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

File No. * SR 2022 - * 025
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)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 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 to amend FINRA Rule 11880 (Settlement of Syndicate Accounts) to revise the syndicate account settlement timeframe for corporate debt offerings.

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 * John Last Name * Nachmann

Title * Associate General Counsel

E-mail * John.nachmann@finra.org

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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 duty authorized.

Date 08/05/2022

By Racquel Russell
(Name *)

(Title *)
Senior Vice President and Director of Capital M

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.

Racquel Russell

Digitally signed by Racquel Russell
Date: 2022.08.05 10:18:46 -04'00'

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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 SR-FINRA-2022-025 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 * Add / Remove / View SR-FINRA-2022-025 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 * 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 2- Notices, Written Comments, Transcripts, Other Communications Add / Remove / View FINRA-2022-025 Exhibit 2a.pdf SR-FINRA-2022-025 Exhibit 2b.docx FINRA-2022-025 Exhibit 2c.pdf	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 Sent As Paper Document
Exhibit 3 - Form, Report, or Questionnaire Add / Remove / View	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 Sent As Paper Document
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 SR-FINRA-2022-025 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 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. <u>Text of the Proposed Rule Change</u>

(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 amend FINRA Rule 11880 (Settlement of Syndicate Accounts) to revise the syndicate account settlement timeframe for corporate debt offerings.

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

(b) Not applicable.

(c) Not applicable.

2. <u>Procedures of the Self-Regulatory Organization</u>

The FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a <u>Regulatory Notice</u>. The effective date will be January 1, 2023.

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

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

(a) Purpose

Underwriting groups ordinarily form syndicate accounts[2] to process the income and expenses of the syndicate. The syndicate manager[3] is responsible for maintaining syndicate account records and must provide to each selling syndicate member an itemized statement of syndicate expenses no later than the date of the final settlement of the syndicate account. Syndicate members record the expected payments from the syndicate manager as "receivables" on their books and records but generally do not receive the payments for up to 90 days after the syndicate settlement date,[4] as currently permitted under FINRA rules.[5]

To help avoid lengthy settlement delays, FINRA Rule 11880 provides that the syndicate manager in a public offering of corporate securities must effect the final settlement of syndicate accounts within 90 days following the settlement date. When FINRA (then NASD) initially adopted a settlement rule in 1985, it required that final settlement of syndicate accounts be effected within 120 days after the syndicate

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2 A syndicate account is the account formed by members of the selling syndicate for the purpose of purchasing and distributing the corporate securities of a public offering. <u>See</u> FINRA Rule 11880(a)(2).

3 A syndicate manager is the member of the selling syndicate that is responsible for the maintenance of syndicate account records. <u>See</u> FINRA Rule 11880(a)(3).

4 The syndicate settlement date is the date that the issuer delivers corporate securities to or for the account of the syndicate members. <u>See</u> FINRA Rule 11880(a)(4).

5 During this time, a syndicate member may not treat the "receivables" as allowable assets for purposes of Exchange Act Rule 15c3-1 ("Net Capital Rule") and therefore must deduct them from its net worth in computing its net capital.

settlement date.[6] The syndicate settlement timeframe was reduced from 120 days to 90 days in 1987, and it has remained the same since then.[7]

In consideration of the technological advances since 1987, FINRA is proposing to amend the timeframe to settle syndicate accounts set forth in FINRA Rule 11880(b). Specifically, FINRA is proposing to establish a two-stage syndicate account settlement approach whereby the syndicate manager would be required to remit to each syndicate member at least 70 percent of the gross amount due to such syndicate member within 30 days following the syndicate settlement date, with any final balance due remitted within 90 days following the syndicate settlement date.

The proposed two-stage approach would be limited to public offerings of corporate debt securities.[8] FINRA is not proposing at this time to change the current 90-day period for the final settlement of syndicate accounts for public offerings of equity securities, which often involve complexities that may necessitate a longer settlement timeframe than corporate debt offerings (e.g., an overallotment option that may have an exercise term of 30 days).

FINRA also notes that, with respect to municipal debt offerings, Municipal Securities Rulemaking Board ("MSRB") Rule G-11 (Primary Offering Practices)

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6 See Securities Exchange Act Release No. 22238 (July 15, 1985), 50 FR 29503 (July 19, 1985) (Order Approving File No. SR-NASD-85-14).

7 See Securities Exchange Act Release No. 24290 (April 1, 1987), 52 FR 11148 (April 7, 1987) (Order Approving File No. SR-NASD-87-7).

8 A "corporate debt security" would be defined as a debt security that is United States ("U.S.") dollar-denominated and issued by a U.S. or foreign private issuer, including a Securitized Product as defined in FINRA Rule 6710(m). "Corporate debt security" would not include a Money Market Instrument as defined in FINRA Rule 6710(o). See proposed Rule 11880(a)(1).

currently provides that final settlement of a syndicate or similar account must be made within 30 calendar days of the syndicate settlement date. The MSRB shortened the settlement timeframe from 60 days to 30 days in 2009 to reduce the exposure of syndicate account members to the credit risk of potential deterioration in the credit of the syndicate manager during the pendency of account settlements.[9] The MSRB believed that this change would not be unduly burdensome on firms given the more efficient billing and accounting systems firms had implemented since the rules were first adopted in the 1970s.[10]

FINRA similarly believes that the proposed rule change will benefit syndicate members by reducing the exposure of syndicate members to the credit risk of the syndicate manager during the pendency of account settlements. FINRA also believes that the proposed rule change will benefit syndicate members, including capital-constrained small firms, by allowing them to obtain earlier access to the funds earned from an offering without significantly increasing the risks of resettlements. In addition, FINRA believes that the proposed staged approach will provide these benefits to syndicate members while easing compliance for syndicate managers by permitting them to retain 30 percent of the gross amount earned by syndicate members to cover expenses and remit any balance due to the syndicate members within the current 90-day period following the syndicate settlement date.

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[9] See Securities Exchange Act Release No. 60487 (August 12, 2009), 74 FR 41771 (August 18, 2009) (Notice of Filing of File No. SR-MSRB-2009-12) and Securities Exchange Act Release No. 60725 (September 28, 2009), 74 FR 50855 (October 1, 2009) (Order Approving File No. SR-MSRB-2009-12).

[10] See supra note 9.

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. The effective date will be January 1, 2023.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] 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 promotes just and equitable principles of trade and is in the public interest as it will reduce the exposure of syndicate members to the potential deterioration of the credit of syndicate managers during the pendency of account settlement without negatively impacting the ability of syndicate managers to run the syndicate settlement account process. FINRA also believes that the proposed rule change promotes just and equitable principles of trade because it will result in syndicate managers more quickly remitting the majority of the gross amount earned by syndicate members and will not be unduly burdensome on syndicate managers given the technological advances that have been made since the 90-day syndicate account settlement timeframe was adopted in 1987.

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

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[11] 15 U.S.C. 78o-3(b)(6).

of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the potential economic impacts of the proposed rule change, including potential costs, benefits, and distributional and competitive effects, relative to the current baseline.

Regulatory Need

FINRA Rule 11880 requires final settlement of syndicate accounts within 90 days following the syndicate settlement date. As discussed further below, FINRA understands that syndicate managers currently could conduct partial settlements of syndicate accounts much more quickly, at limited additional expense, to the benefit of syndicate members. Longstanding industry practices, the number of parties in selling syndicates and possibly greater efficiency in syndicate settlement by syndicate managers that conduct more settlements may limit the impact of competition and negotiation on final settlement practices and timelines. FINRA also believes that modifying the current syndicate settlement timeframe will benefit syndicate members, including capital-constrained small firms, by allowing them to obtain earlier access to the funds earned from an offering without significantly increasing the risks of resettlements. FINRA is therefore proposing a two-staged syndicate settlement framework to enable quicker remittance of a significant portion of syndicate revenue to syndicate members.

Economic Baseline

The economic baseline for the proposed rule change is current FINRA Rule 11880, which allows 90 days for the final settlement of syndicate accounts, industry practices for compliance and implementation of the rule, and the competitive landscape.

FINRA conducted an analysis of the primary corporate debt market to study the extent and scope of participation in corporate debt syndicates by member firms using data from the Trade Reporting and Compliance Engine ("TRACE"). From 2019 to 2021, FINRA estimates that approximately 377 member firms, on average per year, participated in syndicates for corporate debt offerings and could be affected by the proposed rule change.[12] Of these firms, 57 percent, 18 percent, and 25 percent are small, mid-size and large firms, respectively.[13]

The 90-day period following the syndicate settlement date allows the syndicate manager to record income and expenses incurred in connection with the offering and then to distribute the net underwriting revenue due to each syndicate member. Syndicate managers tend to be large, well-capitalized firms.[14] The syndicate manager collects the

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12 The extent of firm participation in the primary corporate debt market was approximated using TRACE data. Issuers sell new stocks and bonds in the primary market to the public, such as through an initial public offering. The data is limited to the primary market sellers for corporate debt, excluding offerings made in compliance with Rule 144A of the Securities Act of 1933 ("144A offerings").

13 See 2022 FINRA Industry Snapshot, https://www.finra.org/sites/default/files/2022-03/2022-industry-snapshot.pdf. Small, mid-size and large firms are defined as having 1-150, 151-499, and at least 500 registered representatives, respectively. See Article I of the FINRA By-Laws.

14 See, e.g., Hendrik Bessembinder, Stacey E. Jacobsen, William F. Maxwell & Kumar Venkataraman, Overallocation and Secondary Market Outcomes in Corporate Bond Offerings (April 29, 2022), SMU Cox School of Business Research Paper No. 20-04, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3611056. The authors developed a sample of 5,573 bond offerings that were issued between 2010 and 2018, based upon primary allocation data collected through TRACE. They found that only 10 firms were syndicate managers and that the most frequent bookrunners (manager and co-managers) were large firms. This finding is consistent with FINRA's findings from its outreach efforts.

underwriting revenue for the syndicate and pays expenses. The other syndicate members, which often include smaller firms, are paid their respective portion of the underwriting revenue, net of expenses, from the syndicate managers by the final syndicate account settlement date.

To assess the magnitude of the gross revenue from underwriting public offerings of corporate debt, FINRA calculated that, on average each year between 2019 and 2021, there were 41,756 U.S. dollar-denominated corporate debt offerings (excluding 144A offerings) with an average amount of $3.5 trillion raised (see Table 1). Investment grade corporate debt offerings account for 49 percent of the total issued amount, and high yield and non-rated corporate debt offerings account for the remainder (see Table 1).[15] A recent study estimates that the average gross underwriting spread is 0.65 percent for investment grade debt securities and 1.42 percent for high yield debt securities.[16] Using these estimates, FINRA estimates that the gross revenue from underwriting public offerings of corporate debt (excluding 144A offerings) would be at least $36 billion per

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15 While members are required to report revenue from underwriting on Financial and Operational Combined Uniform Single ("FOCUS") and Supplemental Statement of Income ("SSOI") reports, the data is in aggregate form and thus we are unable to determine underwriting revenue for public offerings of corporate debt securities.

16 The gross revenue from an underwriting is the difference between the price the syndicate pays the issuer for the securities and the initial price at which the syndicate sells the securities to the public, also called the "gross underwriting spread." The spread generally accounts for management fees paid to lead underwriters, underwriting fees and the sales credits paid to syndicate members for selling the securities. As a rule, gross revenue from a public offering is directly related to the size of the offering.

year.[17] Underwriting revenue, net of expenses, is distributed to syndicate members.

Table 1. TRACE-Eligible Corporate Bonds (Excluding 144A) Issued by Grade and Year

	Number of Offerings	Total Issued Amount (trillion $)	% of Annual Total Issued Amounts
2019	**26,769**	**3.10**	**100.00%**
Investment Grade	3,275	1.50	48.39%
High Yield	468	0.26	8.45%
Non-rated	23,026	1.34	43.15%
2020	**43,334**	**4.22**	**100.00%**
Investment Grade	3,828	2.14	50.81%
High Yield	374	0.24	5.58%
Non-rated	39,132	1.84	43.61%
2021	**55,164**	**3.12**	**100.00%**
Investment Grade	3,615	1.48	47.31%
High Yield	275	0.15	4.71%
Non-rated	51,274	1.50	47.98%
Average 2019-2021	**41,756**	**3.48**	**100.00%**
Investment Grade	3,573	1.71	48.84%
High Yield	372	0.21	6.25%
Non-rated	37,811	1.56	44.92%

Source: Bloomberg for TRACE-eligible Corporate Bonds

Through its outreach efforts, FINRA has heard that the settlement of syndicate

[17] Research using a sample of municipal bond offerings between 1997 and 2001 found that the absence of a rating increases underwriting gross spreads by about 40 basis points after controlling for bond rating and other characteristics. See Alexander W. Butler, Distance Still Matters: Evidence from Municipal Bond Underwriting, 21(2) Rev. Fin. Stud. 763-784 (March 2008), available at https://www.jstor.org/stable/40056834?seq=1. Information on gross spreads for unrated corporate bonds is harder to find. One study found the default rate among unrated institutional loans issued by U.S. publicly owned companies was comparable to that of rated high yield loans. See Edward I. Altman, Sreedhar T. Bharath & Anthony Saunders, Credit Ratings and the BIS Capital Adequacy Reform Agenda, 26(5) J. Bank. Fin. 909–921 (May 2002), available at https://www.sciencedirect.com/science/article/abs/pii/S0378426601002692. These findings indicate that the gross spread for unrated corporate bonds is likely somewhat greater than that for high yield corporate bonds. Based on these assumptions, the gross underwriting revenue from public offerings of corporate debt would be at least $36B (= 0.0065 * 1.71*10^12 + 0.0142 *(0.21 + 1.56)*10^12).

accounts for corporate debt offerings is typically conducted at the end of the 90-day window, rather than earlier in the window, as permitted under the current rule. FINRA also has heard, however, that syndicate income is often known much earlier, even by the closing date of the offering. This information is consistent with recent research findings that, in more than 95 percent of the debt offerings from 2016 to 2018, the debt security is priced, allocated to investors, and starts trading in the secondary market all within the same day.[18] Thus, a large part of syndicate income can be accounted for within days after the date of issuance.[19]

Through its outreach efforts, FINRA understands that syndicate expenses are also generally known within 90 days following the syndicate settlement date. However, syndicate managers sometimes receive invoices after 90 days. Certain expenses, such as legal fees and covering overallotment short transactions, take time to realize and are

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18 See Liying Wang, Lifting the Veil: The Price Formation of Corporate Bond Offerings, 142(3) J. Fin. Econ. 1340-1358 (December 2021), available at https://www.sciencedirect.com/science/article/abs/pii/S0304405X2100307X.

19 FINRA understands that, in the absence of an overallotment option, syndicate managers may over-allocate an offering to stabilize secondary market prices—effectively creating a syndicate short position. Profits or losses from these transactions are considered part of a syndicate's revenues or expenses and depend on secondary market price movements, which cannot be estimated before the public offering. Research has found, however, that average profit/loss from covering overallocations relative to corporate debt underwriting revenue is very small, and most of the overallocations are offset within a few days of the date of issuance. Bessembinder et al. (2022) found that over 70 percent of the issues with overallocations in their sample are offset within two days after issuance and by day 15 about 80 percent of the issues have the overallocation fully offset. See supra note 14. According to the authors, the mean net position for covering overallotment short-transactions and round-trip trades in the secondary market ranges from a $240,967 loss per high-yield issue with a large overallocation to a $161,578 gain per high-yield issue with a smaller overallocation.

difficult to estimate as they might depend on another party or market movements. Invoices received after the final settlement of syndicate accounts result in resettlements. FINRA understands that syndicate managers prefer to avoid this scenario as much as possible. Data on the prevalence of resettlements after 90 days is unavailable, but some public comments submitted in response to the Notice suggest that they are infrequent.

Economic Impacts

Under the proposed rule change, syndicate members would receive 70 percent of the gross receivables due to them within 30 days following the syndicate settlement date and any final balance due within 90 days. The proposed rule change could impact firms of different sizes that participate in corporate debt offerings in different ways, as explained further below. The aggregate impact is less clear, as it depends upon the extent of long-term competitive benefits and short-term cost increases. If competition increases in the market for corporate debt offerings in the long term, investors may also benefit from improved pricing.

