OMB APPROVAL
OMB Number: 3235-0045 Estimated average burden hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 25

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2013 - * 017
Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☑ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule
- ☐ 19b-4(f)(1)
- ☐ 19b-4(f)(2)
- ☐ 19b-4(f)(3)
- ☐ 19b-4(f)(4)
- ☐ 19b-4(f)(5)
- ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) ☐ Section 806(e)(2) ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change Relating to FINRA Rule 4240 (Margin Requirements for Credit Default Swaps)

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Adam Last Name * Arkel
Title * Associate General Counsel
E-mail * adam.arkel@finra.org
Telephone * (202) 728-6961 Fax (202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 03/08/2013
By Patrice Gliniecki
(Name *)

(Title *)
Senior Vice President and Deputy General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Patrice Gliniecki,

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act," "SEA" or "Exchange Act"),[1] Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend FINRA Rule 4240 to permit a member to require, with respect to credit default swaps that are security-based swaps ("CDS") held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, subject to specified requirements. In addition, the proposed rule change makes other revisions to FINRA Rule 4240 to clarify and update the rule.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on February 11, 2009, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. The proposed rule change also has been approved by the Chief Legal Officer of FINRA (or his officer designee) pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

The proposed rule change will become effective upon approval by the SEC. FINRA has requested the Commission to find good cause pursuant to Section 19(b)(2) of

---

[1] 15 U.S.C. 78s(b)(1).

the Act[2] for approving the proposed rule change prior to the 30th day after its publication in the Federal Register.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Portfolio Margining

On July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") into law.[3] Title VII of the Dodd-Frank Act ("Title VII") establishes a regulatory regime applicable to the over-the-counter derivatives markets. Title VII provides the SEC and the CFTC with tools to oversee these markets.[4] Under the comprehensive framework established in Title VII, the SEC is given regulatory authority over security-based swaps, and the CFTC is given regulatory authority over swaps.[5] The Dodd-Frank Act contemplates certain self-regulatory organization responsibilities in this area as well.[6] Section 713(a) of the Dodd-

---

2 15 U.S.C. 78s(b)(2).

3 Pub. L. No. 111-203, 124 Stat. 1376 (2010).

4 Subtitle A of Title VII creates and relates to the regulatory regime for swaps, while Subtitle B of Title VII creates and relates to the regulatory regime for security-based swaps.

5 See Section 3(a)(68) of the Exchange Act, 15 U.S.C. § 78c(a)(68) (as added by Section 761(a)(6) of the Dodd-Frank Act) and Section 1a(47) of the Commodity Exchange Act ("CEA"), 7 U.S.C. § 1a(47) (as added by Section 721(a) of the Dodd-Frank Act) for the definitions of security-based swap and swap, respectively. See also Securities Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48207 (August 13, 2012) (Joint Final Rule with the CFTC: Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement;'' Mixed Swaps; Security-Based Swap Agreement Recordkeeping), further defining the terms swap and security-based swap.

6 See, e.g., Sections 712 and 763 of the Dodd-Frank Act.

Frank Act amended the Exchange Act to generally permit a broker-dealer that is also registered as a futures commission merchant ("FCM") under the CEA to hold cash and securities in a portfolio margining account that is carried as a futures account, pursuant to a portfolio margining program that is approved by the CFTC. Reciprocally, Section 713(b) of the Dodd-Frank Act amended the CEA to generally permit an FCM that is also registered as a broker-dealer to hold futures contracts and options on futures contracts (as well as money, securities or other property received from a customer to margin, guarantee or secure such contracts, or accruing to a customer as a result of such contracts) in a portfolio margining account that is carried as a securities account pursuant to a portfolio margining program that is approved by the SEC.

The SEC and the CFTC have recently acted to grant specific exemptions to facilitate portfolio margining of collateral with respect to swaps and security-based swaps.[7] To help facilitate portfolio margining pursuant to this regulatory relief, FINRA proposes to amend FINRA Rule 4240, which implements an interim pilot program (the "Interim Pilot Program") with respect to margin requirements for certain transactions in CDS.[8] Specifically, proposed new FINRA Rule 4240(c)(3) provides that, in lieu of the

---

[7] See Securities Exchange Act Release No. 68433 (Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With Portfolio Margining of Swaps and Security-Based Swaps) (December 14, 2012); see also CFTC Order, Treatment of Funds Held in Connection with Clearing by ICE Clear Credit of Credit Default Swaps (January 14, 2013) available at: http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/icecreditclearorder011413.pdf.

