* basis more than once during a rolling 90-calendar day period for the purposes of making a withdrawal from its Special Reserve Bank Account under Exchange Act Rule 15c3-3 or the member requests extraordinary regulatory relief to make a withdrawal without performing a reserve formula computation.

In general, performing a reserve formula computation on an *ad-hoc* basis should not trigger a presumption of insufficient liquidity. There are a variety of reasons why a broker-dealer may perform an *ad-hoc* computation that do not evince any liquidity

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15 Additionally, in these transactions, it is common for the parties to hold customer collateral through tri-party custodial arrangements, which reduces operational burdens for the member.

concern, including in connection with annual tax payments or events that result in increases in reserve account credits.

To the extent some form of this presumption is retained, the Proposal should clarify the scope of calculations performed on an "*ad-hoc* basis" as follows.

First, a member that performs daily reserve formula computations under Exchange Act Rule 15c3-3 should not be subject to this presumption. These firms already perform daily reserve formula computations.[16]

Second, routine events that result in a reserve formula computation (e.g., annual tax payments) also should not trigger the presumption. These types of events have nothing to do with the liquidity profile of the member and, as a result, this presumption would raise significant operational and regulatory burdens without justification absent an exclusion for routine calculations.

Finally, the presumption also should not apply to performing *ad-hoc* calculations to justify releasing an excess amount or a calculation that results in a withdrawal. As one example, when an event occurs that gives rise to a significant increase in reserve account credits (e.g., an operational event that leads to a significant increase in suspense account credits and related increase in the reserve formula under Exchange Act Rule 15c3-3a), the broker-dealer may elect to perform a further calculation that results in a reduced reserve requirement once the operational or other event or circumstance resulting in an increase in credits is resolved. These calculations are performed not to rectify a potential liquidity issue but instead to optimize the liquidity of the member.

4. The presumptions regarding lines of credit, securities financing arrangements, settlement bank and central counterparty intraday credit facilities raise issues

The Proposal would incorporate a presumption of insufficient liquidity under Rule 4610(b)(4) through (b)(6) if the member's bank lines of credit (including bank loan facilities other than intraday credit facilities at a settlement bank), securities financing arrangements and intraday settlement bank and central clearing counterparty ("CCP") credit facilities are reduced by 50% or more of the total available bank lines during a rolling 90-calendar day period. There are a number of elements of these presumptions that raise issues or need clarification.

As an overarching matter, these calculations do not address the extent to which a member may be able to secure funding from these sources in the future. The calculation looks only at the funding amounts that were "available" during a rolling 90-calendar day period, which does not address whether those funding amounts might be

[16] Indeed, the SEC recently proposed amendments to Rule 15c3-3 that would require carrying broker-dealers with average total credits of at least $250 million to perform these computations daily, which amendments, if finalized, would render this presumption superfluous as applied to these broker-dealers.

available on an ongoing basis. For this reason, we question the validity of using these calculations to trigger a rebuttable presumption at all.

If FINRA retains these presumptions, then it should make the following changes and clarifications:

- Performing a calculation on a rolling 90-calendar day period raises computational complexities and would impose operational burdens on members. This rolling 90-calendar day period in the Proposal should be replaced with a quarterly calculation cycle;

- The presumption should be triggered only if the condition occurred as a result of a firm-specific liquidity concern. It would be inappropriate to impose a rebuttable presumption as a result of market-wide circumstances or events that do not raise liquidity issues with respect to a particular member; and

- The guidance FINRA listed in the Proposal regarding factors it would consider in determining whether the presumption of insufficient liquidity has been rebutted should be inserted directly into the text of the rule.[17]

In addition to these points that apply across these three presumptions, SIFMA notes the following further points on the particular presumptions.

Bank Lines of Credit. There are many reasons why these arrangements may be reduced that have little to do with the liquidity profile of the member. Most notably, a member may elect to reduce business activities that require these types of funding arrangements, or to obtain cheaper funding from sources other than bank lines of credit.

If, however, FINRA maintains a presumption based on a reduction in bank lines of credit, the Proposal should clarify whether the presumption relates to the member's total borrowing limit or only the unused portion of the limit. The Proposal also should clarify that the presumption applies to the total amount with respect to committed, unsecured lines of credit. Notably, a member may not know whether a credit provider has reduced an uncommitted, unsecured line of credit, such that it would be difficult (if not impossible) to comply with the attendant notification requirements if this presumption were breached.

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[17] Below are the factors listed in the guidance: (i) the member is reducing its business or is exiting a business line (including through a transfer or sale to another firm) and will no longer need its previous level of financing to continue to fund its business; (ii) the member has sufficient other internal liquidity sources to replace its lost funding and can meet its funding obligations as they come due; and (iii) the member has replaced its lost funding through alternative external liquidity sources and can meet its funding obligations as they come due.