Anticipated Benefits

FINRA expects that the proposed rule change could reduce a number of risks associated with syndicate debt issuance, including counterparty and liquidity risk. Remitting revenues earned from the offering to syndicate members more quickly would reduce counterparty risk to syndicate members. The reduction in counterparty risk would depend on the financial capacity of the syndicate manager–where the syndicate manager is smaller or more financially constrained, the reduction in counterparty risk will likely be greater. In addition, a shorter syndicate settlement timeframe would result in providing syndicate members with earlier access to capital and improve the member’s liquidity position where their own net capital is limited. Members may therefore be exposed to lower liquidity risk. The extent of this benefit would depend on the relative magnitude of syndicate receivables to the firm's liquidity position and the strength of the liquidity position itself.

FINRA expects that these potential benefits would be more pronounced for firms with lower capital levels. For instance, firms that do not have sufficient capital to engage in other business activities due to the length of the current settlement period may reap greater benefits from the proposed rule change. Syndicate members exposed to higher counterparty default risk may also disproportionately bear the risks associated with longer final settlement times. To the extent that smaller firms tend to have lower capital levels, the proposed rule change will benefit smaller firms by providing additional capital to engage in other business activities and manage default risk.

The proposed rule change is expected to have positive effects on competition and efficiency in the corporate debt underwriting market to the extent that the anticipated syndicate receivables constrain a firm's liquidity position. Alleviation of liquidity constraints would create opportunities for the syndicate members to participate in new offerings and enhance their ability to compete with other firms, maintain business operations or use the funds for other purposes. This may reduce barriers to entering the corporate debt underwriting market and could ultimately result in an increase in the supply of underwriters and lower costs for corporate debt issuers and investors. Lowering costs to issuers and investors may increase the size and frequency of new corporate debt offerings, benefiting all member firms engaged in the underwriting process. However, the extent of this potential gain in market competitiveness cannot be fully and accurately estimated.

As the syndicate manager would be required to remit a large part of the revenue to the syndicate members sooner, the proposed rule change could lead to a transfer of some of the interest earned on the syndicate's underwriting revenue–i.e., from the syndicate manager to other syndicate members. The magnitude of such benefit is positively correlated with the interest rate environment. Under the proposed rule change, if part of the underwriting revenue is paid earlier, the syndicate manager would forego the earned interest on the amount to be distributed to syndicate members over the 60-day period–the difference between the 90-day baseline and proposed 30-day timeframe for the first payment of the underwriting revenue. Other syndicate members would have the opportunity to earn that interest where they do not have a better economic use for the capital.

Finally, FINRA does not expect the proposed rule change to increase the frequency of resettlements. The maximum time to final syndicate settlement under the proposed rule change, 90 days, is the same as under the baseline, and nothing in the proposed rule change would make it more difficult for parties to provide timely invoices of expenses relative to the baseline.

Anticipated Costs

FINRA believes the proposed rule change may result in additional one-time and ongoing direct costs to member firms that serve as syndicate managers in public offerings of corporate debt. These firms will need to adapt their internal policies and procedures as well as their accounting, compliance, and supervision and management systems to accommodate a two-stage syndicate account settlement cycle. Firms may also adopt better technology and greater automation of accounting and recordkeeping processes. Firms may also need to hire additional staff depending on how settlement cycles on multiple offerings overlap. The magnitude of such associated costs, specifically staff and related human and technology resources, could increase as the volume and frequency of offerings in which firms participate as syndicate managers increases. Syndicate managers could absorb such costs or pass them on to the syndicate members or the issuers.

FINRA believes that the adoption of MSRB Rule G-11 provides a useful case study for understanding the potential costs of the proposed rule change. Both commenters that supported and those more critical of the FINRA rule proposal set forth in Regulatory Notice 21-40 discussed comparisons between the offering process for municipal bonds versus corporate bonds. Opponents argued that, because the process for corporate bond offerings is more complex than that for municipal bonds, experience with the 30-day settlement period for municipal bond offerings is not directly relevant to corporate bond offerings. However, when the MSRB Rule G-11 amendment was proposed to shorten the deadline for municipal bond syndicate account settlement from 60 days to 30 days, similar opposing arguments were raised. Specifically, commenters noted uncertain expenses in complex issuances, the inability to obtain counsel bills and invoices within 30 days, and the fact that some bonds might take longer than 30 days to sell.[20] The amendment to MSRB Rule G-11 became effective in 2009 and market participants were able to implement necessary changes to adapt to the new timeline. While a transition in syndicate settlement timeframes involves costs, FINRA believes that

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20 See 74 FR 41771, supra note 9.

the long-term benefits of shortening the settlement timeframe would outweigh the costs.

Alternatives Considered

In developing the proposed rule change, FINRA considered alternatives to the two-stage syndicate settlement approach. Specifically, FINRA considered requiring syndicate accounts to be fully settled within 30 days. FINRA also considered a 45-day settlement period instead of 30 days. These alternatives could deliver some benefits as well as carry some costs in comparison with the current proposed rule change. FINRA believes that the proposed approach is appropriate at this time because it balances the goals of reducing exposure of syndicate members to the credit risk of the syndicate manager during the pendency of account settlements and providing syndicate members with earlier access to the funds earned from an offering, with preserving the ability of syndicate managers to effectively run the settlement process and thereby limit resettlements.

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

The proposed rule change was published for comment in Regulatory Notice 21-40 ("Notice"). FINRA received 12 comment letters in response to the Notice.[21] A copy of the Notice is attached as Exhibit 2a. A list of the comment letters received in response to the Notice is attached as Exhibit 2b. Copies of the comment letters received in response to the Notice are attached as Exhibit 2c. Of the 12 comment letters received, eight were in favor of the proposal set forth in the Notice and four were opposed. In the Notice, FINRA proposed to reduce the timeframe for the final settlement of syndicate accounts in

[21] All references to commenters are to the comment letters as listed in Exhibit 2b.

a public offering of corporate debt securities from 90 days to 30 days following the syndicate settlement date. FINRA has considered the comment letters received and engaged in further discussions with a wide variety of industry members. As a result, FINRA has revised the proposal to instead provide for a two-stage syndicate account settlement process, as described above. The comments received in response to the approach described in the Notice are summarized below.

A. Reduction of Syndicate Settlement Timeframe to 30 Days

BDA supported the proposal to reduce the timeframe for the final settlement of syndicate accounts in a public offering of corporate debt securities from 90 days to 30 days, stating it would provide the following economic benefits: (1) lessen the risk that a syndicate manager could become insolvent before syndicate members receive payment; (2) provide quicker access to the revenues earned from an offering (and thereby lower barriers for broker-dealers to enter the corporate debt underwriting market); and (3) reduce the amount of interest lost by syndicate members while the funds are held in the syndicate account.

BDA also expressed support by noting that various technological advances that have emerged since 1987, such as electronic order entry and accounting systems, facilitate faster syndicate settlements. BDA further noted support for the proposal by stating that there are not substantial differences between syndicate management and accounting for municipal versus corporate debt offerings that would justify the 90-day timeframe for corporates, including in the areas of multiple lead managers, cross-border offerings, the complexity of the legal issues involved, investor carve-out letters, and asset-backed securities. In addition, BDA stated that overallotments (which effectively do not exist in corporate bond transactions), travel expensing, and vendor billing also present no impediments to a 30-day settlement timeframe.

Castle Oak, InspereX, Loop Capital, SWS, and R. Seelaus supported the proposal, stating it would provide the following economic benefits: (1) lessen the risk that a syndicate manager could become insolvent before the payment of deal revenue to syndicate members; (2) provide quicker access to the revenues earned from an offering, which would allow syndicate members to conduct more business, including additional new-issue underwritings and secondary market trading; and (3) reduce the amount of interest lost by syndicate members while the funds are held in the syndicate account. ASA also supported the proposal, stating that it would provide syndicate members quicker access to the revenues earned from an offering. These commenters, except for Loop Capital, also supported the proposal by noting that there have been significant technological and logistical improvements in the past 35 years that have made the process of settling syndicate accounts cheaper and faster. Loop Capital noted support for the proposal by stating that, based on its experience, shortening the settlement period to 30 days would not present substantive challenges to firms that serve as syndicate managers.

On the other hand, Mizuho opposed the proposal described in the Notice, expressing concern regarding the feasibility of a syndicate manager receiving, reviewing, and approving all expenses within a 30-day window. Mizuho also stated that a 30-day account settlement timeframe would take firms some time to implement and would result in a loss of revenue for firms if done too soon.

Cleary also opposed the proposal, stating that the reduction of the syndicate account settlement period to 30 days would require syndicate managers to hire and train a significant number of additional employees to complete the settlement process within this shortened timeframe.[22] Cleary noted that these additional costs would be passed on to the syndicate, which would reduce the net earnings of syndicate members. Cleary also opposed the proposal because a reduction of the settlement period would result in more frequent resettlements, which is a burdensome process. In addition, Cleary argued that the technological advances that have enabled a 30-day settlement process for municipal debt offerings cannot be expected to expedite, to the same degree, the settlement process for corporate debt offerings. In this regard, Cleary stated that the syndicate settlement process for corporate debt offerings is more complex and involves more manual inputs, many of which are beyond the control of syndicate managers, than the settlement process for municipal debt offerings.

Cleary also opposed the proposal by asserting that there are a number of important differences between the settlement mechanics of corporate versus municipal debt offerings that make corporate debt offerings not amenable to a 30-day settlement period. According to Cleary, these differences include: (1) corporate bond offerings generally involve multiple lead managers; (2) syndicates in corporate debt offerings routinely engage in aftermarket support; (3) expenses in corporate debt offerings are not known up front; (4) corporate bonds are offered outside the United States; (5) corporate

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22 Cleary submitted its comment letter on behalf of BofA Securities, Inc., Barclays Capital Inc., Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Goldman Sachs & Co. LLC, Jefferies LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, RBC Capital Markets, LLC, UBS Securities LLC, and Wells Fargo Securities, LLC.

bond offerings do not have fixed legal fees; and (6) delivery of investor carve-out letters occurs after closing in corporate bond offerings.

B. Alternatives to a 30-Day Syndicate Account Settlement Requirement

Commenters discussed several potential alternatives to reducing the syndicate account settlement timeframe to 30 days.[23] As discussed above, one potential alternative was a two-stage approach, whereby the syndicate manager would be required to remit a specified percentage of the syndicate proceeds to syndicate members within 30 days and would be permitted to retain a portion to cover expenses for an additional period of time. Mizuho expressed support for revising the syndicate account settlement timeframe by either implementing a two-stage – 50/50 – syndicate account settlement approach or by shortening the syndicate settlement timeframe in incremental steps rather than a sudden reduction to 30 days. Cleary also supported implementing a two-stage – 50/50 – syndicate account settlement approach, stating that it would more quickly provide to syndicate members the revenues earned from an offering and also allow syndicate managers to retain a sufficient amount of syndicate funds to effect timely and accurate settlements.

SIFMA supported a two-stage – 70/30 – syndicate account settlement approach for corporate debt offerings because it provides for payment within 30 days of a very large percentage of the net compensation ultimately payable to syndicate members and preserves the ability of syndicate managers to effectively manage the settlement process. SIFMA stated that it had received input on this alternative from broker-dealers that

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[23] BDA, Cleary, Mizuho, SIFMA.

frequently act as syndicate managers as well as other broker-dealers that routinely act as syndicate members, and that all of these constituencies fully support this alternative.

While BDA initially opposed a two-stage syndicate account settlement approach as an alternative to the proposal, BDA subsequently expressed support for a two-stage – 70/30 – syndicate account settlement approach, stating that it was a more practical way to shorten the time to provide compensation to syndicate members.[24] According to BDA, the 70/30 approach would strike an appropriate balance between ensuring that syndicate members have ready access to their funds and minimizing the number of resettlements. In addition, BDA asserted that this approach would benefit investors by encouraging broader syndicate membership and making new-issue corporate bonds available to customers of a wider group of broker-dealers.

FINRA has modified the approach that was described in the Notice to instead adopt a two-stage – 70/30 – syndicate account settlement approach. FINRA believes that the proposed two-stage – 70/30 – approach is preferable to a two-stage 50/50 approach because it provides for a larger up-front payment with a smaller reserve amount and should not significantly increase the number of resettlements.

In response to a question posed in the Notice regarding the use of sole recourse loans as an alternative means of addressing concerns regarding the length of the syndicate account settlement timeframe, BDA stated that such loans are not a feasible alternative to shortening the syndicate account settlement timeframe because such a borrowing option does not exist generally, the lender would charge interest and thereby require a syndicate

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24 BDA submitted three comment letters in response to the Notice.

member to incur a liability for access to its own capital, and this alternative does not address the interest lost by syndicate members while their funds are held in the syndicate account. Cleary also opposed sole recourse loans as an alternative to address the length of the syndicate account settlement period. In this regard, Cleary stated that a syndicate manager will not know the amount required for a sole recourse loan because the syndicate manager will not know the net amount ultimately to be paid to each syndicate member and, as a result, syndicate managers will not know whether the receivable adequately secures any such loan. Cleary commented that syndicate managers also need to treat unsecured and partly-secured receivables as unallowable assets, and this approach therefore would cause uncertainty with regard to net capital for syndicate managers.

In light of the comments received and further discussions regarding the current syndicate account settlement framework, FINRA has determined to modify the approach that was described in the Notice and amend FINRA Rule 11880 as described above. In this regard, FINRA believes that the proposed amendments to FINRA Rule 11880 most directly and fairly balance the goals of reducing exposure of syndicate members to the credit risk of the syndicate manager during the pendency of account settlements and providing syndicate members with earlier access to the funds earned from an offering with preserving the ability of syndicate managers to effectively run the settlement process and thereby limit resettlements. After gaining experience with the two-stage – 70/30 – syndicate account settlement approach, FINRA will consider whether to reduce the 90-day time period for final settlement to align with the MSRB timeframe.

C. Definition of Corporate Debt Security

In the Notice, FINRA proposed defining a "corporate debt security" as a type of "TRACE-Eligible Security" that is U.S. dollar-denominated and issued by a U.S. or foreign private issuer. BDA and Loop Capital expressed support for the definition of "corporate debt security" proposed in the Notice by stating that it generally captures the universe of corporate bonds for which a move to a 30-day settlement timeframe would be easily achievable. Mizuho similarly expressed support for the definition of "corporate debt security" proposed in the Notice. BDA and Loop Capital specifically suggested that the definition should include securitized products as defined in FINRA Rule 6710(m), because the process for managing the syndicate account, paying vendors, and releasing deal revenue to comanagers is virtually the same for both corporate bonds and publicly offered securitized products.

However, Cleary opposed including asset-backed securities in the definition and stated that those securities are often composed of multiple tranches, and offerings of these securities often navigate novel, multi-jurisdictional legal issues. FINRA has determined that it is appropriate that the proposed modifications to the syndicate account settlement process also apply to public offerings of corporate debt securities that are securitized products. Therefore, the proposed definition of "corporate debt security" in Rule 11880 would include securitized products.

D. Public Offerings of Equity Securities

In response to a question posed in the Notice regarding whether the period permitted for the final settlement of syndicate accounts for public offerings of corporate equity securities should be shortened, Cleary stated that the time period should not be less than 90 days because equity offerings are likely to be more complicated than debt offerings, including requiring more diligence and marketing. Mizuho also opposed reducing the timeframe for settling equity syndicate accounts from 90 days to 30 days. However, Loop Capital argued that the time period for settling equity syndicate accounts should be reduced from 90 days and supported the adoption of a two-stage approach for such offerings. FINRA has determined at this time not to propose an amendment to reduce the syndicate account settlement timeframe for equity offerings.

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.[25]

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)

Not applicable.

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.

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[25] 15 U.S.C 78s(b)(2).

Exhibit 2a. Regulatory Notice 21-40 (November 2021).

Exhibit 2b. List of commenters in response to Regulatory Notice 21-40 (November 2021).

Exhibit 2c. Comment letters received in response to Regulatory Notice 21-40 (November 2021).

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2022-025)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 11880 (Settlement of Syndicate Accounts) to Revise the Syndicate Account Settlement Timeframe for Corporate Debt Offerings

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. 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 amend FINRA Rule 11880 (Settlement of Syndicate Accounts) to revise the syndicate account settlement timeframe for corporate debt offerings.

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.

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

2 17 CFR 240.19b-4.