[8] On July 13, 2012, FINRA extended the implementation of the Interim Pilot Program to July 17, 2013. See Securities Exchange Act Release No. 67449 (July 17, 2012), 77 FR 43128 (July 23, 2012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2012-035).

requirements set forth in paragraphs (c)(1) and (c)(2) of the rule,[9] a member may require, with respect to CDS held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, provided that, prior to margining CDS on a portfolio margin basis, the member shall notify FINRA in advance in writing of its intent to operate under the portfolio margin program.

Additional Amendments to FINRA Rule 4240

FINRA proposes to amend the margin requirements set forth in paragraph (c)(2) and Supplementary Material .01[10] of FINRA Rule 4240 to clarify that, in addition to requiring the applicable minimum margin ("initial margin"), a member must collect daily from each customer or broker-dealer counterparty an amount at least equal to the member's current exposure, as defined in SEA Rule 15c3-1e(c)(4) (provided, however, that members not otherwise subject to SEA Rule 15c3-1e are not required to take into account paragraph (c)(4)(v)(G) of such Rule),[11] arising from the daily mark to market of

---

9 FINRA Rule 4240(c)(1) addresses transactions in CDS that make use of the central counterparty clearing facilities of a clearing agency using a margin methodology the use of which has been approved by FINRA as announced in a Regulatory Notice. FINRA Rule 4240(c)(2) addresses transactions making use of facilities that do not use such a methodology, or that settle over-the-counter.

10 Supplementary Material .01 of FINRA Rule 4240 sets forth the rule's specific margin requirements.

11 FINRA is similarly revising the reference to SEA Rule 15c3-1e(c)(4) in paragraph (e) of Rule 4240. Specifically, as revised, the reference would read "SEA Rule 15c3-1e(c)(4) (provided, however, that members not otherwise subject to SEA Rule 15c3-1e are not required to take into account paragraph (c)(4)(v)(G) of such Rule)." Under SEA Rule 15c3-1e(c)(4)(v)(G), a broker-dealer, when calculating maximum potential exposure and current exposure to a counterparty, is permitted to take into account the fair market value of collateral pledged and held provided, in part, that the Commission has approved the broker's or dealer's use of a VaR model to calculate deductions for market risk for the type of collateral in

the CDS ("variation margin"). FINRA notes that collection of variation margin has been implicitly required by the administration of Rule 4240; the amendments would be designed to make this variation margin requirement clear.

FINRA proposes to amend the reference to "largest maximum possible loss" in paragraph (d)(8) of the rule by adding the phrase "(that is, the notional amount of the CDS less the estimated recovery given default)." FINRA believes that the proposed language, by providing members a reference point for computing the largest maximum possible loss pursuant to the rule, lessens the potential burdens from higher capital charges that could result absent the proposed language.

FINRA proposes to clarify the first sentence of paragraph (a) of the rule and the first sentence of paragraph (c)(1) by removing the references to "matching transactions" and making other conforming edits so as to streamline the rule language. Also in the first sentence of paragraph (a), FINRA proposes to amend the phrase "transactions in [CDS] executed by a member" to read "transactions in [CDS] held in an account at a member" so as to clarify the rule's scope and conform with the remainder of the rule.

Finally, FINRA proposes to amend paragraphs (c)(2) and (e)[12] and Supplementary Material .01 of Rule 4240 by adding the phrase "Unless otherwise permitted by FINRA in writing." FINRA anticipates that members may need more flexibility to prepare for and respond to regulatory requirements pursuant to the Dodd-Frank Act in connection with CDS. Accordingly, FINRA believes that this language will make the rule's

---

accordance with SEA Rule 15c3-1e. FINRA believes that the proposed rule change is a useful clarification for members that do not operate pursuant to SEA Rule 15c3-1e other than, for purposes of Rule 4240, to utilize the specified definitions under SEA Rule 15c3-1e(c)(4).

12 FINRA Rule 4240(e) addresses requirements with respect to concentrations.

administration more flexible and efficient, and facilitate the transition to such new requirements, by enabling FINRA staff to, for example, permit members, where appropriate, to take capital charges in lieu of collecting the margin required by the rule.