Securities Financing Arrangements. The intended scope of "securities financing arrangements" that would be subject to the presumption is poorly defined and not indicative of liquidity stress. Accordingly, if it adopts it, FINRA should make the following clarifications and changes to this presumption:

- The presumption should apply on a net basis with respect to cash obtained in repurchase transactions and securities lending transactions, on the one hand, and reverse repurchase transactions and securities borrowing transactions, on the other hand. Many members engage in "matched book" securities financing arrangements. In a matched book securities financing arrangement, a member provides cash funding to a customer in exchange for securities collateral and the member obtains the cash funding through re-pledging the securities collateral received from the customer. In these circumstances, a reduction in the member's funding would result in a concomitant reduction in lending, with no net effect on the member's liquidity.[18]

- The presumption should not be triggered by a 50% net reduction in securities financing arrangements unless the amount of such reduction also exceeds a material amount of the firm's excess net capital. Otherwise the presumption could capture immaterial reductions due to ordinary business fluctuations that are not indicative of a liquidity stress.

- The presumption should not be triggered based solely on changes in the market value of the underlying securities. Events such as broad stock market declines may result in decreases in the aggregate amount of securities financing arrangements without directly affecting a member's liquidity position.

- The presumption should not be triggered based solely on a member's decision to reduce its outstanding securities loans due to a change in the overall market rate of income that can be earned on such transactions. Members may make stock loans to customers not to obtain liquidity but to generate income. A reduction in these arrangements would not indicate any issue with the member's liquidity profile but instead may arise purely from shifting business priorities.

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18 There should be no liquidity concern in particular with respect to matched book securities financing arrangements in which the amounts and maturities of the respective assets and liabilities involved in the arrangements are closely matched because the member's borrowing transaction (the liability) matures on the same date as the loan to the customer (the asset). In respect of matched book securities financing arrangements, a potential liquidity issue would arise only if the member's borrowing transaction has an earlier maturity than the customer loan. Accordingly we think that a significant maturity mismatch, particularly for less liquid collateral such as corporate debt, would be a more relevant factor than a change in the dollar amount of funds borrowed.

- Arrangements with affiliates should not be included within the scope of this presumption. In general, many firms with broker-dealer subsidiaries manage liquidity on an enterprise-wide basis and will deploy liquidity resources at individual entities within the corporate structure for a variety of reasons. A reduction in intercompany securities financing agreements with a broker-dealer could, in fact, signal diminished—rather than heightened—liquidity concerns with respect to the broker-dealer subsidiary because the broader enterprise is deploying resources to other parts of the organization.

Intraday Settlement Bank and CCP Credit Facilities. With respect to intraday settlement bank and CCP credit facilities, SIFMA raises the following points:

- The presumption raises a conceptual issue given that, similar to the point raised above regarding bank lines, it is not clear how the presumption will operate in practice if the relevant settlement bank or CCP does not disclose the amount of intraday credit it will provide to the member. If the member does not know the intraday credit amount extended to it by a settlement bank or CCP, the member cannot monitor for reductions and would be unable to comply with the FINRA notification requirements in the Proposal.

- The presumption should apply only to settlement bank and CCP credit facilities that are material to the member and should not apply in the event of a failure of a settlement bank or CCP that is unrelated to the particular member. With respect to the former, the presumption should be focused on only facilities that materially affect the liquidity profile of the member. Regarding the latter, it would not be appropriate to trigger a presumption as a result of a settlement bank or CCP failure because the reduction in funding would be caused by an event entirely unrelated to the member and its liquidity.

- SIFMA seeks confirmation that the net debit cap provided by the Depository Trust Company to DTC participants, which sets DTC's maximum credit exposure to a participant, is included in this determination.

5. The presumption regarding losing access to settlement banks should apply only to material settlement banks and should not apply in the event of failure of the settlement bank unrelated to the member

The Proposal would include a presumption of insufficient liquidity if the member is notified that it has lost or will lose access to the services of a settlement bank and the member has not replaced the settlement bank 90 days prior to the termination of access.

This presumption should not apply to a settlement bank that is not material to the member because this "loss" of access would not materially affect the member's financial condition or liquidity profile. In addition, the presumption should not apply if the settlement bank undergoes stress or fails in a manner unrelated to the member, as this does not indicate a liquidity problem with respect to the individual member.

Consistent with the comments above, the guidance FINRA listed in the Proposal regarding factors it would consider in determining whether the presumption of insufficient liquidity has been rebutted should be inserted directly into the text of the rule.[19]

6. The presumption regarding revocation of CCP membership or material CCP or settlement bank restrictions should apply only to material CCP memberships and settlement banks

Under the Proposal, there would be a presumption of insufficient liquidity if the member is subject to revocation of a CCP membership or any "material restrictions" by a CCP or settlement bank (including an increased minimum deposit or collateral requirement due to firm-specific liquidity concerns or restrictions on withdrawing excess margin exceeding 10% of excess net capital).