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

Underwriting groups ordinarily form syndicate accounts[3] to process the income and expenses of the syndicate. The syndicate manager[4] is responsible for maintaining syndicate account records and must provide to each selling syndicate member an itemized statement of syndicate expenses no later than the date of the final settlement of the syndicate account. Syndicate members record the expected payments from the syndicate manager as "receivables" on their books and records but generally do not receive the

3 A syndicate account is the account formed by members of the selling syndicate for the purpose of purchasing and distributing the corporate securities of a public offering. See FINRA Rule 11880(a)(2).

4 A syndicate manager is the member of the selling syndicate that is responsible for the maintenance of syndicate account records. See FINRA Rule 11880(a)(3).

payments for up to 90 days after the syndicate settlement date,[5] as currently permitted under FINRA rules.[6]

To help avoid lengthy settlement delays, FINRA Rule 11880 provides that the syndicate manager in a public offering of corporate securities must effect the final settlement of syndicate accounts within 90 days following the settlement date. When FINRA (then NASD) initially adopted a settlement rule in 1985, it required that final settlement of syndicate accounts be effected within 120 days after the syndicate settlement date.[7] The syndicate settlement timeframe was reduced from 120 days to 90 days in 1987, and it has remained the same since then.[8]

In consideration of the technological advances since 1987, FINRA is proposing to amend the timeframe to settle syndicate accounts set forth in FINRA Rule 11880(b). Specifically, FINRA is proposing to establish a two-stage syndicate account settlement approach whereby the syndicate manager would be required to remit to each syndicate member at least 70 percent of the gross amount due to such syndicate member within 30 days following the syndicate settlement date, with any final balance due remitted within 90 days following the syndicate settlement date.

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5 The syndicate settlement date is the date that the issuer delivers corporate securities to or for the account of the syndicate members. See FINRA Rule 11880(a)(4).

6 During this time, a syndicate member may not treat the "receivables" as allowable assets for purposes of Exchange Act Rule 15c3-1 ("Net Capital Rule") and therefore must deduct them from its net worth in computing its net capital.

7 See Securities Exchange Act Release No. 22238 (July 15, 1985), 50 FR 29503 (July 19, 1985) (Order Approving File No. SR-NASD-85-14).

8 See Securities Exchange Act Release No. 24290 (April 1, 1987), 52 FR 11148 (April 7, 1987) (Order Approving File No. SR-NASD-87-7).

The proposed two-stage approach would be limited to public offerings of corporate debt securities.[9] FINRA is not proposing at this time to change the current 90-day period for the final settlement of syndicate accounts for public offerings of equity securities, which often involve complexities that may necessitate a longer settlement timeframe than corporate debt offerings (e.g., an overallotment option that may have an exercise term of 30 days).

FINRA also notes that, with respect to municipal debt offerings, Municipal Securities Rulemaking Board ("MSRB") Rule G-11 (Primary Offering Practices) currently provides that final settlement of a syndicate or similar account must be made within 30 calendar days of the syndicate settlement date. The MSRB shortened the settlement timeframe from 60 days to 30 days in 2009 to reduce the exposure of syndicate account members to the credit risk of potential deterioration in the credit of the syndicate manager during the pendency of account settlements.[10] The MSRB believed that this change would not be unduly burdensome on firms given the more efficient billing and accounting systems firms had implemented since the rules were first adopted in the 1970s.[11]

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[9] A "corporate debt security" would be defined as a debt security that is United States ("U.S.") dollar-denominated and issued by a U.S. or foreign private issuer, including a Securitized Product as defined in FINRA Rule 6710(m). "Corporate debt security" would not include a Money Market Instrument as defined in FINRA Rule 6710(o). See proposed Rule 11880(a)(1).

[10] See Securities Exchange Act Release No. 60487 (August 12, 2009), 74 FR 41771 (August 18, 2009) (Notice of Filing of File No. SR-MSRB-2009-12) and Securities Exchange Act Release No. 60725 (September 28, 2009), 74 FR 50855 (October 1, 2009) (Order Approving File No. SR-MSRB-2009-12).

[11] See supra note 10.

FINRA similarly believes that the proposed rule change will benefit syndicate members by reducing the exposure of syndicate members to the credit risk of the syndicate manager during the pendency of account settlements. FINRA also believes that the proposed rule change will benefit syndicate members, including capital-constrained small firms, by allowing them to obtain earlier access to the funds earned from an offering without significantly increasing the risks of resettlements. In addition, FINRA believes that the proposed staged approach will provide these benefits to syndicate members while easing compliance for syndicate managers by permitting them to retain 30 percent of the gross amount earned by syndicate members to cover expenses and remit any balance due to the syndicate members within the current 90-day period following the syndicate settlement date.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. The effective date will be January 1, 2023.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] 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 promotes just and equitable principles of trade and is in the public interest as it will reduce the exposure of syndicate members to the potential deterioration of the credit of syndicate managers during the

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[12] 15 U.S.C. 78o-3(b)(6).

pendency of account settlement without negatively impacting the ability of syndicate managers to run the syndicate settlement account process. FINRA also believes that the proposed rule change promotes just and equitable principles of trade because it will result in syndicate managers more quickly remitting the majority of the gross amount earned by syndicate members and will not be unduly burdensome on syndicate managers given the technological advances that have been made since the 90-day syndicate account settlement timeframe was adopted in 1987.

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.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the potential economic impacts of the proposed rule change, including potential costs, benefits, and distributional and competitive effects, relative to the current baseline.

Regulatory Need

FINRA Rule 11880 requires final settlement of syndicate accounts within 90 days following the syndicate settlement date. As discussed further below, FINRA understands that syndicate managers currently could conduct partial settlements of syndicate accounts much more quickly, at limited additional expense, to the benefit of syndicate members. Longstanding industry practices, the number of parties in selling syndicates and possibly greater efficiency in syndicate settlement by syndicate managers that conduct more settlements may limit the impact of competition and negotiation on final settlement practices and timelines. FINRA also believes that modifying the current syndicate settlement timeframe will benefit syndicate members, including capital-constrained small firms, by allowing them to obtain earlier access to the funds earned from an offering without significantly increasing the risks of resettlements. FINRA is therefore proposing a two-staged syndicate settlement framework to enable quicker remittance of a significant portion of syndicate revenue to syndicate members.

Economic Baseline

The economic baseline for the proposed rule change is current FINRA Rule 11880, which allows 90 days for the final settlement of syndicate accounts, industry practices for compliance and implementation of the rule, and the competitive landscape.

FINRA conducted an analysis of the primary corporate debt market to study the extent and scope of participation in corporate debt syndicates by member firms using data from the Trade Reporting and Compliance Engine ("TRACE"). From 2019 to 2021, FINRA estimates that approximately 377 member firms, on average per year, participated in syndicates for corporate debt offerings and could be affected by the proposed rule change.[13] Of these firms, 57 percent, 18 percent, and 25 percent are small, mid-size and large firms, respectively.[14]

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13 The extent of firm participation in the primary corporate debt market was approximated using TRACE data. Issuers sell new stocks and bonds in the primary market to the public, such as through an initial public offering. The data is limited to the primary market sellers for corporate debt, excluding offerings made in compliance with Rule 144A of the Securities Act of 1933 ("144A offerings").

14 See 2022 FINRA Industry Snapshot, https://www.finra.org/sites/default/files/2022-03/2022-industry-snapshot.pdf. Small, mid-size and large firms are defined as having 1-150, 151-499, and at least

The 90-day period following the syndicate settlement date allows the syndicate manager to record income and expenses incurred in connection with the offering and then to distribute the net underwriting revenue due to each syndicate member. Syndicate managers tend to be large, well-capitalized firms.[15] The syndicate manager collects the underwriting revenue for the syndicate and pays expenses. The other syndicate members, which often include smaller firms, are paid their respective portion of the underwriting revenue, net of expenses, from the syndicate managers by the final syndicate account settlement date.

To assess the magnitude of the gross revenue from underwriting public offerings of corporate debt, FINRA calculated that, on average each year between 2019 and 2021, there were 41,756 U.S. dollar-denominated corporate debt offerings (excluding 144A offerings) with an average amount of $3.5 trillion raised (see Table 1). Investment grade corporate debt offerings account for 49 percent of the total issued amount, and high yield and non-rated corporate debt offerings account for the remainder (see Table 1).[16] A

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500 registered representatives, respectively. See Article I of the FINRA By-Laws.

15 See, e.g., Hendrik Bessembinder, Stacey E. Jacobsen, William F. Maxwell & Kumar Venkataraman, Overallocation and Secondary Market Outcomes in Corporate Bond Offerings (April 29, 2022), SMU Cox School of Business Research Paper No. 20-04, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3611056. The authors developed a sample of 5,573 bond offerings that were issued between 2010 and 2018, based upon primary allocation data collected through TRACE. They found that only 10 firms were syndicate managers and that the most frequent bookrunners (manager and co-managers) were large firms. This finding is consistent with FINRA’s findings from its outreach efforts.

16 While members are required to report revenue from underwriting on Financial and Operational Combined Uniform Single (“FOCUS”) and Supplemental Statement of Income (“SSOI”) reports, the data is in aggregate form and thus we

recent study estimates that the average gross underwriting spread is 0.65 percent for investment grade debt securities and 1.42 percent for high yield debt securities.[17] Using these estimates, FINRA estimates that the gross revenue from underwriting public offerings of corporate debt (excluding 144A offerings) would be at least $36 billion per year.[18] Underwriting revenue, net of expenses, is distributed to syndicate members.

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are unable to determine underwriting revenue for public offerings of corporate debt securities.

17 The gross revenue from an underwriting is the difference between the price the syndicate pays the issuer for the securities and the initial price at which the syndicate sells the securities to the public, also called the "gross underwriting spread." The spread generally accounts for management fees paid to lead underwriters, underwriting fees and the sales credits paid to syndicate members for selling the securities. As a rule, gross revenue from a public offering is directly related to the size of the offering.

18 Research using a sample of municipal bond offerings between 1997 and 2001 found that the absence of a rating increases underwriting gross spreads by about 40 basis points after controlling for bond rating and other characteristics. See Alexander W. Butler, Distance Still Matters: Evidence from Municipal Bond Underwriting, 21(2) Rev. Fin. Stud. 763-784 (March 2008), available at https://www.jstor.org/stable/40056834?seq=1. Information on gross spreads for unrated corporate bonds is harder to find. One study found the default rate among unrated institutional loans issued by U.S. publicly owned companies was comparable to that of rated high yield loans. See Edward I. Altman, Sreedhar T. Bharath & Anthony Saunders, Credit Ratings and the BIS Capital Adequacy Reform Agenda, 26(5) J. Bank. Fin. 909–921 (May 2002), available at https://www.sciencedirect.com/science/article/abs/pii/S0378426601002692. These findings indicate that the gross spread for unrated corporate bonds is likely somewhat greater than that for high yield corporate bonds. Based on these assumptions, the gross underwriting revenue from public offerings of corporate debt would be at least $36B (= 0.0065 * 1.71*10^12 + 0.0142 *(0.21 + 1.56)*10^12).

Table 1. TRACE-Eligible Corporate Bonds (Excluding 144A) Issued by Grade and Year

	Number of Offerings	Total Issued Amount (trillion $)	% of Annual Total Issued Amounts
2019	26,769	3.10	100.00%
Investment Grade	3,275	1.50	48.39%
High Yield	468	0.26	8.45%
Non-rated	23,026	1.34	43.15%
2020	43,334	4.22	100.00%
Investment Grade	3,828	2.14	50.81%
High Yield	374	0.24	5.58%
Non-rated	39,132	1.84	43.61%
2021	55,164	3.12	100.00%
Investment Grade	3,615	1.48	47.31%
High Yield	275	0.15	4.71%
Non-rated	51,274	1.50	47.98%
Average 2019-2021	41,756	3.48	100.00%
Investment Grade	3,573	1.71	48.84%
High Yield	372	0.21	6.25%
Non-rated	37,811	1.56	44.92%

Source: Bloomberg for TRACE-eligible Corporate Bonds

Through its outreach efforts, FINRA has heard that the settlement of syndicate accounts for corporate debt offerings is typically conducted at the end of the 90-day window, rather than earlier in the window, as permitted under the current rule. FINRA also has heard, however, that syndicate income is often known much earlier, even by the closing date of the offering. This information is consistent with recent research findings that, in more than 95 percent of the debt offerings from 2016 to 2018, the debt security is priced, allocated to investors, and starts trading in the secondary market all within the same day.[19] Thus, a large part of syndicate income can be accounted for within days

19 See Liying Wang, Lifting the Veil: The Price Formation of Corporate Bond Offerings, 142(3) J. Fin. Econ. 1340-1358 (December 2021), available at https://www.sciencedirect.com/science/article/abs/pii/S0304405X2100307X.

after the date of issuance.[20]

Through its outreach efforts, FINRA understands that syndicate expenses are also generally known within 90 days following the syndicate settlement date. However, syndicate managers sometimes receive invoices after 90 days. Certain expenses, such as legal fees and covering overallotment short transactions, take time to realize and are difficult to estimate as they might depend on another party or market movements. Invoices received after the final settlement of syndicate accounts result in resettlements. FINRA understands that syndicate managers prefer to avoid this scenario as much as possible. Data on the prevalence of resettlements after 90 days is unavailable, but some public comments submitted in response to the Notice suggest that they are infrequent.

Economic Impacts

Under the proposed rule change, syndicate members would receive 70 percent of the gross receivables due to them within 30 days following the syndicate settlement date and any final balance due within 90 days. The proposed rule change could impact firms of different sizes that participate in corporate debt offerings in different ways, as

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[20] FINRA understands that, in the absence of an overallotment option, syndicate managers may over-allocate an offering to stabilize secondary market prices—effectively creating a syndicate short position. Profits or losses from these transactions are considered part of a syndicate's revenues or expenses and depend on secondary market price movements, which cannot be estimated before the public offering. Research has found, however, that average profit/loss from covering overallocations relative to corporate debt underwriting revenue is very small, and most of the overallocations are offset within a few days of the date of issuance. Bessembinder et al. (2022) found that over 70 percent of the issues with overallocations in their sample are offset within two days after issuance and by day 15 about 80 percent of the issues have the overallocation fully offset. See supra note 15. According to the authors, the mean net position for covering overallotment short-transactions and round-trip trades in the secondary market ranges from a $240,967 loss per high-yield issue with a large overallocation to a $161,578 gain per high-yield issue with a smaller overallocation.

explained further below. The aggregate impact is less clear, as it depends upon the extent of long-term competitive benefits and short-term cost increases. If competition increases in the market for corporate debt offerings in the long term, investors may also benefit from improved pricing.

Anticipated Benefits

FINRA expects that the proposed rule change could reduce a number of risks associated with syndicate debt issuance, including counterparty and liquidity risk. Remitting revenues earned from the offering to syndicate members more quickly would reduce counterparty risk to syndicate members. The reduction in counterparty risk would depend on the financial capacity of the syndicate manager–where the syndicate manager is smaller or more financially constrained, the reduction in counterparty risk will likely be greater. In addition, a shorter syndicate settlement timeframe would result in providing syndicate members with earlier access to capital and improve the member's liquidity position where their own net capital is limited. Members may therefore be exposed to lower liquidity risk. The extent of this benefit would depend on the relative magnitude of syndicate receivables to the firm's liquidity position and the strength of the liquidity position itself.

FINRA expects that these potential benefits would be more pronounced for firms with lower capital levels. For instance, firms that do not have sufficient capital to engage in other business activities due to the length of the current settlement period may reap greater benefits from the proposed rule change. Syndicate members exposed to higher counterparty default risk may also disproportionately bear the risks associated with longer final settlement times. To the extent that smaller firms tend to have lower capital levels, the proposed rule change will benefit smaller firms by providing additional capital to engage in other business activities and manage default risk.

The proposed rule change is expected to have positive effects on competition and efficiency in the corporate debt underwriting market to the extent that the anticipated syndicate receivables constrain a firm's liquidity position. Alleviation of liquidity constraints would create opportunities for the syndicate members to participate in new offerings and enhance their ability to compete with other firms, maintain business operations or use the funds for other purposes. This may reduce barriers to entering the corporate debt underwriting market and could ultimately result in an increase in the supply of underwriters and lower costs for corporate debt issuers and investors. Lowering costs to issuers and investors may increase the size and frequency of new corporate debt offerings, benefiting all member firms engaged in the underwriting process. However, the extent of this potential gain in market competitiveness cannot be fully and accurately estimated.

