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

File No. * SR 2021 - * 021

Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

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

Initial *

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Amendment *

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Withdrawal

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Section 19(b)(2) *

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Section 19(b)(3)(A) *

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Section 19(b)(3)(B) *

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Pilot

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Extension of Time Period for
Commission Action *

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Date Expires *

Rule

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19b-4(f)(1)

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19b-4(f)(4)

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19b-4(f)(2)

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19b-4(f)(5)

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19b-4(f)(3)

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19b-4(f)(6)

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

Section 806(e)(1) *

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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

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Exhibit 3 Sent As Paper Document

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Description

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

Proposed Rule Change Extending the Expiration Dates of FINRA Rules 0180 and 4240

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 *

Robert

Last Name *

McNamee

Title *

Associate General Counsel

E-mail *

robert.mcnamee@finra.org

Telephone *

(202) 728-8012

Fax

(202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duty caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date

08/20/2021

(Title *)

By

Patrice Gliniecki

(Name *)

Senior Vice President and Deputy General Counsel

Patrice
Gliniecki

Digitally signed by Patrice
Gliniecki
Date: 2021.08.20 11:34:12
-04'00'

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

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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FINRA-2021-021 19b-4.docx

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 *

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FINRA-2021-021 Exhibit 1.docx

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 Advanced Notice by Clearing Agencies *

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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 2- Notices, Written Comments, Transcripts, Other Communications

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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.

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Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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.

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Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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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

FINRA-2021-021 Exhibit 5.docx

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

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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” or “Exchange Act”),¹ the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to (i) extend the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps) to February 6, 2022 and (ii) extend to April 6, 2022 the implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps) and clarify that the rule does not apply if a member is registered with the SEC as a security-based swap (“SBS”) dealer (“SBSD”).

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

The filing of the proposed rule change with the SEC was authorized by the FINRA Board of Governors, and by the Chief Legal Officer of FINRA pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change on September 1, 2021.

¹ 15 U.S.C. 78s(b)(1).

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

(a) Purpose

On July 8, 2011, FINRA filed for immediate effectiveness FINRA Rule 0180, which, with certain exceptions, temporarily limits the application of FINRA rules with respect to SBS, thereby avoiding undue market disruptions resulting from the change to the definition of “security” under the Act to expressly encompass SBS.² Pending the SEC’s final implementation of its rulemakings under Title VII of the Dodd-Frank Act,³ FINRA extended the expiration date of FINRA Rule 0180 a number of times, most recently in January 2020, when FINRA extended the expiration date to September 1, 2021.⁴ In addition, on May 22, 2009, the Commission approved FINRA Rule 4240,⁵ which implements an interim pilot program (the “Interim Pilot Program”) with respect to margin requirements for certain transactions in credit default swaps (“CDS”).⁶ On June 2, 2020, FINRA filed a proposed rule change for immediate effectiveness extending the

² See Securities Exchange Act Release No. 64884 (July 14, 2011), 76 FR 42755 (July 19, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2011-033).

³ See Pub. L. No. 111-203, 124 Stat. 1376 (2010), Section 701.

⁴ See Securities Exchange Act Release No. 88023 (January 23, 2020), 85 FR 5261 (January 29, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-001).

⁵ See Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Order Approving File No. SR-FINRA-2009-012).

⁶ In March 2012, the SEC approved amendments to FINRA Rule 4240 that, among other things, limit the rule’s application to CDS that are SBS. See Securities Exchange Act Release No. 66527 (March 7, 2012), 77 FR 14850 (March 13, 2012) (Order Approving File No. SR-FINRA-2012-015).

implementation of FINRA Rule 4240 to September 1, 2021.⁷ Therefore, both FINRA Rule 0180 and the Interim Pilot Program under FINRA Rule 4240 are currently scheduled to expire on September 1, 2021.

On April 26, 2021, FINRA filed a proposed rule change to amend FINRA Rules 0180, 4120, 4210, 4220, 4240 and 9610 to clarify the application of its rules to SBS following the SEC's completion of its rulemaking under Title VII of the Dodd-Frank Act regarding SBSDs and major SBS participants (collectively, "SBS Entities").⁸ Among other things, the Proposal would adopt a new FINRA Rule 0180, to replace expiring current FINRA Rule 0180, that would generally apply FINRA rules to members' activities and positions with respect to SBS, while providing limited exceptions for SBS in circumstances where FINRA believes such exceptions are appropriate. The Proposal would also adopt a new margin rule specifically applicable to SBS, which would replace the expiring Interim Pilot Program establishing margin requirements for CDS. FINRA originally proposed that the effective date of the Proposal would be October 6, 2021, to align with the SEC's compliance date for registration of SBS Entities (the "Registration Compliance Date"). FINRA noted in the Proposal that it intended to extend the expiration dates of existing FINRA Rules 0180 and 4240 to October 6, 2021 to align with the Registration Compliance Date and implementation of the Proposal.⁹

⁷ See Securities Exchange Act Release No. 89036 (June 10, 2020), 85 FR 36458 (June 16, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-016).