As noted in Item 2 of this filing, the proposed rule change will become effective upon approval by the SEC. FINRA has requested the Commission to find good cause pursuant to Section 19(b)(2) of the Act[13] for approving the proposed rule change prior to the 30th day after its publication in the Federal Register.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act by permitting a member to require, with respect to CDS held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, subject to specified requirements. The proposed rule change will clarify and update provisions of FINRA Rule 4240 with respect to margin requirements for CDS. These changes will facilitate members' compliance with the Act and help to stabilize the financial markets by requiring margin commensurate to the risks of the portfolio.

---

13 15 U.S.C. 78s(b)(2).

14 15 U.S.C. 78o-3(b)(6).

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed rule change with respect to FINRA Rule 4240(c)(3) would reduce burdens on all members with customers using margin on multiple products by permitting a member to require, with respect to CDS held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, subject to specified requirements. With respect to the additional proposed amendments to FINRA Rule 4240, FINRA believes the proposed rule change will, by streamlining and clarifying the rule, facilitate the rule's orderly administration, thereby reducing burdens on members.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.[15]

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

FINRA requests the Commission to find good cause pursuant to Section 19(b)(2) of the Act[16] for approving the proposed rule change prior to the 30th day after its publication in the Federal Register.

---

15 15 U.S.C. 78s(b)(2).

16 15 U.S.C. 78s(b)(2).

The proposed rule change is intended to permit a member to require, with respect to CDS held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, subject to specified requirements. So that FINRA margin rules do not delay members' participation in approved portfolio margining programs, FINRA requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2013-017)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to FINRA Rule 4240 (Margin Requirements for Credit Default Swaps)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act," "SEA" or "Exchange Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on , Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 4240 to permit a member to require, with respect to credit default swaps that are security-based swaps ("CDS") held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, subject to specified requirements. In addition, the proposed rule change makes other revisions to FINRA Rule 4240 to clarify and update the rule.

---

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

The text of the proposed rule change is available on FINRA's website at http://www.finra.org, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Portfolio Margining

On July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") into law.[3] Title VII of the Dodd-Frank Act ("Title VII") establishes a regulatory regime applicable to the over-the-counter derivatives markets. Title VII provides the SEC and the CFTC with tools to oversee these markets.[4] Under the comprehensive framework established in Title VII, the SEC is given regulatory authority over security-based swaps, and the CFTC is given

---

3 Pub. L. No. 111-203, 124 Stat. 1376 (2010).

4 Subtitle A of Title VII creates and relates to the regulatory regime for swaps, while Subtitle B of Title VII creates and relates to the regulatory regime for security-based swaps.

regulatory authority over swaps.[5] The Dodd-Frank Act contemplates certain self-regulatory organization responsibilities in this area as well.[6] Section 713(a) of the Dodd-Frank Act amended the Exchange Act to generally permit a broker-dealer that is also registered as a futures commission merchant ("FCM") under the CEA to hold cash and securities in a portfolio margining account that is carried as a futures account, pursuant to a portfolio margining program that is approved by the CFTC. Reciprocally, Section 713(b) of the Dodd-Frank Act amended the CEA to generally permit an FCM that is also registered as a broker-dealer to hold futures contracts and options on futures contracts (as well as money, securities or other property received from a customer to margin, guarantee or secure such contracts, or accruing to a customer as a result of such contracts) in a portfolio margining account that is carried as a securities account pursuant to a portfolio margining program that is approved by the SEC.

The SEC and the CFTC have recently acted to grant specific exemptions to facilitate portfolio margining of collateral with respect to swaps and security-based swaps.[7] To help facilitate portfolio margining pursuant to this regulatory relief, FINRA

---

5 See Section 3(a)(68) of the Exchange Act, 15 U.S.C. § 78c(a)(68) (as added by Section 761(a)(6) of the Dodd-Frank Act) and Section 1a(47) of the Commodity Exchange Act ("CEA"), 7 U.S.C. § 1a(47) (as added by Section 721(a) of the Dodd-Frank Act) for the definitions of security-based swap and swap, respectively. See also Securities Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48207 (August 13, 2012) (Joint Final Rule with the CFTC: Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement;'' Mixed Swaps; Security-Based Swap Agreement Recordkeeping), further defining the terms swap and security-based swap.