As the syndicate manager would be required to remit a large part of the revenue to the syndicate members sooner, the proposed rule change could lead to a transfer of some of the interest earned on the syndicate's underwriting revenue–i.e., from the syndicate manager to other syndicate members. The magnitude of such benefit is positively correlated with the interest rate environment. Under the proposed rule change, if part of the underwriting revenue is paid earlier, the syndicate manager would forego the earned interest on the amount to be distributed to syndicate members over the 60-day period–the difference between the 90-day baseline and proposed 30-day timeframe for the first payment of the underwriting revenue. Other syndicate members would have the opportunity to earn that interest where they do not have a better economic use for the capital.

Finally, FINRA does not expect the proposed rule change to increase the frequency of resettlements. The maximum time to final syndicate settlement under the proposed rule change, 90 days, is the same as under the baseline, and nothing in the proposed rule change would make it more difficult for parties to provide timely invoices of expenses relative to the baseline.

Anticipated Costs

FINRA believes the proposed rule change may result in additional one-time and ongoing direct costs to member firms that serve as syndicate managers in public offerings of corporate debt. These firms will need to adapt their internal policies and procedures as well as their accounting, compliance, and supervision and management systems to accommodate a two-stage syndicate account settlement cycle. Firms may also adopt better technology and greater automation of accounting and recordkeeping processes. Firms may also need to hire additional staff depending on how settlement cycles on multiple offerings overlap. The magnitude of such associated costs, specifically staff and related human and technology resources, could increase as the volume and frequency of offerings in which firms participate as syndicate managers increases. Syndicate managers could absorb such costs or pass them on to the syndicate members or the issuers.

FINRA believes that the adoption of MSRB Rule G-11 provides a useful case study for understanding the potential costs of the proposed rule change. Both commenters that supported and those more critical of the FINRA rule proposal set forth in Regulatory Notice 21-40 discussed comparisons between the offering process for municipal bonds versus corporate bonds. Opponents argued that, because the process for corporate bond offerings is more complex than that for municipal bonds, experience with the 30-day settlement period for municipal bond offerings is not directly relevant to corporate bond offerings. However, when the MSRB Rule G-11 amendment was proposed to shorten the deadline for municipal bond syndicate account settlement from 60 days to 30 days, similar opposing arguments were raised. Specifically, commenters noted uncertain expenses in complex issuances, the inability to obtain counsel bills and invoices within 30 days, and the fact that some bonds might take longer than 30 days to sell.[21] The amendment to MSRB Rule G-11 became effective in 2009 and market participants were able to implement necessary changes to adapt to the new timeline. While a transition in syndicate settlement timeframes involves costs, FINRA believes that the long-term benefits of shortening the settlement timeframe would outweigh the costs.

Alternatives Considered

In developing the proposed rule change, FINRA considered alternatives to the two-stage syndicate settlement approach. Specifically, FINRA considered requiring syndicate accounts to be fully settled within 30 days. FINRA also considered a 45-day settlement period instead of 30 days. These alternatives could deliver some benefits as well as carry some costs in comparison with the current proposed rule change. FINRA believes that the proposed approach is appropriate at this time because it balances the goals of reducing exposure of syndicate members to the credit risk of the syndicate manager during the pendency of account settlements and providing syndicate members

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[21] See 74 FR 41771, supra note 10.

with earlier access to the funds earned from an offering, with preserving the ability of syndicate managers to effectively run the settlement process and thereby limit resettlements.

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

The proposed rule change was published for comment in Regulatory Notice 21-40 ("Notice"). FINRA received 12 comment letters in response to the Notice.[22] A copy of the Notice is attached as Exhibit 2a. A list of the comment letters received in response to the Notice is attached as Exhibit 2b. Copies of the comment letters received in response to the Notice are attached as Exhibit 2c. Of the 12 comment letters received, eight were in favor of the proposal set forth in the Notice and four were opposed. In the Notice, FINRA proposed to reduce the timeframe for the final settlement of syndicate accounts in a public offering of corporate debt securities from 90 days to 30 days following the syndicate settlement date. FINRA has considered the comment letters received and engaged in further discussions with a wide variety of industry members. As a result, FINRA has revised the proposal to instead provide for a two-stage syndicate account settlement process, as described above. The comments received in response to the approach described in the Notice are summarized below.

1. Reduction of Syndicate Settlement Timeframe to 30 Days

BDA supported the proposal to reduce the timeframe for the final settlement of syndicate accounts in a public offering of corporate debt securities from 90 days to 30 days, stating it would provide the following economic benefits: (1) lessen the risk that a

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[22] All references to commenters are to the comment letters as listed in Exhibit 2b.

syndicate manager could become insolvent before syndicate members receive payment; (2) provide quicker access to the revenues earned from an offering (and thereby lower barriers for broker-dealers to enter the corporate debt underwriting market); and (3) reduce the amount of interest lost by syndicate members while the funds are held in the syndicate account.

BDA also expressed support by noting that various technological advances that have emerged since 1987, such as electronic order entry and accounting systems, facilitate faster syndicate settlements. BDA further noted support for the proposal by stating that there are not substantial differences between syndicate management and accounting for municipal versus corporate debt offerings that would justify the 90-day timeframe for corporates, including in the areas of multiple lead managers, cross-border offerings, the complexity of the legal issues involved, investor carve-out letters, and asset-backed securities. In addition, BDA stated that overallotments (which effectively do not exist in corporate bond transactions), travel expensing, and vendor billing also present no impediments to a 30-day settlement timeframe.

Castle Oak, InspereX, Loop Capital, SWS, and R. Seelaus supported the proposal, stating it would provide the following economic benefits: (1) lessen the risk that a syndicate manager could become insolvent before the payment of deal revenue to syndicate members; (2) provide quicker access to the revenues earned from an offering, which would allow syndicate members to conduct more business, including additional new-issue underwritings and secondary market trading; and (3) reduce the amount of interest lost by syndicate members while the funds are held in the syndicate account. ASA also supported the proposal, stating that it would provide syndicate members quicker access to the revenues earned from an offering. These commenters, except for Loop Capital, also supported the proposal by noting that there have been significant technological and logistical improvements in the past 35 years that have made the process of settling syndicate accounts cheaper and faster. Loop Capital noted support for the proposal by stating that, based on its experience, shortening the settlement period to 30 days would not present substantive challenges to firms that serve as syndicate managers.

On the other hand, Mizuho opposed the proposal described in the Notice, expressing concern regarding the feasibility of a syndicate manager receiving, reviewing, and approving all expenses within a 30-day window. Mizuho also stated that a 30-day account settlement timeframe would take firms some time to implement and would result in a loss of revenue for firms if done too soon.

Cleary also opposed the proposal, stating that the reduction of the syndicate account settlement period to 30 days would require syndicate managers to hire and train a significant number of additional employees to complete the settlement process within this shortened timeframe.[23] Cleary noted that these additional costs would be passed on to the syndicate, which would reduce the net earnings of syndicate members. Cleary also opposed the proposal because a reduction of the settlement period would result in more frequent resettlements, which is a burdensome process. In addition, Cleary argued that the technological advances that have enabled a 30-day settlement process for municipal debt offerings cannot be expected to expedite, to the same degree, the settlement process

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23 Cleary submitted its comment letter on behalf of BofA Securities, Inc., Barclays Capital Inc., Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Goldman Sachs & Co. LLC, Jefferies LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, RBC Capital Markets, LLC, UBS Securities LLC, and Wells Fargo Securities, LLC.

for corporate debt offerings. In this regard, Cleary stated that the syndicate settlement process for corporate debt offerings is more complex and involves more manual inputs, many of which are beyond the control of syndicate managers, than the settlement process for municipal debt offerings.

Cleary also opposed the proposal by asserting that there are a number of important differences between the settlement mechanics of corporate versus municipal debt offerings that make corporate debt offerings not amenable to a 30-day settlement period. According to Cleary, these differences include: (1) corporate bond offerings generally involve multiple lead managers; (2) syndicates in corporate debt offerings routinely engage in aftermarket support; (3) expenses in corporate debt offerings are not known up front; (4) corporate bonds are offered outside the United States; (5) corporate bond offerings do not have fixed legal fees; and (6) delivery of investor carve-out letters occurs after closing in corporate bond offerings.

2. <u>Alternatives to a 30-Day Syndicate Account Settlement Requirement</u>

Commenters discussed several potential alternatives to reducing the syndicate account settlement timeframe to 30 days.[24] As discussed above, one potential alternative was a two-stage approach, whereby the syndicate manager would be required to remit a specified percentage of the syndicate proceeds to syndicate members within 30 days and would be permitted to retain a portion to cover expenses for an additional period of time. Mizuho expressed support for revising the syndicate account settlement timeframe by either implementing a two-stage – 50/50 – syndicate account settlement approach or by shortening the syndicate settlement timeframe in incremental steps rather than a sudden

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[24] BDA, Cleary, Mizuho, SIFMA.

reduction to 30 days. Cleary also supported implementing a two-stage – 50/50 – syndicate account settlement approach, stating that it would more quickly provide to syndicate members the revenues earned from an offering and also allow syndicate managers to retain a sufficient amount of syndicate funds to effect timely and accurate settlements.

SIFMA supported a two-stage – 70/30 – syndicate account settlement approach for corporate debt offerings because it provides for payment within 30 days of a very large percentage of the net compensation ultimately payable to syndicate members and preserves the ability of syndicate managers to effectively manage the settlement process. SIFMA stated that it had received input on this alternative from broker-dealers that frequently act as syndicate managers as well as other broker-dealers that routinely act as syndicate members, and that all of these constituencies fully support this alternative.

While BDA initially opposed a two-stage syndicate account settlement approach as an alternative to the proposal, BDA subsequently expressed support for a two-stage – 70/30 – syndicate account settlement approach, stating that it was a more practical way to shorten the time to provide compensation to syndicate members.[25] According to BDA, the 70/30 approach would strike an appropriate balance between ensuring that syndicate members have ready access to their funds and minimizing the number of resettlements. In addition, BDA asserted that this approach would benefit investors by encouraging broader syndicate membership and making new-issue corporate bonds available to customers of a wider group of broker-dealers.

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[25] BDA submitted three comment letters in response to the Notice.

FINRA has modified the approach that was described in the Notice to instead adopt a two-stage – 70/30 – syndicate account settlement approach. FINRA believes that the proposed two-stage – 70/30 – approach is preferable to a two-stage 50/50 approach because it provides for a larger up-front payment with a smaller reserve amount and should not significantly increase the number of resettlements.

In response to a question posed in the Notice regarding the use of sole recourse loans as an alternative means of addressing concerns regarding the length of the syndicate account settlement timeframe, BDA stated that such loans are not a feasible alternative to shortening the syndicate account settlement timeframe because such a borrowing option does not exist generally, the lender would charge interest and thereby require a syndicate member to incur a liability for access to its own capital, and this alternative does not address the interest lost by syndicate members while their funds are held in the syndicate account. Cleary also opposed sole recourse loans as an alternative to address the length of the syndicate account settlement period. In this regard, Cleary stated that a syndicate manager will not know the amount required for a sole recourse loan because the syndicate manager will not know the net amount ultimately to be paid to each syndicate member and, as a result, syndicate managers will not know whether the receivable adequately secures any such loan. Cleary commented that syndicate managers also need to treat unsecured and partly-secured receivables as unallowable assets, and this approach therefore would cause uncertainty with regard to net capital for syndicate managers.

In light of the comments received and further discussions regarding the current syndicate account settlement framework, FINRA has determined to modify the approach that was described in the Notice and amend FINRA Rule 11880 as described above. In this regard, FINRA believes that the proposed amendments to FINRA Rule 11880 most directly and fairly balance the goals of reducing exposure of syndicate members to the credit risk of the syndicate manager during the pendency of account settlements and providing syndicate members with earlier access to the funds earned from an offering with preserving the ability of syndicate managers to effectively run the settlement process and thereby limit resettlements. After gaining experience with the two-stage – 70/30 – syndicate account settlement approach, FINRA will consider whether to reduce the 90-day time period for final settlement to align with the MSRB timeframe.

3. Definition of Corporate Debt Security

In the Notice, FINRA proposed defining a "corporate debt security" as a type of "TRACE-Eligible Security" that is U.S. dollar-denominated and issued by a U.S. or foreign private issuer. BDA and Loop Capital expressed support for the definition of "corporate debt security" proposed in the Notice by stating that it generally captures the universe of corporate bonds for which a move to a 30-day settlement timeframe would be easily achievable. Mizuho similarly expressed support for the definition of "corporate debt security" proposed in the Notice. BDA and Loop Capital specifically suggested that the definition should include securitized products as defined in FINRA Rule 6710(m), because the process for managing the syndicate account, paying vendors, and releasing deal revenue to comanagers is virtually the same for both corporate bonds and publicly offered securitized products.

However, Cleary opposed including asset-backed securities in the definition and stated that those securities are often composed of multiple tranches, and offerings of these securities often navigate novel, multi-jurisdictional legal issues. FINRA has determined that it is appropriate that the proposed modifications to the syndicate account settlement process also apply to public offerings of corporate debt securities that are securitized products. Therefore, the proposed definition of "corporate debt security" in Rule 11880 would include securitized products.

4. Public Offerings of Equity Securities

In response to a question posed in the Notice regarding whether the period permitted for the final settlement of syndicate accounts for public offerings of corporate equity securities should be shortened, Cleary stated that the time period should not be less than 90 days because equity offerings are likely to be more complicated than debt offerings, including requiring more diligence and marketing. Mizuho also opposed reducing the timeframe for settling equity syndicate accounts from 90 days to 30 days. However, Loop Capital argued that the time period for settling equity syndicate accounts should be reduced from 90 days and supported the adoption of a two-stage approach for such offerings. FINRA has determined at this time not to propose an amendment to reduce the syndicate account settlement timeframe for equity offerings.

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

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.

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-2022-025 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-2022-025. 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-2022-025 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.[26]

Jill M. Peterson
Assistant Secretary

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[26] 17 CFR 200.30-3(a)(12).

Regulatory Notice 21-40

Settlement of Syndicate Accounts

FINRA Requests Comment on Amendments to Rule 11880 Shortening the Settlement of Syndicate Accounts

Comment Period Expires: January 18, 2022

November 11, 2021

Notice Type
- Request for Comment

Suggested Routing
- Compliance
- Corporate Finance
- Legal
- Operations
- Senior Management
- Syndicate
- Underwriting

Key Topics
- Capital Raising
- Distribution of Securities
- Fixed Income
- Initial Public Offerings
- Investment Banking
- Public Offerings
- Underwriting

Referenced Rules & Notices
- FINRA Rule 11880
- MSRB Rule G-11
- Regulatory Notice 21-17
- SEA Rule 15c3-1

Summary

FINRA is soliciting comment on a proposal to amend FINRA Uniform Practice Code Rule 11880 (Settlement of Syndicate Accounts). The proposed amendments would reduce the maximum time for the final settlement of syndicate accounts in a public offering of corporate debt securities from 90 days to 30 days following the syndicate settlement date.

Questions concerning this *Notice* should be directed to:

- Paul Mathews, Vice President, Corporate Financing, at (240) 386-4639 or paul.mathews@finra.org;
- Kris Dailey, Vice President, Office of Financial and Operational Risk Policy, at (646) 315-8434 or kris.dailey@finra.org; or
- Cindy Friedlander, Senior Director, Fixed Income Regulation, at (202) 728-8133 or cynthia.friedlander@finra.org.

Questions concerning the Economic Impact Assessment in this *Notice* should be directed to:

- Dror Kenett, Senior Economist, Office of the Chief Economist, at (202) 728-8208 or dror.kenett@finra.org; or
- Vy Nguyen, Principal Research Analyst, Office of the Chief Economist at vy.nguyen@finra.org.

Action Requested

FINRA encourages all interested parties to comment on this request for comment. Comments must be received by January 18, 2022.

Comments must be submitted through one of the following methods:

- Online using FINRA's comment form for this *Notice*;
- Emailing comments to pubcom@finra.org; or
- Mailing comments in hard copy to:

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

To help FINRA process comments more efficiently, persons should use only one method to comment.