Consistent with the comments above, the presumption should not apply with respect to CCPs or settlement banks that are not material to the member, including in each case circumstances when the member has access to alternative CCPs or settlement banks. In addition, the presumption should not apply if the condition occurs as a result of general market conditions or other factors that are unrelated to the member and its liquidity. Any presumption based on CCP or settlement bank membership or restrictions should apply only in the event of actions taken by the applicable CCP or settlement bank.

Further, the guidance FINRA listed in the Proposal regarding factors it would consider in determining whether the presumption of insufficient liquidity has been rebutted should be inserted directly into the text of the rule.[20]

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19 Below are the factors listed in the guidance: (i) the member plans to voluntarily exit the business line processed through the settlement bank or, for another reason, will no longer need the settlement bank to process the impacted business activity; and (ii) the member has another settlement bank through which it can process the affected business activity and can shift the activity to such other settlement bank without impacting customers or counterparties.

20 Below are the factors listed in the guidance: (i) the member is reducing or exiting a line of business (including through a transfer or sale to another firm) that was cleared through the subject CCP or settlement bank; and (ii) the member can shift the clearance of the affected line of business to another CCP or settlement bank without adversely impacting its business operations or liquidity needs.

7. *The Proposal should clarify the data sources used in calculating the figures from the presumptions and confirm the required monitoring cadence*

As noted above, the Proposal would incorporate rebuttable presumptions of insufficient liquidity based on a variety of calculations. The Proposal does not specify the particular line items in SEC rules or reporting forms (e.g., the SLS or FOCUS reports) that members should use to perform these calculations.

In addition, the Proposal does not specify how frequently a member must perform monitoring to determine whether a presumption has been triggered. SIFMA requests that the Proposal clarify the presumptions must be monitored with the same frequency as liquidity stress testing (e.g., on a monthly basis) because more frequent monitoring would impose significant operational costs and burdens.

V. The liquidity stress testing and contingency funding plan requirements are overbroad and duplicative as applied to members subject to prudential regulation

A. The stress testing assumptions in the Proposal are too prescriptive as applied to members subject to consolidated liquidity requirements and in respect of the frequency of stress testing

Under the Proposal, a member would be required to establish and maintain a liquidity risk management program that includes designing and conducting monthly liquidity stress tests for a projected rolling 30-day period. The Proposal provides that a liquidity stress test based on the assumptions listed in Supplementary Material .02 is presumed to be reasonable.

First, the liquidity stress test requirements are duplicative of—and inconsistent with—requirements to which parent companies of members subject to the Federal Reserve's enhanced prudential standards (and similar foreign requirements) are subject. These standards include broad liquidity risk management obligations and specifically require liquidity stress testing under various scenarios and planning horizons. The Proposal should provide that the liquidity stress testing requirements are satisfied if the member's holding company is subject to liquidity stress testing requirements under the Federal Reserve's enhanced prudential standards in Regulation YY or Regulation LL, or is subject to comparable non-U.S. standards based on the Basel Liquidity Standards. Requiring different assumptions at the member level from those used by a parent company would introduce significant operational burdens on member firms and their parent companies.

For those firms not subject to Federal Reserve or similar prudential standards incorporating liquidity stress testing requirements, SIFMA supports FINRA providing a set of assumptions that would be considered presumptively reasonable. However, we want to confirm that FINRA would also permit each member to design its own liquidity stress test and related assumptions commensurate with its business so long as the stress test is reasonably designed. In this regard, it will be important for FINRA not to introduce procyclicality in connection with liquidity stress testing and related assumptions, which can exacerbate market stress and harm financial stability. In general, SIFMA supports member firms holding sufficient liquidity in advance of a stress scenario and taking into account only forms of liquidity that will be available notwithstanding market stress.

The Proposal is too prescriptive with respect to frequency of stress tests. Although some firms already perform stress tests on a monthly basis, other firms perform tests less frequently. In this regard, the frequency of testing should take into account the extent of a member firm's external debt and excess net capital, such that firms that have little to no external debt or very high levels of liquidity may, with FINRA approval, perform stress tests less frequently.

Additionally, it would be helpful for FINRA to clarify that one stress scenario is sufficient to satisfy the liquidity stress test requirement and make clear that the Proposal does not mandate particular forms of internal documentation for the design and conceptual framework of the liquidity stress tests, which would provide flexibility for members to tailor these policies to their broader documentation practices.

Finally, given that certain firms already perform stress tests that they provide to the SEC, for those firms FINRA should defer to the SEC regarding the frequency of stress tests and related assumptions.

Specific comments on certain of the assumptions listed in Supplementary Material .02 are included in the Appendix.