6 See, e.g., Sections 712 and 763 of the Dodd-Frank Act.

7 See Securities Exchange Act Release No. 68433 (Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With Portfolio Margining of Swaps and Security-Based Swaps) (December 14, 2012);

proposes to amend FINRA Rule 4240, which implements an interim pilot program (the "Interim Pilot Program") with respect to margin requirements for certain transactions in CDS.[8] Specifically, proposed new FINRA Rule 4240(c)(3) provides that, in lieu of the requirements set forth in paragraphs (c)(1) and (c)(2) of the rule,[9] a member may require, with respect to CDS held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, provided that, prior to margining CDS on a portfolio margin basis, the member shall notify FINRA in advance in writing of its intent to operate under the portfolio margin program.

Additional Amendments to FINRA Rule 4240

FINRA proposes to amend the margin requirements set forth in paragraph (c)(2) and Supplementary Material .01[10] of FINRA Rule 4240 to clarify that, in addition to requiring the applicable minimum margin ("initial margin"), a member must collect daily

---

see also CFTC Order, Treatment of Funds Held in Connection with Clearing by ICE Clear Credit of Credit Default Swaps (January 14, 2013) available at: http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/icecreditclearorder011413.pdf.

8 On July 13, 2012, FINRA extended the implementation of the Interim Pilot Program to July 17, 2013. See Securities Exchange Act Release No. 67449 (July 17, 2012), 77 FR 43128 (July 23, 2012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2012-035).

9 FINRA Rule 4240(c)(1) addresses transactions in CDS that make use of the central counterparty clearing facilities of a clearing agency using a margin methodology the use of which has been approved by FINRA as announced in a Regulatory Notice. FINRA Rule 4240(c)(2) addresses transactions making use of facilities that do not use such a methodology, or that settle over-the-counter.

10 Supplementary Material .01 of FINRA Rule 4240 sets forth the rule's specific margin requirements.

from each customer or broker-dealer counterparty an amount at least equal to the member's current exposure, as defined in SEA Rule 15c3-1e(c)(4) (provided, however, that members not otherwise subject to SEA Rule 15c3-1e are not required to take into account paragraph (c)(4)(v)(G) of such Rule),[11] arising from the daily mark to market of the CDS ("variation margin"). FINRA notes that collection of variation margin has been implicitly required by the administration of Rule 4240; the amendments would be designed to make this variation margin requirement clear.

FINRA proposes to amend the reference to "largest maximum possible loss" in paragraph (d)(8) of the rule by adding the phrase "(that is, the notional amount of the CDS less the estimated recovery given default)." FINRA believes that the proposed language, by providing members a reference point for computing the largest maximum possible loss pursuant to the rule, lessens the potential burdens from higher capital charges that could result absent the proposed language.

FINRA proposes to clarify the first sentence of paragraph (a) of the rule and the first sentence of paragraph (c)(1) by removing the references to "matching transactions" and making other conforming edits so as to streamline the rule language. Also in the first

---

[11] FINRA is similarly revising the reference to SEA Rule 15c3-1e(c)(4) in paragraph (e) of Rule 4240. Specifically, as revised, the reference would read "SEA Rule 15c3-1e(c)(4) (provided, however, that members not otherwise subject to SEA Rule 15c3-1e are not required to take into account paragraph (c)(4)(v)(G) of such Rule)." Under SEA Rule 15c3-1e(c)(4)(v)(G), a broker-dealer, when calculating maximum potential exposure and current exposure to a counterparty, is permitted to take into account the fair market value of collateral pledged and held provided, in part, that the Commission has approved the broker's or dealer's use of a VaR model to calculate deductions for market risk for the type of collateral in accordance with SEA Rule 15c3-1e. FINRA believes that the proposed rule change is a useful clarification for members that do not operate pursuant to SEA Rule 15c3-1e other than, for purposes of Rule 4240, to utilize the specified definitions under SEA Rule 15c3-1e(c)(4).

sentence of paragraph (a), FINRA proposes to amend the phrase "transactions in [CDS] executed by a member" to read "transactions in [CDS] held in an account at a member" so as to clarify the rule's scope and conform with the remainder of the rule.