Important Notes: Comments received in response to *Regulatory Notices* will be made available to the public on the FINRA website. In general, comments will be posted as they are received.[1]

Before becoming effective, a proposed rule change must be approved by the FINRA Board of Governors and filed with the Securities and Exchange Commission (SEC) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).[2]

Summary

Background and Discussion

Rule 11880

To avoid lengthy settlement delays, since 1987 FINRA Rule 11880 has required the syndicate manager[3] of a selling syndicate[4] in a public offering of corporate securities to effect the final settlement of syndicate accounts within 90 days following the syndicate settlement date (the date that the issuer delivers corporate securities to or for the account of the syndicate members).[5] Underwriting groups ordinarily form syndicate accounts to process the income and expenses of the syndicate.

The syndicate manager is responsible for maintaining syndicate account records and must provide to each member of the selling syndicate an itemized statement of syndicate expenses no later than the date of the final settlement of the syndicate accounts. Syndicate managers aggregate and bill expenses related to the offering, including due diligence, legal, marketing and distribution costs. The payment that each syndicate member receives at final settlement is netted of these expenses. Syndicate members record the expected payments from the syndicate manager as "receivables" on their books and records, but may not receive the payments for up to 90 days, as the rule currently permits.

Net Capital Rule Impact

The 90-day period between the syndicate settlement date and the receipt of the final payment by a syndicate member has an impact on a syndicate member's net capital position and its ability to use the revenues it earned from its participation in the syndicate offering in its business operations.

Initially, capital charges for purposes of SEA Rule 15c3-1 (Net Capital Rule)[6] arise from the commitment to underwrite the securities of the issuer and are a percentage of the total amount of the issuance that the syndicate member has committed to purchase (referred to as open contractual commitment charges). The syndicate member takes these capital charges from the time the syndicate member is legally committed to the offering up until they have sold the securities (confirmed sales) to customers. A firm can participate in more offerings when it has more capital to sustain the open contractual commitment capital charges for such offerings.

However, a syndicate member may not treat syndicate receivables (*i.e.,* the profits the syndicate member earns from its participation in the offering that the syndicate manager has not remitted to the syndicate member) as allowable assets for the Net Capital Rule and therefore, must deduct them from its net worth in computing its net capital. As a result, while the revenue from the offering might otherwise increase a syndicate member's net capital when it records revenue earned from the syndicate, there is a corresponding deduction to net capital related to the receivable from the syndicate manager in its net capital computation, and the net effect is that its net capital remains unchanged. Hence, such syndicate members effectively are unable, in the interim, to use their earnings from the syndicate as additional net capital, to participate in new offerings, to offset expenses related to the syndicate offering or to otherwise operate their business.

Firms that are active underwriters in public offerings may have a significant amount of syndicate receivables and may be disproportionately negatively impacted by the inability to treat these receivables as allowable assets for purposes of SEA Rule 15c3-1. This may be of particular concern for smaller firms that may not be as highly capitalized as larger firms and thus may be more limited in their ability to participate in new offerings.[7]

Proposed Amendments

In light of the technological advancements since 1987 that improve the efficiency of the settlement process, FINRA is proposing amendments to Rule 11880(b) to reduce settlement delays that prolong a firm's exposure to the credit risk of the syndicate manager, among other potential benefits. Specifically, FINRA is proposing that, for a public offering of corporate debt securities, the syndicate manager must effect final settlement of syndicate accounts within 30 days following the syndicate settlement date. FINRA is requesting comment on whether 30 days is feasible for all types of corporate debt offerings or whether there are some that are more complex and would require a slightly longer timeframe, for example, an offering with an overallotment option.[8] FINRA also is requesting comment on shortening the settlement period for all other public offerings of corporate securities, including equity offerings.

FINRA notes that the Municipal Securities Rulemaking Board (MSRB) Rule G-11 (Primary Offering Practices) provides that final settlement of a syndicate or similar account for a municipal offering shall be made within 30 calendar days following the date the issuer delivers the securities to the syndicate. The MSRB shortened the settlement period from 60 days to 30 days in 2009, stating in the related rule filing that the amendments were designed to reduce the exposure of syndicate account members to the risk of potential deterioration in the credit of the syndicate manager during the pendency of account settlements.[9] The MSRB further stated that, since the rules were adopted in the 1970s, firms have adopted more efficient billing and accounting systems such that reductions in the time periods for distribution of syndicate account profits is feasible and not unduly burdensome to dealers.[10]

FINRA believes the principles the MSRB outlined with respect to final settlement of syndicate accounts for municipal offerings may apply equally with respect to final settlement of syndicate accounts for public offerings of corporate debt securities. The 90-day allowable timeframe for settling syndicate accounts impacts not only a firm's net capital—as syndicate receivables are not considered an "allowable asset" under SEA Rule 15c3-1(c)(2)(iv)(C)—but also exposes the firm to the credit risk of the syndicate manager. Since 1987, firms have implemented technology to broadly automate their back-office processes, and systems are available to similarly automate corporate debt syndicate settlement, as well as for municipal offerings. FINRA also notes that there are some differences between municipal and corporate debt syndicate practices. For example, in a municipal offering typically only the syndicate manager incurs expenses on behalf of the syndicate, and the legal expenses of the syndicate are a fixed amount known in advance. However, these differences do not appear to justify the current 60-day gap between corporate and municipal syndicate account settlement timeframes.

FINRA believes that public offerings of corporate debt securities are generally less complex than other public corporate offerings, such as an equity initial public offering. Therefore, at this time FINRA is proposing a 30-day syndicate settlement for corporate debt, while seeking comment on whether certain types of debt offerings may require a different settlement period. FINRA also seeks comment on shortening the time to settle syndicate accounts for all other corporate public offerings, including equity offerings.

Economic Impact Assessment

FINRA has analyzed the potential costs and benefits of the proposal, and the impacts on the different parties that are expected to be affected. FINRA believes that the proposal would generally benefit syndicate members that engage in public offerings of corporate debt securities. Additionally, by shortening the final settlement timeframe for syndicate accounts, the proposal could potentially reduce barriers to entry and facilitate competition in the corporate debt underwriting market.

Economic Baseline

The economic baseline for the proposed amendments is current Rule 11880, which allows 90 days for the final settlement of syndicate accounts, current industry practices for compliance and implementation of the rule, and the current competitive landscape.

FINRA has engaged with member firms, trade associations and FINRA advisory committees on the proposal. FINRA has also conducted an analysis of the primary corporate debt market to study the extent and scope of participation in corporate debt syndicates by member firms, using data from the Trade Reporting and Compliance Engine (TRACE), for the 2018 to 2020 period. FINRA estimates that approximately 393 member firms, annually, on average, participate in syndicates for corporate debt offerings and could be affected by the proposed amendments.[11] Of these firms, 25 percent, 18 percent, and 57 percent are large, mid-size and small firms, respectively.[12]

Table 1. Number of Firms Participating as Sellers in Corporate Debt Primary Market, by Firm Size, Years 2018-2020

	Number of firms	Percent of total firms
Annual Average 2018-2020	393	100%
Large (>= 500 Registered Representatives)	97	25%
Mid-Size (151-499 Registered Representatives)	71	18%
Small (1-150 Registered Representatives)	226	57%

Source: Derived from TRACE Data

The 90-day period following the syndicate settlement date allows the syndicate manager to record income and expenses incurred in connection with the offering and then distribute the net underwriting revenue due to each syndicate member. Syndicate managers tend to be large, well-capitalized firms.[13] Among other things, the syndicate manager collects the underwriting revenue for the syndicate and pays expenses. The other syndicate members, which are often smaller firms, are paid their share of the underwriting revenue, netted of expenses, from the syndicate managers by the final syndicate account settlement date.

In order to assess the magnitude of the gross revenue from underwriting public offerings of corporate debt, FINRA calculates that, on average, between 2018 and 2020, there were 30,803 U.S. dollar-denominated corporate debt offerings (excluding 144A offerings) with an average amount of $3.5 trillion raised per year (*see* Table 2). Investment grade corporate debt offerings account for 50 percent of the total issued amount, and high yield and non-rated corporate debt offerings account for the remainder (*see* Table 2).[14] A recent study shows that the average gross underwriting spread[15] is 0.65 percent for investment grade debt securities and 1.42 percent for high yield debt securities.[16] Using this spread data, FINRA estimates that the gross revenue from underwriting public offerings of corporate debt (excluding 144A offerings) would be somewhat greater than $36 billion per year.[17] A portion of the underwriting revenue, net of expenses, is distributed to other syndicate members.

Table 2. TRACE-Eligible Corporate Bonds Issued by Grade and Year (excluding 144A offerings)

	Number of Offerings	Total Issued Amount (trillion $)	Percent of annual total issued amounts
2018	**23,346**	**3.32**	**100.00%**
Investment Grade	3,063	1.60	48.17%
High Yield	574	0.29	8.63%
Non-rated	19,709	1.43	43.20%
2019	**26,272**	**3.00**	**100.00%**
Investment Grade	3,233	1.47	49.13%
High Yield	450	0.25	8.22%
Non-rated	22,589	1.28	42.65%
2020	**42,792**	**4.08**	**100.00%**
Investment Grade	3,741	2.09	51.31%
High Yield	355	0.22	5.44%
Non-rated	38,696	1.77	43.24%
Average 2018-2020	**30,803**	**3.47**	**100.00%**
Investment Grade	3,346	1.72	49.54%
High Yield	460	0.25	7.43%
Non-rated	26,998	1.49	43.03%

Source: Bloomberg for TRACE-eligible Corporate Bonds

Through its outreach efforts, FINRA understands there may be substantial differences between public offerings of debt and equity securities with respect to the settlement of syndicate accounts. Generally, the issuance process for debt is simpler than that of other types of securities, such as equity or certain preferred equity. FINRA understands that, in many instances, the income for a corporate debt offering is known by the closing date of the offering. Wang (2020) found that, in more than 95 percent of the debt offerings from 2016 to 2018, the debt security is priced, allocated to investors and starts trading in the secondary market all within the same day.[18] Thus, a large part of syndicate income for corporate debt offerings could be accounted for within days after the date of issuance.[19]

Unlike equity offerings, which FINRA understands can take more time to price, based on feedback from institutional investors, the bond issuer and the syndicate manager typically negotiate and agree on a price range, issue amount and spreads on or before the date of issuance.

FINRA understands that expenses related to an offering of corporate debt securities can be ascertained sooner than 90 days from the close of the debt offering. However, FINRA has heard anecdotally that the settlement of syndicate accounts is typically conducted at the end of the 90-day window, rather than earlier in the window, as permitted under the current rule. FINRA understands that the current industry practice of settling syndicate accounts at the end of the 90-day period, and not sooner, presents challenges for some syndicate members, but may benefit others.

Economic Impacts

The proposed amendments could potentially impact firms of different sizes that participate in corporate debt offerings in different ways. The aggregate impact is less clear, as it depends upon the extent of long-term competitive benefits and short-term cost increases.

Anticipated Benefits

A primary benefit of the proposal, particularly for smaller firms, is that syndicate receivables would become available to syndicate members sooner. Because syndicate receivables are not treated as allowable assets under SEA Rule 15c3-1, a shorter syndicate account settlement timeframe would provide syndicate members with earlier access to capital to participate in new offerings and compete with other firms, maintain business operations or use the funds for other purposes. Public information does not permit FINRA to assess directly the proportion of receivables associated with smaller firms, although, as noted above, syndicate management appears to be concentrated in a small number of large firms.[20] Through its outreach efforts, however, as well as comments received in response to FINRA *Regulatory Notice 21-17*, FINRA believes that such potential benefits would be more pronounced for small firms with lower capital levels.[21]

The proposed amendments could lower barriers to enter the corporate debt underwriting market and thereby increase the supply of underwriters. This could ultimately result in lower costs for corporate debt issuers and investors. Lowering costs to issuers and investors may increase the size and frequency of new corporate debt offerings, benefiting all member firms engaged in the underwriting process. The extent of this potential gain in market competitiveness cannot be fully and accurately estimated.

Shortening the syndicate account settlement period could lead to a transfer of some of the interest earned on the syndicate's underwriting revenue—*i.e.*, from the syndicate manager to other syndicate members—because the syndicate manager would be required to remit payment to the syndicate members sooner.[22] Under the proposed amendments, if the underwriting revenue is paid earlier, the syndicate manager would forego the earned interest on the amount to be distributed to syndicate members over the 60-day period—the difference between the 90-day baseline and proposed 30-day settlement time frame. Other syndicate members, likely smaller firms, would have the opportunity to earn that interest. Additionally, the shorter syndicate account settlement period would mitigate the counterparty risks for syndicate members that expect to receive a payment from the syndicate manager.

Finally, FINRA believes the proposal would provide some benefits to joint members with respect to potential regulatory alignment with the MSRB. FINRA understands that, while differences exist between municipal bonds and corporate debt instruments and their offering processes, potentially aligning the syndicate account settlement period in Rule 11880 with that in MSRB Rule G-11, where appropriate, could ultimately reduce compliance and supervisory program costs associated with different compliance regimes.

Anticipated Costs

FINRA believes the proposal could result in some direct costs to member firms, particularly those that serve as syndicate managers in public offerings of corporate debt. These firms could experience increased costs to adapt their accounting, compliance, supervision and management systems, and may need to hire additional staff to accommodate a shorter syndicate account settlement cycle. Firms may adopt better technology and greater automation of accounting and recordkeeping processes to settle syndicate accounts more quickly. FINRA understands that firms may also incur increased legal or other fees due to the demands of an accelerated timeframe. FINRA also understands that the magnitude of such associated costs, specifically staff and related human and technology resources, could increase with the volume and frequency of offerings in which firms participate as syndicate managers. Syndicate managers could absorb such costs or pass them on to the syndicate members or the issuers.

Through its firm engagement efforts, FINRA understands that, under the current system, syndicate managers may receive late invoices after the final settlement of syndicate accounts. FINRA understands that syndicate managers prefer to avoid this scenario as much as possible and indicated that collecting invoices and expenses in a shortened time-period may be challenging. FINRA cannot currently estimate whether or how much syndicate manager costs would increase if the syndicate account settlement timeframe was reduced.

Request for Comment

FINRA requests comment on all aspects of the proposal. FINRA requests that commenters provide empirical data or other factual support for their comments whenever possible. FINRA specifically requests comments concerning the following issues:

1. In addition to the economic impacts identified in this proposal:
   a. Are there other significant sources of impacts, including direct or indirect costs and benefits, of the proposed amendments to firms, issuers and investors?
   b. What are these economic impacts and what factors contribute to them?
   c. What would be the magnitude of these costs and benefits?
   d. Would such economic impacts differ across firm size or business model?

   Please provide data or other supporting evidence.
2. FINRA could consider defining a "corporate debt security" as a type of "TRACE-Eligible Security" that is United States ("U.S.") dollar-denominated and issued by a U.S. or foreign private issuer. Is this the appropriate definition of "corporate debt security" for purposes of this proposal? Why or why not? Should the definition exclude a "Securitized Product," as defined in Rule 6710(m)? Please explain.
3. What are the various syndicate manager activities, processes and related timing that must precede the final settlement of syndicate accounts? Are there specific procedures or other measures used to address unresolved or uncertain expenses? How do these activities, processes and related timing considerations differ between various types of corporate public offerings?
4. FINRA is proposing to shorten the syndicate account settlement cycle for public offerings of corporate debt securities from 90 days to 30 days. Is 30 days the most appropriate shortened timeframe? Is a shorter timeframe feasible?
5. Are there certain types of offering costs that a syndicate manager may be unable to itemize within 30 days? For example, are fees for legal services always determined within 30 days of the syndicate settlement date? If not, when are such fees finalized? Could legal fees increase where the syndicate manager is required to settle syndicate accounts in a shorter period of time?
6. Are there some types of corporate debt offerings that could not settle in 30 days? If so, what are the specific types of corporate debt offerings and the reasons 30 days is not feasible? For example, is the feasibility of a 30-day settlement impacted by the type of corporate debt security, whether the security is investment grade or non-investment grade; the number of tranches in the offering; or other factors? Please specify.