B. The contingency funding plan requirements in the Proposal should be presumed to be satisfied if the member's holding company is subject to the Federal Reserve's contingency funding plan requirements or comparable non-U.S. standards

The Proposal would require a member to have a written contingency funding plan that is reasonably designed to assist the member in mitigating materially adverse fluctuations in its liquidity.

As noted above, the parent companies of many member firms are subject to contingency funding plan requirements under the Federal Reserve's enhanced prudential standards that overlap with this requirement. Therefore, the Proposal should include a presumption that the contingency funding plan requirements are satisfied if the member's holding company is subject to contingency funding plan requirements under the Federal Reserve's enhanced prudential standards in Regulation YY or Regulation LL, or is subject to comparable non-U.S. standards based on the Basel Liquidity Standards.

VI. The Proposal's FINRA notification and reporting requirements would raise unintended consequences and operational burdens

Under the Proposal, a member would be required to notify FINRA within two business days after any of the conditions in Rule 4610(b)(1) through (b)(8) occur and, if the member seeks to rebut the presumption, provide FINRA a written rebuttal with supporting evidence within five business days after the notification. A member also must provide FINRA the results of any liquidity stress test reflecting a liquidity shortfall during the projected 30-calendar day period within two business days.

The Proposal should incorporate a cure period whereby the member has the opportunity to address any projected liquidity shortfalls without submitting a notification to FINRA. Client activity or broader market conditions may result in changes in a member's liquidity profile that a member is equipped to address on a timely basis through affiliate funding and other arrangements without raising liquidity concerns. A requirement to notify FINRA when there are any projected liquidity shortfalls will result in member firms holding unduly large amounts of liquidity cushions, in particular in light of the severe consequences of a FINRA determination of insufficient liquidity described in Section VII.

Finally, the Proposal should clarify the frequency of notification and reporting requirements when a presumption is triggered multiple times for the same underlying reasons. It would be resource-intensive and unproductive for members to submit multiple notifications in these circumstances.

VII. Additional specificity is needed regarding the restriction and suspension of business provisions in the Proposal

Under the Proposal, if FINRA determines a member does not have sufficient liquidity on a current basis, FINRA may issue a notice pursuant to FINRA Rule 9557 directing the member to take measures necessary to restore the member's liquidity, which may include restricting or suspending all or a part of a member's business.

The Proposal should include additional specificity regarding the actions that FINRA would consider in the event of a finding of insufficient liquidity and prescribe timing under which FINRA would determine whether to "accept" or "reject" a member's rebuttal of insufficient liquidity. Importantly, the Proposal should state definitively that significant restrictions (or suspensions) of a member's business would be used only in exigent circumstances and commit to providing adequate time for a member to remediate liquidity concerns prior to taking actions that could be devastating to the individual member, its parent company and the financial system more broadly.

SIFMA expects FINRA would consider a member's plans to alleviate liquidity concerns prior to restricting or suspending a member's business in whole or in part. In this regard, in an actual liquidity scenario, SIFMA expects that coordination among regulatory and self-regulatory bodies would be required.

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We appreciate the opportunity to provide comments in response to the Proposal and FINRA's consideration of our views. If you have any questions or would like additional information, please contact the undersigned at (202) 962-7386 or kzambrowicz@sifma.org.

Very truly yours,

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APPENDIX
CLARIFICATIONS REGARDING LIQUIDITY STRESS TEST ASSUMPTIONS

- **Clearing Deposit Requirements (e.g., NSCC, OCC, etc.)**: The Proposal includes an assumption that the clearing deposit requirement is the 99th percentile of the member's total daily clearing deposit requirement as calculated or modeled covering a two-year period. A better approach would be to calculate the clearing deposit requirement for the member as a percentage of the total market value of instruments cleared through the CCP and apply that percentage to the current market value of instruments cleared through the CCP. Under this approach, the clearing deposit requirement is sized to the member's current level of activity on the CCP.

- **Product Haircuts (Liquidation or Financing of Inventory)**: The Proposal specifies product haircuts for certain broad categories of instruments that would be considered reasonable. These haircut levels are not sufficiently granular to reflect the level of actual liquidity risk with respect to those categories. For example, the Proposal would impose a 3% haircut on all U.S. Treasuries, which is too high for very short-term Treasury bills. Firms that participate in the Federal Reserve's Standing Repo Facility should be permitted to apply the haircuts specified by the Federal Reserve.

- **Securities Financing (Securities Borrow/Loan & Reverse Repo/Repo)**: With respect to securities financing, the Proposal provides that the liquidity stress test assumptions should address (1) the net reduction of active open funding sources with no current alternative funding arrangements as replacements and (2) account for counterparty concentrations. These assumptions should not apply to affiliate funding.

    - In addition, the Proposal provides that same-day term notice should be assumed with respect to evergreen agreements. This assumption should be removed because same-day term notice is not standard as a matter of market practice.