Finally, FINRA proposes to amend paragraphs (c)(2) and (e)[12] and Supplementary Material .01 of Rule 4240 by adding the phrase "Unless otherwise permitted by FINRA in writing." FINRA anticipates that members may need more flexibility to prepare for and respond to regulatory requirements pursuant to the Dodd-Frank Act in connection with CDS. Accordingly, FINRA believes that this language will make the rule's administration more flexible and efficient, and facilitate the transition to such new requirements, by enabling FINRA staff to, for example, permit members, where appropriate, to take capital charges in lieu of collecting the margin required by the rule.

The proposed rule change will become effective upon approval by the SEC. FINRA has requested the Commission to find good cause pursuant to Section 19(b)(2) of the Act[13] for approving the proposed rule change prior to the 30th day after its publication in the Federal Register.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public

---

12 FINRA Rule 4240(e) addresses requirements with respect to concentrations.

13 15 U.S.C. 78s(b)(2).

14 15 U.S.C. 78o-3(b)(6).

interest. FINRA believes that the proposed rule change will further the purposes of the Act by permitting a member to require, with respect to CDS held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, subject to specified requirements. The proposed rule change will clarify and update provisions of FINRA Rule 4240 with respect to margin requirements for CDS. These changes will facilitate members' compliance with the Act and help to stabilize the financial markets by requiring margin commensurate to the risks of the portfolio.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed rule change with respect to FINRA Rule 4240(c)(3) would reduce burdens on all members with customers using margin on multiple products by permitting a member to require, with respect to CDS held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, subject to specified requirements. With respect to the additional proposed amendments to FINRA Rule 4240, FINRA believes the proposed rule change will, by streamlining and clarifying the rule, facilitate the rule's orderly administration, thereby reducing burdens on members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

FINRA has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act[15] for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FINRA and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will benefit FINRA members by permitting a member to require, with respect to CDS held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, subject to specified requirements. This will help ensure that FINRA margin rules do not delay members' participation in approved portfolio margining programs.

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

---

15 15 U.S.C. 78s(b)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2013-017 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2013-017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street,

NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2013-017 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy

Secretary

---

16 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

4200. MARGIN

* * * * *

4240. Margin Requirements for Credit Default Swaps

(a) Effective Period of Interim Pilot Program

This Rule establishes an interim pilot program ("Interim Pilot Program") with respect to margin requirements for any transactions in credit default swaps [executed by] held in an account at a member (regardless of the type of account in which the transaction is booked), including [those in which the offsetting matching hedging] transactions [("matching transactions")] that are effected by the member in contracts that are cleared through a clearing agency that provides central counterparty clearing services using a margin methodology the use of which has been approved by FINRA as announced in a Regulatory Notice. The Interim Pilot Program shall automatically expire on July 17, 2013. For purposes of this Rule, the term "credit default swap" ("CDS") shall include any product that is commonly known to the trade as a credit default swap and is a security-based swap as defined pursuant to Section 3(a)(68) of the Exchange Act or the rules and guidance of the SEC and its staff. The term "transaction" shall include any ongoing CDS position.

(b) No Change.

(c) Margin Requirements

(1) CDS Cleared Through a Clearing Agency Using a Margin Methodology the Use of Which Has Been Approved By FINRA

Members shall require as a minimum for computing customer or broker-dealer margin, with respect to any customer or broker-dealer transaction in CDS [with a member in which the member executes a matching transaction] that is cleared through [makes use of] the central counterparty clearing facilities of a clearing agency using a margin methodology the use of which has been approved by FINRA as announced in a Regulatory Notice, the applicable margin pursuant to the rules of such clearing agency regardless of the type of account in which the transaction in CDS is booked. Members shall, based on the risk monitoring procedures and guidelines set forth in paragraph (d) of this Rule, determine whether the applicable clearing agency requirements are adequate with respect to their customer and broker-dealer accounts and the positions in those accounts and, where appropriate, increase such margin in excess of such minimum margin. For this purpose, members are permitted to use the margin requirements set forth in Supplementary Material .01 of this Rule.

The aggregate amount of margin the member collects from customers and broker-dealers for transactions in CDS must equal or exceed the aggregate amount of margin the member is required to post at the clearing agency with respect to those customer and broker-dealer transactions.