7. As stated above, the MSRB shortened the syndicate account settlement period for municipal offerings from 60 days to 30 days in 2009. Are there differences between municipal and corporate debt security offerings that justify a longer syndicate account settlement timeframe for corporates? For example, to what degree are corporate debt security offerings more or less complex or time-consuming from a syndicate account settlement perspective and how do these differences impact the time needed to settle syndicate accounts? Are there circumstances in which it is not possible to completely settle all expenses of the syndicate in a municipal offering within 30 days, and if so, how is that handled?
8. How do the billing and payment processes for public offerings of corporate debt securities that involve international participants affect the timeframe for settlement of syndicate accounts for corporate offerings?
9. What technology has emerged that can support syndicate managers in syndicate account settlement billing and payment for corporate debt securities?
10. What systems, process or other changes must firms make to implement the proposed amendments? Will these changes affect the costs of the capital raising process for corporate debt securities?
11. Should the period permitted for the final settlement of syndicate accounts for public offerings of corporate equity securities be shortened? If so, what time frame is feasible? What impact, if any, would the exercise period for overallotment options have on shortening the period for final settlement of syndicate accounts for equity offerings?
12. FINRA understands that overallotment options are less commonly used in public offerings of debt securities because they could increase the issued amount, making it difficult to assess the debt rating and negotiate the offering price.[23] Please provide comment on the frequency of use of overallotment options in connection with corporate debt offerings and what impact, if any, the exercise period for overallotment options would have on shortening the period for final settlement of syndicate accounts.
13. An SEC staff interpretation under the Net Capital Rules provides that syndicate receivables may be considered an allowable asset to the extent a creditor issues a sole recourse loan to the syndicate member secured by the syndicate receivable.[24] Is adopting this approach feasible? What are the impacts of adopting this approach?
14. Are there additional approaches that FINRA should consider to accomplish the goals of this proposal? For example, what are commenters’ views on a two-stage syndicate account settlement approach—whereby the syndicate manager must remit a percentage of the gross underwriting spread from the offering within 30 days of the syndicate settlement date, with the balance due to syndicate members on a later date between 30 days and 90 days of the syndicate settlement date? If FINRA takes such an approach, what percentage should be required to be paid by the syndicate manager within the first 30 days? Please describe any other alternatives that FINRA should consider and why they are better suited?

15. Are there any potential risks to member firms, the investor community or others, associated with the existing 90-day settlement period? Could such risks decrease or increase by shortening the settlement period?
16. Will shortening the period for the final settlement of syndicate accounts lead to an increase or decrease in member firm participation in syndicate debt offerings?

Endnotes

1. Parties should submit in their comments only personally identifiable information, such as phone numbers and addresses, that they wish to make available publicly. FINRA, however, reserves the right to redact or edit personally identifiable information from comment submissions. FINRA also reserves the right to redact, remove or decline to post comments that are inappropriate for publication, such as vulgar, abusive or potentially fraudulent comment letters.

2. *See* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.

3. Rule 11880(a)(2) defines "syndicate manager" as "the member of the selling syndicate that is responsible for maintenance of the syndicate account records." A "syndicate account" is defined in Rule 11880(a)(3) as "the account formed by members of the selling syndicate for the purpose of purchasing and distributing the corporate securities of a public offering."

4. A "selling syndicate" is defined in Rule 11880(a)(1) as "any syndicate formed in connection with a public offering to distribute all or part of an issue of corporate securities by sales made directly to the public by or through participants in such syndicate."

5. *See* Securities Exchange Act Release No. 22238 (July 15, 1985), 50 FR 29503 (July 19, 1985) (Approval Order of SR-NASD-85-14). Initially the rule required that final settlement of syndicate accounts be closed out within 120 days after the syndicate settlement date. The time was reduced to 90 days in 1987. *See* Securities Exchange Act Release No. 24290 (April 1, 1987), 52 FR 11148 (April 7, 1987) (Approval order of SR-NASD-87-7).

6. *See* SEA Rule 15c3-1(c)(2)(iv)(C), which provides that syndicate receivables are not an allowable asset, except that receivables due to municipal securities underwriting syndicates are allowable for 60 days from the settlement of the underwriting with the issuer. An SEC staff interpretation provides that syndicate profit receivables must be deducted unless the asset: (1) adequately secures (*see* definition at SEA Rule 15c3-1(c)(5)) a fixed liability and are the sole recourse of the creditor for nonpayment of the liability, and (2) the loan agreement has been submitted to and found acceptable by the Exchange. (SEC Staff to NYSE) (No. 88-14, August 1988). *See* Interpretations of Financial and Operational Rules, SEA Rule 15c3-1(c)(2)(iv)(E)/011 Syndicate Receivables.

7. FINRA recently solicited comment on supporting diversity and inclusion in the broker-dealer industry in *Regulatory Notice 21-17*. FINRA received a comment indicating that the combined effect of Rule 11880 and the Net Capital Rule hurts minority-, women-, and veteran-owned broker-dealers (MWVBDs) because they frequently serve as co-managers and, thus, often have significant syndicate receivables that are not allowable as good capital. *See* letter from Kenneth E. Bentsen, Jr., SIFMA President and CEO to Jennifer Piorko Mitchell, FINRA (June 28, 2021).

   In addition, working with the Bond Dealers of America (BDA), a coalition of MWVBDs have raised concerns regarding the impact of Rule 11880 and the Net Capital Rule on MWVBDs to the SEC Chair, Gary Gensler. *See* letter from Chance Mims, Academy Securities, Inc. Founder and CEO; David R. Jones, CastleOak Securities, L.P. President and CEO; Juan D. Espinosa, Apto Partners, LLC Founder and CEO; Candace King Weir, C.L. King & Associates Inc. President; Eric V. Standifer, Blaylock Van, LLC President and CEO; Anthony Felice, Drexel

Hamilton, LLC CEO; Martin Cabrera, Cabrera Capital Markets, LLC Founder and CEO; James Reynolds, Jr., Loop Capital Markets LLC Chairman and CEO; George Ramirez, MFR Securities, Inc. CEO; Christopher J. Williams, Siebert Williams Shank and Co., LLC Chairman; George Madrigal, Penserra Securities LLC Founder and CEO; Pepe Finn, Stern Brokers & Co. Chairperson and CEO; Annie Seelaus, R. Seelaus & Co., Inc. CEO; Cynthia DiBartolo, Esq., Tigress Financial Partners LLC Founder and CEO; Samuel A. Ramirez, Samuel A. Ramirez & Company, Inc. President and CEO; Cynthia DiBartolo & Alexis Thomas, Diversity Broker-Dealer Coalition Chairperson and Vice Chairperson to Gary Gensler, SEC (May 1, 2021), available here on the BDA's website.

8. Overallotment options typically have an exercise term of 30 days and may have legal and other expenses associated with their exercise and subsequent closing. Such options are typically granted in listed offerings and permit the syndicate to purchase additional securities from the issuer at the public offering price to cover overallotments incurred during the distribution.

9. *See* Securities Exchange Act Release No. 60487 (August 12, 2009), 74 FR 41771 (August 18, 2009) (Notice of filing of SR-MSRB-2009-12) at 41771 and Securities Exchange Act Release No. 60725 (September 28, 2009), 74 FR 50855 (October 1, 2009) (Order approving SR-MSRB-2009-12).

10. *See id*. In addition, the MSRB noted that many fees are agreed upon in advance or can be estimated with considerable accuracy soon after settlement.

11. The extent of firm participation in primary corporate debt market was approximated using TRACE data. The primary market is where issuers sell new stocks and bonds to the public for the first time, such as with an initial public offering (IPO). The data displayed here is limited to the primary market sellers for corporate debt offerings.

12. For definitions of firm sizes, *see* Table 1; *see also* FINRA 2021 Industry Snapshot.

13. For example, *see* Hendrik Bessembinder, Stacey E. Jacobsen, William F. Maxwell and Kumar Venkataraman, "Syndicate Structure, Overallocation, and Secondary Market Outcomes in Corporate Bond Offerings" (May 18, 2021). SMU Cox School of Business Research Paper No. 20-04. The authors developed a sample of 5,573 bond offerings that were issued between 2010 and 2018, based upon primary allocation data FINRA collected through TRACE. They found that only 10 firms were syndicate managers and that the most frequent bookrunners (manager and co-managers) were large firms. This finding is consistent with FINRA's findings from its outreach efforts.

14. While members are required to report revenue from underwriting on Financial and Operational Combined Uniform Single (FOCUS) and Supplemental Statement of Income (SSOI) reports, the data is in aggregate form and thus FINRA is unable to determine underwriting revenue for public offerings of corporate debt securities.

15. The gross revenue from an underwriting is the difference between the price the syndicate pays the issuer for the securities and the initial price at which the syndicate sells them to the public. This is also called the "gross underwriting spread." The spread generally accounts for management fees paid to lead underwriters, underwriting fees and the sales credits paid to syndicate members for selling the securities. As a rule, gross revenue from a public offering is directly related to the size of the offering.

16. *See supra* note 13.

17. For a sample of municipal bond offerings between 1997 and 2001, Butler (2008) found that the absence of a rating increases underwriting gross spreads by about 40 basis points after controlling for bond rating and other characteristics. *See* Alexander W. Butler, 2008. "Distance Still Matters: Evidence from Municipal Bond Underwriting." The Review of Financial Studies 763-784.

    Information on gross spreads for unrated corporate bonds is harder to find. Altman, Bharath and Saunders (2002) found the default rate among unrated institutional loans issued by US publicly owned companies was comparable to that of rated high yield loans. *See* Edward I. Altman, Sreedhar T. Bharath and Anthony Saunders, 2002. "Credit ratings and the BIS capital." Journal of Banking & Finance 909–921. These findings indicate that that the gross spread for unrated corporate bonds is likely somewhat greater than that for high yield corporate bonds.

    Based on these assumptions, the gross underwriting revenue from public offerings of corporate debt would be somewhat greater than $36B (= 0.0065 * 1.72*10^12 + 0.0142 *(0.25 + 1.49)*10^12).

18. *See* L. Wang, Lifting the veil: The price formation of corporate bond offerings, Journal of Financial Economics.

19. FINRA understands that, in the absence of an overallotment option, syndicate managers may over-allocate an offering to stabilize secondary market prices—effectively creating a syndicate short position. Profits or losses from these transactions are considered part of syndicate's revenues or expenses and depend on secondary market price movements, which cannot be estimated before the public offering. Research has found, however, that average profit/loss from covering overallocations relative to corporate debt underwriting revenue is very small, and most of the overallocations are offset within a few days of the date of issuance. Bessembinder et. al. (2021) found that over 70 percent of the issues with overallocations in their sample are offset within two days after issuance (*see supra* note 13). By day 15, about 80 percent of the issues have the overallocation fully (100 percent) offset. According to the authors, the mean net position for covering overallotment short-transactions and round-trip trades in the secondary market ranges from a $240,967 loss per high yield issue with a large overallocation to a $161,578 gain per high yield issue with a non-large overallocation.

20. *See supra* note 13.

21. *See supra* note 7.

22. The magnitude of such benefit is conditional on the existing interest rate environment. In low interest rate environments, such benefit is expected to be small.

23. *See supra* note 19.

24. *See supra* note 6.

Alphabetical List of Written Comments
Regulatory Notice 21-40

1. Kenneth E. Bentsen, Jr., Securities Industry and Financial Markets Association ("SIFMA") (May 10, 2022)

2. Stephen Berkeley, Loop Capital Markets LLC ("Loop Capital") (January 18, 2022)

3. A. Brad Busscher, InspereX LLC ("InspereX") (January 14, 2022)

4. Michael Decker, Bond Dealers of America ("BDA") (January 18, 2022)

5. Michael Decker, Bond Dealers of America ("BDA") (March 15, 2022)

6. Michael Decker, Bond Dealers of America ("BDA") (May10, 2022)

7. David R. Jones, CastleOak Securities, L.P. ("CastleOak") (January 28, 2022)

8. Jeffrey D. Karpf, Cleary Gottlieb Steen & Hamilton LLP ("Cleary") (January 18, 2022)

9. Kelli McMorrow, American Securities Association ("ASA") (January 18, 2022)

10. Karolina Pajdak, R. Seelaus & Co., LLC ("R. Seelaus") (January 18, 2022)

11. Suzanne Shank, Siebert Williams Shank & Co., LLC ("SWS") (January 18, 2022)

12. David Wong, Mizuho Securities USA LLC ("Mizuho") (January 18, 2022)

May 10, 2022

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

Re: Regulatory Notice 21-40 – FINRA Requests Comment on Amendments to Rule 11880 Shortening the Settlement of Syndicate Accounts

Dear Ms. Mitchell:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to provide the following submission for consideration by the Financial Industry Regulatory Authority ("FINRA") regarding Regulatory Notice 21-40 ("Notice 21-40") and proposed amendments to Rule 11880 shortening the settlement of syndicate accounts (the "Proposal").[2]

SIFMA and its member firms have been and remain fully supportive of the policy goals set forth in the Proposal, including providing firms of all sizes that participate in syndicates with earlier access to capital to participate in new offerings, maintain business operations or use the funds for other purposes, and lowering barriers to enter the corporate debt underwriting market. To that end, we are pleased to support the two-stage approach to syndicate settlement referenced by FINRA in Notice 21-40,[3] the details of which were developed with input from broker-dealers that frequently act as syndicate managers as well as other broker-dealers that routinely act as syndicate members (including members of the Bond Dealers of America ("BDA") and a coalition of minority, women, and veteran-owned broker-dealers ("MWVBDs"), a number of which submitted comments on the Proposal to FINRA directly or through the BDA). We believe the approach described below represents a balanced and workable solution for all broker-dealers that participate in underwriting syndicates for corporate debt securities because it simultaneously (i) provides for payment within 30 days of a very large percentage of the net compensation ultimately payable to syndicate members, thereby achieving the goal of providing a net capital benefit to syndicate members, and (ii) preserves the ability of syndicate managers to effectively manage the settlement process, offer meaningful aftermarket support that contributes significantly to the efficient functioning of the corporate debt markets and minimize the risk of burdensome resettlements.

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[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, 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] The Proposal is available at https://www.finra.org/rules-guidance/notices/21-40.

[3] *See* Notice 21-40, at 10.

Description of the Two-Stage Approach

The proposed two-stage approach would provide for settlement of syndicate accounts for public offerings of corporate debt securities to be made in two installments: the first installment, due no later than 30 days following the syndicate settlement date, would pay each syndicate member its *pro rata* portion of seventy percent (70%) of the *gross* underwriting spread from the offering, and the second installment, due no later than 90 days following the syndicate settlement date, would pay each syndicate member its *pro rata* portion of any remaining balance, after deduction of syndicate expenses, in the syndicate account.

This two-stage approach would allow syndicate members to use a substantial portion of the anticipated net syndicate profit ultimately payable as an allowable asset in the computation of net capital, to participate in new offerings, to offset expenses related to the syndicate offering or to otherwise operate their business. Syndicate managers, meanwhile, would continue to have adequate time and sufficient remaining funds in the syndicate account to be able to pay anticipated syndicate expenses without the need, except in rare cases, for burdensome resettlements.

As noted above, this two-stage approach is the product of successful dialogue among, and has the full support of, various constituencies, including SIFMA member firms, the BDA and its member firms and a coalition of MWVBDs with which the groups have worked.

We appreciate the opportunity to submit this proposed two-stage approach to syndicate settlement for your consideration and support an expeditious rulemaking to ensure the net capital-related goals of the Proposal are met as quickly as possible. Given the technical realities of SIFMA's member firms' operational capabilities, however, we respectfully request an implementation period of at least 90 days post-rulemaking. For example, if this proposal is adopted by October 1, 2022, or earlier, implementation could begin no later than January 1, 2023. In addition, we are encouraged by the effective dialogue that led to agreement on this two-stage approach, and believe the relationships created as a result of that process could be effective in facilitating further discussions regarding the syndicate settlement process for public offerings of other corporate securities.

If you have questions or would like additional information, please contact Joseph Corcoran at (202) 962-7383.

Very truly yours,

Kenneth E. Bentsen, Jr.
President and CEO

Loop Capital

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January 18, 2022

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

Comments on FINRA Regulatory Notice 21-40

Dear Ms. Mitchell,

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

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

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

Economic costs and benefits

The reduction in the time period to settle syndicate accounts to 30 days would result in economic benefits to the Firm. First, the Firm would benefit from the ability to count funds earned in an underwriting transaction as regulatory capital. The earlier payment of syndicate compensation would allow the Firm to commit additional capital to underwriting opportunities and allow the Firm to participate in additional secondary trading activity, adding liquidity to the trading markets. In addition, more timely closing of the syndicate would allow syndicate members, rather than the syndicate manager, to earn interest on their share of the syndicate proceeds. Under the current structure, the syndicate manager receives 100% of the interest earned on the syndicate proceeds.