⁸ See Securities Exchange Act Release No. 91789 (May 7, 2021), 86 FR 26084 (May 12, 2021) (Notice of Filing of File No. SR-FINRA-2021-008) ("Proposal").

⁹ See Proposal, supra note 8, at 26086 n.18.

After consideration of comments on the Proposal, as well as further feedback from member firms, on August 9, 2021 FINRA filed Partial Amendment No. 1 to the Proposal.¹⁰ The Amendment (1) extends the effective date of the proposed amendments to FINRA Rules 0180, 4120 and 9610 from October 6, 2021 to February 6, 2022; (2) extends the effective date of the proposed amendments to FINRA Rules 4210, 4220 and 4240 from October 6, 2021 to April 6, 2022; and (3) conforms the proposed definition of “Legacy Swap” in proposed FINRA Rule 4240(d)(12) to reflect the new effective date of April 6, 2022. FINRA noted in the Amendment that it intended to extend the expiration date of existing FINRA Rule 0180 until February 6, 2022, and the expiration date of existing FINRA Rule 4240 until April 6, 2022, so as to align with the new effective dates of the Proposal described above.¹¹ Accordingly, the proposed rule change (i) amends existing FINRA Rule 0180 to extend the expiration date of the rule from September 1, 2021 to February 6, 2022 and (ii) amends existing FINRA Rule 4240 to extend the expiration date of the Interim Pilot Program from September 1, 2021 to April 6, 2022. FINRA believes it is appropriate to extend the expiring rules so as to align with the effective dates of the new rules that will replace them, thereby avoiding undue burdens on market participants and undue market disruption.

FINRA also noted in the Amendment that, beginning on the Registration Compliance Date, members may register with the SEC as SBSs, and thereby become

¹⁰ See Securities Exchange Act Release No. 92617 (August 9, 2021), 86 FR 44761 (August 13, 2021) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change, as Modified by Amendment No. 1, Relating to Security-Based Swaps) (“Amendment”).

¹¹ See supra note 10.

subject to the margin requirements applicable to SBSs under Exchange Act Rule 18a-3.¹² Therefore, if a member were to register as an SBS on the Registration Compliance Date or during the period between the Registration Compliance Date and April 6, 2022, the member would be subject to both the new margin requirements for SBS under Exchange Act Rule 18a-3 and the expiring Interim Pilot Program for CDS. In order to avoid unnecessary regulatory duplication or any potential conflicting obligations as between Exchange Act Rule 18a-3 and the Interim Pilot Program, FINRA is also amending existing, expiring FINRA Rule 4240 to add Supplementary Material .02 to clarify that the rule does not apply to a member that is registered with the SEC as an SBS.¹³

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change on September 1, 2021.

¹² See supra note 10.

¹³ FINRA notes that this provision is consistent with the new SBS margin rule under the Proposal, which provides that a member that is registered as an SBS shall instead comply with Exchange Act Rule 18a-3. As discussed in the Proposal, FINRA believes it should defer to the SEC's margin framework for registered SBSs rather than impose additional or different requirements on such entities. See Proposal, supra note 8, at 26098.

(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 would further the purposes of the Act because the proposed rule change will help to avoid undue burdens on market participants and undue market disruption that could result if existing FINRA Rule 0180 expires before the effective date of new FINRA Rule 0180. Similarly, FINRA believes that the proposed rule change is consistent with the Act because extending the implementation of FINRA Rule 4240 will ensure that the Interim Pilot Program establishing margin requirements for CDS will continue to apply until the new SBS margin rule under new FINRA Rule 4240 becomes effective, thereby helping to promote stability in the financial markets and regulatory certainty for members. FINRA further believes that clarifying that the Interim Pilot Program does not apply to a registered SBSB will promote legal certainty and avoid unnecessary regulatory duplication.

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 would prevent undue burdens on market participants and undue market disruption that would otherwise result if FINRA Rule 0180 expires before the effective date of new FINRA Rule 0180. FINRA believes

¹⁴ 15 U.S.C. 78o-3(b)(6).

that, by extending the expiration of FINRA Rule 0180, the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. Similarly, FINRA believes that extending the implementation of the Interim Pilot Program under FINRA Rule 4240 will ensure that the Interim Pilot Program establishing margin requirements for CDS will continue to apply until the new SBS margin rule under new FINRA Rule 4240 becomes effective, thereby helping to promote stability in the financial markets and regulatory certainty for members. FINRA further believes that clarifying that the Interim Pilot Program does not apply to a registered SBSB will promote legal certainty and avoid unnecessary regulatory duplication.