Transactions that are cleared through a clearing agency using a margin methodology the use of which has been approved by FINRA as announced in a

Regulatory Notice are not subject to the provisions of paragraph (c)(2) of this Rule.

(2) CDS That Are Cleared on Central Counterparty Clearing Facilities That Do Not Use a Margin Methodology the Use of Which Has Been Approved By FINRA or That Settle Over-the-Counter ("OTC")

Unless otherwise permitted by FINRA in writing, [M]members shall require, with respect to any transaction in CDS that makes use of central counterparty clearing facilities that do not use a margin methodology the use of which has been approved by FINRA as announced in a Regulatory Notice or that settle OTC, the applicable minimum margin as set forth in Supplementary Material .01 of this Rule regardless of the type of account in which the transaction in CDS is booked. However, members shall, based on the risk monitoring procedures and guidelines set forth in paragraph (d) of this Rule, determine whether such margin is adequate with respect to their customer and broker-dealer accounts and, where appropriate, increase such requirements.

In addition to requiring the applicable minimum margin as set forth pursuant to this paragraph (c)(2) (initial margin), the member shall collect daily from each customer or broker-dealer counterparty an amount at least equal to the member's current exposure, as defined in SEA Rule 15c3-1e(c)(4) (provided, however, that members not otherwise subject to SEA Rule 15c3-1e are not required to take into account paragraph (c)(4)(v)(G) of such Rule), arising from the daily mark to market of the CDS (variation margin).

(3) CDS That Are Held in an Account Subject To a CDS Portfolio Margining Program

In lieu of the requirements set forth in paragraphs (c)(1) and (c)(2) of this Rule, a member may require, with respect to CDS held in an account subject to an approved portfolio margining program, the amount of margin determined by the member's portfolio margin methodology, provided that, prior to margining CDS on a portfolio margin basis, the member shall notify FINRA in advance in writing of its intent to operate under the portfolio margin program.

(d) Risk Monitoring Procedures and Guidelines

Members shall monitor the risk of any customer or broker-dealer accounts with exposure to CDS and shall maintain a comprehensive written risk analysis methodology for assessing the potential risk to the member's capital over a specified range of possible market movements over a specified time period. For purposes of this Rule, members must employ the risk monitoring procedures and guidelines set forth in paragraphs (d)(1) through (8) of this Rule. The member must review, in accordance with the member's written procedures, at reasonable periodic intervals, the member's credit extension activities for consistency with the risk monitoring procedures and guidelines set forth in this Rule, and must determine whether the data necessary to apply the risk monitoring procedures and guidelines is accessible on a timely basis and information systems are available to adequately capture, monitor, analyze and report relevant data, including:

(1) through (7) No Change.

(8) maintaining sufficient margin in each customer and broker-dealer account to protect against the default of the largest individual exposure in the

account as measured by computing the largest maximum possible loss (that is, the notional amount of the CDS less the estimated recovery given default).

(e) Concentrations

Unless otherwise permitted by FINRA in writing, [W]where the current and maximum potential exposure, as defined in SEA Rule 15c3-1e(c)(4) (provided, however, that members not otherwise subject to SEA Rule 15c3-1e are not required to take into account paragraph (c)(4)(v)(G) of such Rule), with respect to the largest single name CDS across all accounts exceeds the member's tentative net capital, the member must take a capital charge equal to the aggregate margin requirement for such accounts on the positions in such single name CDS in accordance with the tables set forth in Supplementary Material .01 of this Rule. This capital charge may be reduced by the amount of excess margin held in each such counterparty account holding such exposure, on an account by account basis.

• • • Supplementary Material: ----------

.01 Margin Requirements for CDS. Unless otherwise permitted by FINRA in writing, [T]the following customer and broker-dealer margin requirements shall apply, as appropriate, pursuant to paragraph (c) of this Rule. In addition to requiring the applicable minimum margin (initial margin) as set forth pursuant to this Supplementary Material, the member shall collect daily from each customer or broker-dealer counterparty an amount at least equal to the member's current exposure, as defined in SEA Rule 15c3-1e(c)(4) (provided, however, that members not otherwise subject to SEA Rule 15c3-1e are not required to take into account paragraph (c)(4)(v)(G) of such Rule), arising from the daily mark to market of the CDS (variation margin).

(a) **through (c) No Change.**