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

Definition of corporate debt security

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

Closing of Syndicate Accounts

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

Syndicate deadline for equity underwriting

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

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

Sincerely,

Loop Capital Markets LLC

Stephen Berkeley
Chief Compliance Officer and Regulatory Counsel

InsperеX

Via Overnight Mail

January 14, 2022

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

Dear Ms. Mitchell:

InspereX LLC ("InspereX") is pleased to offer comments on FINRA Regulatory Notice 21-40, "FINRA Requests Comment on Amendments to Rule 11880 Shortening the Settlement of Syndicate Accounts" (the "Notice"). As a FINRA-member broker-dealer that regularly and frequently participates as a co-manager on corporate bond underwritings, we fully endorse the proposal in the Notice to shorten the deadline in FINRA Uniform Practice Code Rule 11880 for syndicate managers to settle syndicate accounts and pay revenue to co-managers.

As a co-manager in corporate bond underwriting syndicates, we are actively engaged in the distribution of new issue debt offerings. In addition to selling such new issue debt securities direct to institutional accounts, we may also utilize a broad network of downstream selling group members, with which we maintain selling agreements, as we fulfill our distribution responsibilities. In connection with our participation as a co-manager, beyond our distribution capabilities, we share with other syndicate members the risks associated with the underwriting. Under current Rule 11880, once a corporate bond transaction settles, co-managers must wait up to ninety (90) days to receive funds we earn from the underwriting and our distribution activities. Under the SEC Net Capital Rule, we cannot count the receivable we are owed from the senior manager towards our regulatory capital, which may limit our ability to conduct certain business activities, including engaging in both additional new-issue underwritings and secondary market trading. We also lose the "float" on these funds for as long as they sit with the syndicate manager, and we face the risk that the senior manager could become insolvent before they pay out syndicate deal revenue to co-managers.

The 90-day standard in Rule 11880 has been on the books since 1987. Since that time we have seen the emergence of operations-related and other technology that has made the process of settling syndicate accounts much more efficient, thus making the process administratively less expensive and time consuming. Yet, the 90-day time frame has not been addressed in 35 years.

25 SE 4TH Avenue | Suite 400 | Delray Beach, FL 33483 | 561.361.1100

There is no doubt that syndicate managers have the ability to settle accounts within thirty (30) days, as the Notice proposes. That is the standard that has prevailed in the municipal securities market since 2009.

The time has come to modernize Rule 11880. We support the Notice's proposal to shorten the syndicate settlement deadline to thirty (30) days and we urge FINRA to adopt the proposal expeditiously.

Sincerely,

INSPEREX LLC

A. Brad Busscher
Chief Administrative Officer & General Counsel

ABB/pea

Bond Dealers of America

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January 18, 2022

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

Transmitted electronically

Comments on FINRA Regulatory Notice 21-40

Dear Ms. Mitchell,

The Bond Dealers of America (BDA) is pleased to comment on FINRA Regulatory Notice 21-40, "FINRA Requests Comment on Amendments to Rule 11880 Shortening the Settlement of Syndicate Accounts" (the "Notice"). BDA is the only DC-based organization exclusively representing the interests of securities dealers and banks focused on the US fixed income markets. This letter represents the views not only of BDA's member firms but also a coalition of minority-, women-, and veteran-owned broker-dealers with whom we are working on this issue.

Rule 11880 regulates the activity of syndicate managers[1] closing syndicate accounts, distributing revenue from transactions to comanagers, and related activities. The Rule currently requires senior managers, or bookrunners, to close syndicate accounts within 90 days of the transaction closing. The 90-day deadline has been the FINRA standard governing this activity since 1987. In the last 35 years there have been enormous strides in messaging and payment technologies that have increased the speed and lowered the cost at which syndicate invoices can be received and paid. In that time the Municipal Securities Rulemaking Board amended its Rule G-11 to shorten the time for syndicate settlement on municipal securities underwritings to 30 days, and revenue derived from customer designations must be paid within 10 days, changes adopted with no ill effects. Yet the FINRA Rule maintains the 90-day deadline. It is appropriate for FINRA to examine shortening this timeframe.

As the Notice recognizes, the 90-day deadline in Rule 11880 affects comanagers' regulatory capital calculation under Securities Exchange Act Rule 15c3-1, the Net Capital Rule. As long as comanagers' funds are tied up at the bookrunner, the comanager not only loses the use of those funds, but it also cannot count that receivable asset as regulatory capital until it is received in cash. BDA supports FINRA's proposal in the Notice to shorten the syndicate closing deadline and we urge you to adopt the proposal as soon as practicable. Issues raised about the Notice are addressed herein.

[1] The terms "syndicate manager," "lead manager," "senior manager" and "bookrunner" are used interchangeably in this letter.

Economic costs and benefits

The two principal economic benefits that would accrue to comanagers from the Notice's proposed amendments are the ability to count funds earned in an underwriting transaction as regulatory capital and the ability to earn float on or otherwise gain use of their funds within 30 days after deal closing. Currently, for the 90 days after deal closing, bookrunners earn the float on comanagers' funds. More capital for regional and mid-size firms means more capacity to underwrite new issues and provide liquidity to customers in the secondary market.

We also agree with the Notice that the proposed change to Rule 11880 would significantly "lower barriers to enter the corporate debt underwriting market and thereby increase the supply of underwriters." This is especially true for minority-, women-, and veteran-owned broker dealers (MWVBDs) because after years of education and advocacy, corporate bond issuers are beginning to recognize the value of diversity in their underwriting syndicates and are increasingly inviting MWVBDs into syndicates that were previously closed to new entrants. The ability of MWVBDs to accept these invitations depends to a significant degree on their access to capital. The faster that bookrunners pay out deal revenue to comanagers, thereby adding to their capital, the greater the ability of MWVBDs to participate in more underwritings.

The Notice's proposed 30-day deadline for closing syndicate accounts would also provide the benefit of significantly reducing counterparty risk exposure. A receivable owed by a bookrunner represents a default risk for comanagers in the event that the bookrunner becomes insolvent before paying comanagers. While this risk is small, it is not zero, and the longer the comanager is exposed to the bookrunner, the greater the risk. Reducing the syndicate closing deadline to 30 days would mitigate this exposure.

Definition of corporate debt security

We agree with the definition of "corporate debt security" in the Notice as "a type of 'TRACE-Eligible Security' that is United States dollar-denominated and issued by a U.S. or foreign private issuer." We believe this definition generally captures the universe of corporate bonds—investment grade and high yield—for which a move to a 30-day syndicate closing deadline would be easily achievable. We do not believe the definition should exclude securitized products as defined in Rule 6710(m). The process for managing the syndicate account, paying vendors, and releasing deal revenue to comanagers is virtually the same for both corporate bonds and securitized products.

Steps necessary to close syndicate accounts

As the Notice states, the time allotted to settle syndicate accounts in Rule 11880 is designed to allow bookrunners to "aggregate and bill expenses related to the offering, including due diligence, legal, marketing and distribution costs." In our members' experience when serving as bookrunners, law firms and other vendors are not shy about sending out timely invoices, especially if they are prompted by regulatory deadline. Moreover, many of the services provided to the syndicate by law firms and other vendors are based on pre-negotiated, fixed fees, not variable hourly charges, making billing and payments within 30 days even easier. The steps and processes associated with settling syndicate expenses do not vary widely among types of corporate bond offerings, even transactions which are offered to investors outside the US.

Appropriate deadline for the Rule

The Notice proposes to amend Rule 11880 to reduce the time to settle syndicate accounts from 90 to 30 days. We believe 30 days is an appropriate standard. A 30-day deadline would give bookrunners sufficient time to collect and pay syndicate invoices, perform syndicate accounting tasks, and pay out revenue to comanagers. It is the standard established in MSRB Rule G-11, and bookrunners on municipal securities transactions have settled syndicate accounts within 30 days since 2009 without issue. Indeed, revenue derived from designated customer orders is paid to comanagers within 10 days of the sale under MSRB Rule G-11(g)(iv).

When the MSRB was considering shortening their deadline for syndicate closings in 2009, large broker-dealers argued that 30 days was insufficient time to settle all syndicate expenses. "All the syndicate's expenses may not be final within 30 calendar days after the issuer delivers the securities to the syndicate," stated SIFMA's comment letter at the time.[2] "Final bills from underwriters' counsel may take many weeks to arrive, and the receipt of such bills are out of the direct control of the senior manager," SIFMA argued. We expect FINRA will hear similar arguments from large broker-dealers in reaction to the Notice. We point out, however, that despite the concerns of large underwriters in 2009, the 30-day deadline for closing syndicate accounts and the 10-day deadline for paying the proceeds of designated orders were implemented without problem by bookrunners after the MSRB's 2009 amendments took effect. The same will be true for the amendments in the Notice.

Expenses outside the 30-day window

It is a rare occurrence for syndicate expenses to be incurred outside the 30-day deadline proposed in the Notice. It can happen, however. Indeed, even under current rules, syndicate invoices can, on rare occasions, appear outside the 90-day window. Standard practice in those cases is for the bookrunner to bill comanagers for their share of the late-arriving expenses. Given that late expenses are such a rarity, current practice is not disruptive whatsoever. Under the Notice, if the bookrunner receives an invoice for expenses outside the proposed 30-day deadline, they will simply bill the syndicate. In underwritings of new equity issues, late syndicate expenses related to stability pricing and hedging may be more common. However, those expenses generally do not apply to debt transactions.

Financings where a 30-day deadline may not be possible

There are no categories of corporate bonds of US issuers offered for sale to US investors where it is not possible to collect and pay syndicate expenses within 30 days. The process for processing syndicate expenses and closing syndicate accounts is the same no matter the size of the issue, the credit rating of the issuer, the identities of the buyers, or any other variable. As discussed above, rare occasions may arise where expenses arrive late for a single transaction, but not on a categorical basis.

FINRA may hear the argument that new issues of US bonds marketed to international investors require more time to settle. In our experience, however, invoices from law firms and other vendors in Europe tend to arrive even faster than from vendors in the US. Moreover, taxable securities sold to international investors have become much more prevalent in the municipal market in recent years, and

[2] Letter from Leslie M. Norwood, SIFMA, to Margaret C. Henry, MSRB, June 29, 2009, msrb.org/-/media/Files/RFC/2009/2009-20/SIFMAG11.ashx.

international distribution has not affected the ability of municipal bookrunners to settle accounts according to MSRB requirements.

Traditionally, most municipal issuers sell bonds where the interest is exempt from federal income tax for most US investors, generally reducing an issuer's capital cost. Tax-exempt municipal bonds do not appeal to non-US investors because they have no need for the federal tax-exemption. In recent years, however, state and local governments have been increasingly selling taxable bonds in lieu of tax-exempts. Long-term taxable municipal issuance has gone from less than eight percent of new-issue volume in 2014 to over 30 percent in 2020.[3] Taxable municipal issues do appeal to global investors, and many taxable municipal transactions include international distribution. This does not, however, affect the ability of municipal bookrunners to close syndicate accounts within 30 days as MSRB Rule G-11 requires and would not affect the ability to close corporate syndicate accounts under the 30-day deadline proposed in the Notice.

Differences between municipal and corporate transactions

There are not substantial differences between syndicate management and accounting for municipal and corporate debt transactions that affect the ability of bookrunners to settle syndicate accounts within 30 days. There is nothing about the complexity of corporate bonds that would limit the ability of a bookrunner to collect and pay syndicate invoices within 30 days. The processes for processing and paying syndicate expenses are very similar in both markets. And as described previously, if the syndicate incurs expenses or receives invoices after the syndicate account closing deadline—currently 30 days for municipals and 90 days for corporates—the bookrunning manager simply bills comanagers for their shares of the expense. This happens from time to time in the municipal market, especially in competitive issuances, which are not used by corporate issuers.

Processing revenue and invoices for a municipal securities transaction is arguably more complicated than for a corporate transaction. Virtually all corporate syndicates distribute revenue among members on the basis of "group net," meaning members share revenue based on predetermined allocations, not which firm generated which customer orders. While some municipal syndicates operate on a group net basis, most are based on a "net designated" approach to revenue sharing where individual syndicate members receive credit for the customer orders they generate. That means the lead manager must track orders on a firm by firm basis and pay out revenue based on each firm's orders. That step generally is not necessary in corporate underwritings.

Also, corporate underwritings almost never have unsold balances at the time the transaction closes, due in large part to the bullet maturity structure used by most corporate issuers. Municipal issuers tend to use serial maturities where a transaction is split among many tranches, each with different, sequential maturities. Because some maturities are often easier to sell than others, it is not unusual for a syndicate to be left with remining balances of bonds, which must be addressed by the bookrunner at syndicate closing, another step generally not necessary in corporate syndicates.

Technology that can facilitate faster syndicate closings

There obviously have been a plethora of technologies that have emerged since 1987 which facilitate faster syndicate settlements. Instead of snail mail, physical checks, and faxes, we have email, electronic

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[3] The Bond Buyer, "A Decade of Municipal Bond Finance," www.bondbuyer.com/broker/bond-buyer-data.

messaging, and electronic funds transfer. In addition, the emergence of electronic order entry and accounting systems has facilitated significant improvements in the efficiency of managing syndicate accounts. These systems, certainly not available in 1987 when the current 90-day deadline in Rule 11880 was established, allow syndicate members to communicate with each other quickly and efficiently, view unsold balances, and conduct other functions. Technology has streamlined syndicate accounting generally and would help facilitate the transition to 30-day syndicate account closings.

Transitioning to a 30-day deadline

We do not believe that compliance with a 30-day deadline for syndicate account closings would require a significant technology investment among bookrunners. Most of the transition would involve changes in processes. Professionals at bookrunning managers would need to more closely monitor the receipt and payment of invoices and proactively request invoices that have not arrived. Once law firms and other vendors become accustomed to shortened deadlines, the process of settling accounts within 30 days will become as seamless as the current 90-day process for corporates and the 30-day process for municipals.

Syndicate deadline for equity underwriting

We believe it is appropriate for FINRA to periodically examine dated rules to ensure the terms remain relevant, and in that respect, we encourage FINRA to explore the question of an appropriate syndicate closing standard for equity underwritings. However, BDA does not have a position on whether a 30-day deadline for equities is currently feasible.

Over-allotment and syndicate closings

As the Notice recognizes, over-allotments “are less commonly used in public offerings of debt securities because they could increase the issued amount, making it difficult to assess the debt rating and negotiate the offering price.” Over-allotments effectively do not exist in corporate bond transactions and would not be a hurdle to transitioning to a 30-day syndicate closing deadline.

Sole recourse loans and receivables due from bookrunners

The Notice references “an SEC staff interpretation under the Net Capital Rules [which] provides that syndicate receivables may be considered an allowable asset to the extent a creditor issues a sole recourse loan to the syndicate member secured by the syndicate receivable.” We are not aware of any market for providing sole recourse loans backed by receivables owed by bookrunners to comanagers. None of our members has ever obtained sole recourse loans backed by these receivables, and we do not believe such a borrowing option exists generally. Moreover, the lender in a sole recourse loan would undoubtedly charge interest to the borrower, resulting in a situation where a comanager would need to incur a liability, including interest expenses and the associated capital charge, for access to its own capital. And this solution would not address the loss of float experienced by comanagers while their funds are tied up at the bookrunner. For these reasons, sole recourse loans are not a workable solution to the issues raised in the Notice.

Alternatives to a 30-day deadline

The Notice raises the prospect of “a two-stage syndicate account settlement approach—whereby the syndicate manager must remit a percentage of the gross underwriting spread from the offering within

30 days of the syndicate settlement date, with the balance due to syndicate members on a later date between 30 days and 90 days of the syndicate settlement date." While receiving the bulk of their funds within 30 days would be a better outcome for comanagers than the current Rule, we do not see a justification for bookrunners withholding a portion of comanagers' funds for perhaps months longer. Bookrunning managers do not need more than 30 days to settle syndicate accounts. Providing more time to return even a portion of comanagers' funds would be unnecessary and would undercut the benefits of the amendments.

Risks associated with the current 90-day deadline

As discussed above, the biggest risk faced by comanagers associated with the current 90-day deadline is counterparty credit risk, or the risk that the bookrunning manager could fail to pay comanagers their funds when due. While remote, as anyone who lived through the 2008 financial crisis knows, that risk is real. For example, one firm reported to us that in 2008 they were a comanager on a corporate underwriting which closed in May 2008 lead managed by Lehman Brothers. The comanager finally received their funds from the transaction just days before Lehman declared bankruptcy in September 2008. Another example is Refco, the financial services firm which became insolvent in 2005. Refco was the lead manager in corporate syndicates in as late as August 2005, and they entered bankruptcy in October 2005. Shortening the 90-day deadline to 30 days would mitigate the counterparty credit risk associated with syndicate closings because it would shorten the time that comanagers are exposed to bookrunners.