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

Not applicable.

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)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act¹⁵ and paragraph (f)(6) of Rule 19b-4 thereunder,¹⁶ in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing or such shorter time as the Commission may designate.

¹⁵ 15 U.S.C. 78s(b)(3).

¹⁶ 17 CFR 240.19b-4(f)(6).

FINRA requests that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii),¹⁷ so FINRA can implement the proposed rule change immediately and thereby avoid undue market disruption that would otherwise result if FINRA Rules 0180 and 4240 expire before the effective date of the new corresponding rules. In accordance with Rule 19b-4(f)(6),¹⁸ FINRA submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as the Commission may designate, as specified in Rule 19b-4(f)(6)(iii) under the Act.¹⁹

FINRA proposes to make the proposed rule change operative on September 1, 2021.

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.

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

11. Exhibits

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

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2021-021)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Expiration Dates of FINRA Rules 0180 and 4240.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the 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. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to (i) extend the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps) to February 6, 2022 and (ii) extend to April 6, 2022 the implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps) and clarify that the rule does not apply if a member is registered with the SEC as a security-based swap (“SBS”) dealer (“SBSD”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

On July 8, 2011, FINRA filed for immediate effectiveness FINRA Rule 0180, which, with certain exceptions, temporarily limits the application of FINRA rules with respect to SBS, thereby avoiding undue market disruptions resulting from the change to the definition of "security" under the Act to expressly encompass SBS.⁴ Pending the SEC's final implementation of its rulemakings under Title VII of the Dodd-Frank Act,⁵ FINRA extended the expiration date of FINRA Rule 0180 a number of times, most recently in January 2020, when FINRA extended the expiration date to September 1,

⁴ See Securities Exchange Act Release No. 64884 (July 14, 2011), 76 FR 42755 (July 19, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2011-033).

⁵ See Pub. L. No. 111-203, 124 Stat. 1376 (2010), Section 701.

2021.⁶ In addition, on May 22, 2009, the Commission approved FINRA Rule 4240,⁷ which implements an interim pilot program (the “Interim Pilot Program”) with respect to margin requirements for certain transactions in credit default swaps (“CDS”).⁸ On June 2, 2020, FINRA filed a proposed rule change for immediate effectiveness extending the implementation of FINRA Rule 4240 to September 1, 2021.⁹ Therefore, both FINRA Rule 0180 and the Interim Pilot Program under FINRA Rule 4240 are currently scheduled to expire on September 1, 2021.

On April 26, 2021, FINRA filed a proposed rule change to amend FINRA Rules 0180, 4120, 4210, 4220, 4240 and 9610 to clarify the application of its rules to SBS following the SEC’s completion of its rulemaking under Title VII of the Dodd-Frank Act regarding SBSs and major SBS participants (collectively, “SBS Entities”).¹⁰ Among other things, the Proposal would adopt a new FINRA Rule 0180, to replace expiring current FINRA Rule 0180, that would generally apply FINRA rules to members’

⁶ See Securities Exchange Act Release No. 88023 (January 23, 2020), 85 FR 5261 (January 29, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-001).

⁷ See Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Order Approving File No. SR-FINRA-2009-012).

⁸ In March 2012, the SEC approved amendments to FINRA Rule 4240 that, among other things, limit the rule’s application to CDS that are SBS. See Securities Exchange Act Release No. 66527 (March 7, 2012), 77 FR 14850 (March 13, 2012) (Order Approving File No. SR-FINRA-2012-015).

⁹ See Securities Exchange Act Release No. 89036 (June 10, 2020), 85 FR 36458 (June 16, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-016).

¹⁰ See Securities Exchange Act Release No. 91789 (May 7, 2021), 86 FR 26084 (May 12, 2021) (Notice of Filing of File No. SR-FINRA-2021-008) (“Proposal”).

activities and positions with respect to SBS, while providing limited exceptions for SBS in circumstances where FINRA believes such exceptions are appropriate. The Proposal would also adopt a new margin rule specifically applicable to SBS, which would replace the expiring Interim Pilot Program establishing margin requirements for CDS. FINRA originally proposed that the effective date of the Proposal would be October 6, 2021, to align with the SEC's compliance date for registration of SBS Entities (the "Registration Compliance Date"). FINRA noted in the Proposal that it intended to extend the expiration dates of existing FINRA Rules 0180 and 4240 to October 6, 2021 to align with the Registration Compliance Date and implementation of the Proposal.¹¹

After consideration of comments on the Proposal, as well as further feedback from member firms, on August 9, 2021 FINRA filed Partial Amendment No. 1 to the Proposal.¹² The Amendment (1) extends the effective date of the proposed amendments to FINRA Rules 0180, 4120 and 9610 from October 6, 2021 to February 6, 2022; (2) extends the effective date of the proposed amendments to FINRA Rules 4210, 4220 and 4240 from October 6, 2021 to April 6, 2022; and (3) conforms the proposed definition of "Legacy Swap" in proposed FINRA Rule 4240(d)(12) to reflect the new effective date of April 6, 2022. FINRA noted in the Amendment that it intended to extend the expiration date of existing FINRA Rule 0180 until February 6, 2022, and the expiration date of existing FINRA Rule 4240 until April 6, 2022, so as to align with the new effective dates

¹¹ See Proposal, supra note 10, at 26086 n.18.

¹² See Securities Exchange Act Release No. 92617 (August 9, 2021), 86 FR 44761 (August 13, 2021) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change, as Modified by Amendment No. 1, Relating to Security-Based Swaps) ("Amendment").

of the Proposal described above.¹³ Accordingly, the proposed rule change (i) amends existing FINRA Rule 0180 to extend the expiration date of the rule from September 1, 2021 to February 6, 2022 and (ii) amends existing FINRA Rule 4240 to extend the expiration date of the Interim Pilot Program from September 1, 2021 to April 6, 2022. FINRA believes it is appropriate to extend the expiring rules so as to align with the effective dates of the new rules that will replace them, thereby avoiding undue burdens on market participants and undue market disruption.

FINRA also noted in the Amendment that, beginning on the Registration Compliance Date, members may register with the SEC as SBSs, and thereby become subject to the margin requirements applicable to SBSs under Exchange Act Rule 18a-3.¹⁴ Therefore, if a member were to register as an SBS on the Registration Compliance Date or during the period between the Registration Compliance Date and April 6, 2022, the member would be subject to both the new margin requirements for SBS under Exchange Act Rule 18a-3 and the expiring Interim Pilot Program for CDS. In order to avoid unnecessary regulatory duplication or any potential conflicting obligations as between Exchange Act Rule 18a-3 and the Interim Pilot Program, FINRA is also amending existing, expiring FINRA Rule 4240 to add Supplementary Material .02 to clarify that the rule does not apply to a member that is registered with the SEC as an SBS.¹⁵

¹³ See supra note 12.

¹⁴ See supra note 12.

¹⁵ FINRA notes that this provision is consistent with the new SBS margin rule under the Proposal, which provides that a member that is registered as an SBS shall instead comply with Exchange Act Rule 18a-3. As discussed in the Proposal, FINRA believes it should defer to the SEC's margin framework for registered

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change on September 1, 2021.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁶ 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 would further the purposes of the Act because the proposed rule change will help to avoid undue burdens on market participants and undue market disruption that could result if existing FINRA Rule 0180 expires before the effective date of new FINRA Rule 0180. Similarly, FINRA believes that the proposed rule change is consistent with the Act because extending the implementation of FINRA Rule 4240 will ensure that the Interim Pilot Program establishing margin requirements for CDS will continue to apply until the new SBS margin rule under new FINRA Rule 4240 becomes effective, thereby helping to promote stability in the financial markets and regulatory certainty for members. FINRA further believes that clarifying that the Interim Pilot Program does not apply to a registered SBSB will promote legal certainty and avoid unnecessary regulatory duplication.

SBSBs rather than impose additional or different requirements on such entities. See Proposal, supra note 10, at 26098.

¹⁶ 15 U.S.C. 78o-3(b)(6).

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 would prevent undue burdens on market participants and undue market disruption that would otherwise result if FINRA Rule 0180 expires before the effective date of new FINRA Rule 0180. FINRA believes that, by extending the expiration of FINRA Rule 0180, the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. Similarly, FINRA believes that extending the implementation of the Interim Pilot Program under FINRA Rule 4240 will ensure that the Interim Pilot Program establishing margin requirements for CDS will continue to apply until the new SBS margin rule under new FINRA Rule 4240 becomes effective, thereby helping to promote stability in the financial markets and regulatory certainty for members. FINRA further believes that clarifying that the Interim Pilot Program does not apply to a registered SBSB will promote legal certainty and avoid unnecessary regulatory duplication.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2021-021 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2021-021. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2021-021 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.¹⁹

Jill M. Peterson
Assistant Secretary

¹⁹ 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.

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0100. GENERAL STANDARDS

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0180. Application of Rules to Security-Based Swaps

(a) through (c) No Change.

(d) This Rule shall expire on [September 1, 2021] February 6, 2022.

• • • Supplementary Material: -----

.01 No Change.

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4200. MARGIN

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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 held in an account at a member (regardless of the type of account in which the transaction is booked), including 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 [September 1, 2021] April 6, 2022. 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) through (e) No Change.

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

.01 No Change.

.02 This Rule shall not apply to a member that is registered as a security-based swap dealer under Exchange Act section 15F.

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