Effect on new entrants

Shortening the syndicate closing deadline would undoubtedly lower barriers to entry for broker-dealers seeking to participate in the new-issue corporate underwriting business. This is especially true for smaller broker-dealers and, as discussed above, minority-, women-, and veteran-owned firms. As SIFMA noted in a recent comment letter to FINRA, "the combined effect of FINRA Uniform Practice Rule 11880, which allows syndicate bookrunning managers 90 days to settle syndicate accounts, and the Net Capital Rule, which prevents co-managers from treating syndicate receivables as good capital if they are aged more than 30 days, hurts MWVBDs because they frequently serve as comanagers and, thus, often have significant syndicate receivables."[4] We agree with SIFMA on this point and we support the amendments in the Notice as the best solution to address this issue.

It is necessary and appropriate for FINRA to review old rules from time to time to ensure they are still relevant and workable. The 35-year-old 90-day deadline for syndicate closings in Rule 11880 is ripe for that review. In 1985 the then-NASD adopted the first syndicate closing rule establishing a deadline for settling accounts and paying comanagers, stating in the adopting release "delays in settling these [syndicate] accounts can result in unnecessary outlays of time and money by syndicate participants."[5]

[4] Letter from Kenneth E. Bentsen, SIFMA, to Jennifer Piorko Mitchell, FINRA, June 28, 2021, www.finra.org/sites/default/files/NoticeComment/Kenneth%20E.%20Bentsen%2C%20Jr._%5BSIFMA%5D_6.28.2021%20-%20Comment%20on%20RN%2021-17%20%28June%2028%2C%202021%29.pdf.

[5] National Association of Securities Dealers, "NASD Notice 85-59: Effectiveness of Amendment to the Uniform Practice Code to Require Prompt Settlement of Syndicate Accounts," January 1, 1985.

That is as true today as it was in 1985. The current 90-day deadline represents an unnecessary and risky delay in settling syndicate accounts, and the time has come to modernize the Rule.

We commend FINRA for identifying the issue of a longer-than-necessary syndicate closing deadline for corporate bond underwritings and we fully support the solution offered in the Notice, to shorten the syndicate settlement deadline to 30 days. We urge FINRA to quickly seek approval for this amendment, and we look forward to working with regulators and stakeholders to implement this change. Please do not hesitate to call or write if you have any questions.

Sincerely,

Michael Decker
Senior Vice President

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March 15, 2022

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
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Washington DC 20006

In regard to FINRA Regulatory Notice 21-40

Transmitted electronically

Dear Ms. Mitchell,

On January 18, 2022 the Bond Dealers of America (BDA) sent a comment letter on FINRA Regulatory Notice 21-40, "FINRA Requests Comment on Amendments to Rule 11880 Shortening the Settlement of Syndicate Accounts" (the "Notice"). We kindly request that you accept this supplementary comment letter with additional views and information on the Notice. BDA is the only DC-based organization exclusively representing the interests of securities dealers and banks focused on the US fixed income markets. This letter represents the views not only of BDA's member firms but also a coalition of minority-, women-, and veteran-owned broker-dealers with whom we are working.

FINRA received a comment letter on the Notice from Cleary Gottlieb Steen & Hamilton LLP on behalf of multiple parties[1] (the "Cleary Letter"). This letter includes a number of unsupported claims and statements which are inconsistent with the experiences of our firms in the corporate bond new-issue underwriting business. We appreciate this opportunity to address those statements.

Multiple lead managers

The Cleary Letter attempts to distinguish municipal underwriting transactions from corporate underwriting explaining that "In syndicates involving municipal debt, it is typical market practice to assign only one active manager with responsibility for all principal syndicate functions, including documentation, marketing and billing and delivery." Municipal underwriting syndicates can and do have multiple lead managers. In municipal syndicates, like corporate syndicates, there is typically one bookrunning manager who assumes all the administrative functions of the syndicate, including processing expenses and allocating revenue to comanagers. In both corporate and municipal offerings, any member of the syndicate can submit valid expenses to be paid from the syndicate account. The existence of multiple lead managers does not prevent municipal syndicates from paying deal revenue to comanagers within 30 days or 10 days for designated orders. The process for settling syndicate accounts

[1] Letter from Jefferey D. Karpf, Cleary Gottlieb Steen & Hamilton LLP, to Jennifer Piorko Mitchell, FINRA, January 18, 2022, www.finra.org/sites/default/files/NoticeComment/Jeffrey%20D%20Karpf_Cleary%20Gottlieb%20Steen%20%26%20Hamilton%20LLP_1.18.2022%20-%20Comment%20Letter%20-%20Regulatory%20Notice%2021-40%20%2801.18.2022%29.pdf.

for municipals and corporate is virtually the same, regardless of how many lead managers are on the deal.

The Cleary Letter next contends that the complexity associated with multiple lead managers "is compounded in multi-tranche offerings of investment grade corporate debt." In reality municipal securities are more structured and complex than many corporate transactions, where single bullet maturities are the standard. A significant majority of municipal bond new-issues are sold as "serial maturities," meaning the transaction is structured with sequential annual maturities in order to give the issuer level debt service payments over the life of the bond. Municipal transactions can include 20 or more separate maturities each with its own CUSIP. None of this prevents municipal bookrunners from complying with the MSRB's syndicate settlement rule.

In addition, FINRA received a comment letter on the Notice from Mizuho Securities USA LLC[2] (the "Mizuho Letter"). The Mizuho letter states "The type of corporate offerings, whether investment grade or non-grade, or the number of tranches in the offering, etc. are not concerns with regards [sic] to the 30 days settlement window."

Aftermarket support and overallotments

The Cleary Letter states "Syndicates in corporate debt offerings routinely engage in aftermarket support through short covering purchases in the secondary market. Syndicates create the short position by overallotting a percentage of the securities being offered." This is true. However, the Cleary Letter also states "the amount of the short position varies from offering to offering, and it is fairly common for this to be more than a couple of percent of the offering." We are not sure what the letter means by "fairly common," but in our experience, it is rare for syndicate short positions to exceed a few percent of the deal. Moreover, the letter states that expenses associated with hedging cannot be allocated to comanagers until "after the short is fully covered, a period generally ranging from a couple of days or more in investment grade debt offerings to up to 30 days or more in high yield debt offerings." In our experience, shorts arising from overallotments typically take place during the first few days after pricing. It is exceedingly rare for short positions to extend past a week, and almost unheard of past 30 days. Overallotments are not a barrier to a 30-day syndicate settlement deadline. The Mizuho Letter states that overallotments are "Not a major factor for our firm."

Syndicate expenses

The Cleary Letter states "In syndicates offering corporate debt, these [roadshow, legal and other] expenses are not known up front and must be submitted, collected, and allocated in a process that typically continues until 60–90 days after closing." This is the weakest argument in the Letter. Submitting, collecting, and allocating routine syndicate expenses never has to take 90 days. It takes this long only because bookrunners typically do not even begin the process of collecting expenses until near the end of the 90-day window provided in Rule 11880. Implementing a 30-day syndicate settlement deadline would largely be a matter of adapting processes to accommodate the revised standard. Bookrunners will need to demand that law firms and other vendors submit invoices earlier and begin soliciting comanagers' expenses earlier. There is nothing inherent about the process of settling corporate underwriting syndicates that demands 90 days.

[2] Email from David Wong, Mizuho Securities USA LLC, January 18, 2022, www.finra.org/sites/default/files/NoticeComment/Mizuho%20Americas_David%20Wong_1.18.2022%20-%20Regulatory%20Notice%2021-40%20-%20Comments%20from%20Mizuho%20Securities%20USA%20LLC.pdf

Cross-border offerings

The Cleary Letter states "A number of additional settlement complexities are introduced in cross-border offerings of corporate debt. For syndicates offering corporate debt, the legal work generally is more complex and therefore typically is billed on an hourly basis." As we stated in our January comment letter, "In our experience, however, invoices from law firms and other vendors in Europe tend to arrive even faster than from vendors in the US. Moreover, taxable securities sold to international investors have become much more prevalent in the municipal market in recent years, and international distribution has not affected the ability of municipal bookrunners to settle accounts according to MSRB requirements." The Mizuho Letter states "For international participants, same issue with regards to expenses and ensuring they submit reimbursable expenses timely," suggesting that cross-border offerings do not burden the syndicate settlement process.

Complex legal work

The Cleary Letter states "For syndicates offering corporate debt, the legal work generally is more complex and therefore typically is billed on an hourly basis. Counsel invoices are necessarily received after closing and must be reviewed and approved by the syndicate lead manager before being factored into the settlement process. This often takes well over 30 days post-closing." The Cleary Letter offers no support for why reviewing and approving legal expenses takes this long, perhaps because review and approval of law firm invoices does not take "well over 30 days post-closing." It may take, generously, perhaps a few hours. Municipal securities transactions also entail complex legal work. There are often multiple lawyers involved in a transaction: tax counsel, underwriters' counsel, disclosure counsel, etc. It is typical for municipal transactions to have multiple tranches, as already described, and for municipal securities to be distributed outside the US. None of this prevents municipal lead managers from complying with the MSRB's 30-day deadline.

Investor carve-out letters

The circumstance described in the Clearly Letter where "investors may deliver letters requiring that an underwriter not be compensated on the investor's participation in the offering, in compliance with Rule 17d-1(a) under the Investment Company Act" is not unique to corporate bond offerings. The Cleary Letter, referring to ERISA-related letters that some investors must send to the syndicate, states "For corporate debt offerings, these letters are often delivered by investors well after closing, sometimes very close to the 90th day post-closing. For municipal debt offerings, investor practice is to inform the lead underwriter by the trade date, consistent with the practice that all costs or other factors affecting settlement are known prior to closing."

This is an excellent example of how changes in processes can shorten the syndicate settlement time. Investor carve-out letters arise in the municipal market as well. And similar to the corporate world, before the MSRB shortened its syndicate settlement time, investors transmitted these letters close to the syndicate closing deadline. When the deadline was shortened and investors recognized the need to transmit these letters earlier, they did. The same will happen in the corporate underwriting world.

Travel

The Cleary Letter states "Personnel from a syndicate member may travel for multiple deals at a time, and expenses may not be compiled and submitted until after that travel ends. Expenses are then collated, coded, and approved before they are finalized." In practice, travel expensing is a trivial function presenting no hurdles to a 30-day settlement deadline. "Collating, coding, and approving" travel expenses are not time consuming tasks.

Vendor billing

In several places the Cleary Letter makes a point that vendor invoices are out of the control of syndicate managers, that bookrunners have to simply accept vendor invoices whenever they arrive. Underwriters are not beholden to vendors with respect to invoices. As clients of law firms and other vendors, bookrunners can request invoices whenever they want and specify to vendors that invoices must be received within an appropriate window after closing to ensure prompt compliance the proposed 30-day time period to close the syndicate. There should be no doubt vendors will invoice sooner if it means getting paid earlier.

Technological solutions

The Cleary Letter references "the technological advances that helped to facilitate a more efficient but generally less complex municipal debt settlement process." We are not aware of any technological advances specific to the municipal underwriting process which have facilitated the transition to 30 days. The technology available to municipal underwriters is the same as that available to corporate underwriters. The solution to shortening the settlement time is process change, not technology. Request and process invoices and expense reports sooner. There is no more work involved in settling syndicate accounts within 30 days versus 90 days. The work is simply more compressed. Any expenses associated with transitioning to a 30-day deadline will be minimal.

In referencing ostensible expenses bookrunning managers would incur in implementing a 30-day deadline, Cleary Letter states "These additional costs will be passed on to the syndicate, which will reduce the net earnings from participation." We remind FINRA that comanagers' net earnings from participation in corporate syndicates are already being reduced as a result of the obsolete 90-day deadline, and we challenge the notion that compliance expenses will even be significantly higher.

Asset-backed securities

The Cleary Letter offers two reasons why ABS should not be subject to a 30-day deadline. First, the Letter states that ABS generally come in multiple tranches. The second is that ABS transactions "must often navigate novel, multi-jurisdictional legal issues." Neither of these reasons hold water.

Municipal securities are often sold with a dozen or more distinct maturities or tranches. And many securities offerings also involve multiple legal jurisdictions. The US municipal market is global, and municipal underwriters face the same multijurisdictional issues as ABS underwriters do. In short, the process for collecting syndicate expenses and paying out transaction revenue is exactly the same for ABS as for municipals and corporates. There is nothing unique about ABS that would prevent bookrunners from meeting the 30-day deadline.

Resettlements

The Cleary Letter in several places argues that a 30-day deadline would cause more frequent resettlements where bookrunners must invoice comanagers for expenses that came in after the syndicate account was closed. Resettlements are not "burdensome processes" as the Cleary Letter characterizes them. They do not happen frequently, but they represent a normal occurrence that is built into the syndicate settlement process. We do not believe that reducing the syndicate settlement time to

30 days will result in a significant increase in resettlements. We believe that the corporate market will absorb a 30-day settlement deadline just as the municipal market did. Nothing opponents to FINRA's proposal have offered suggests otherwise. But a marginal increase in resettlements should not prevent FINRA from adopting a 30-day deadline in any case. Resettlements are not overly costly or burdensome.

Two-stage settlement approach

The Cleary Letter states "we support a requirement that the syndicate manager remit 50% of the gross underwriting spread within 30 days of the syndicate settlement date, with the balance due to syndicate members within 90 days of the syndicate settlement date." However, the letter offers no support for why a 50-50 split is necessary or warranted. What data or evidence are there that 50 percent of syndicate expenses arrive more than 30 days after closing and cannot be accelerated? The Cleary Letter presents none. The 50-50 approach suggested by the letter is arbitrary and unsupported.

Counterparty credit risk

One issue completely ignored in the Cleary Letter is the inordinate counterparty credit risk—the risk that a bookrunning manager could fail to pay revenue due to a comanager when due—posed by the current obsolete syndicate closing rule. This risk is real, and in our January letter we cited examples of how this risk has played out in our members' experience. Reducing the syndicate deadline to 30 days would significantly reduce counterparty credit risk associated with corporate bond underwritings and would represent a major benefit of the amendments proposed in FINRA Regulatory Notice 21-40.

As the Mizuho Letter states, "This proposal will have minimal impact on large investment banks as (1) they are likely in the Lead role, so they have collected all the cash from the issuer and able to recognize the regulatory capital earlier anyway, (2) they have sufficiently over capitalized their broker dealers so the timing of regulatory capital recognition is not material to them, and (3) they have sufficiently invested in their technology systems to allow for shorten settlement period." For these reasons and others, a 30-day syndicate settlement deadline is eminently feasible.

BDA appreciates the opportunity to provide additional comments on the Notice. We look forward to working with FINRA and other stakeholders to ensure that a 30-day syndicate settlement deadline is implemented as efficiently as possible. As always, please call or write if you have any questions.

Sincerely,

Michael Decker
Senior Vice President

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May 10, 2022

Jennifer Piorko Mitchell
Office of the Corporate Secretary
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In regard to FINRA Regulatory Notice 21-40

Transmitted electronically

Dear Ms. Mitchell,

On January 18, 2022 the Bond Dealers of America (BDA) sent a comment letter on FINRA Regulatory Notice 21-40, "FINRA Requests Comment on Amendments to Rule 11880 Shortening the Settlement of Syndicate Accounts" (the "Notice"), and on March 15, 2022 we sent a supplemental letter addressing issues raised during the comment process. We kindly request that you accept this additional supplementary comment letter with revised views and perspective. BDA is the only DC-based organization exclusively representing the interests of securities dealers and banks focused on the US fixed income markets. This letter represents the views not only of BDA's member firms, large and small, and also a coalition of minority-, women-, and veteran-owned broker-dealers with whom we are working.

The Notice requests comment on amending FINRA Uniform Practice Rule 11880 to shorten the time allowed for managers of corporate bond underwriting syndicates to pay out net revenue derived from the transaction to syndicate members who participated in the syndicate from 90 days after deal closing to 30 days. Rather than a firm 30-day deadline to pay out all net revenue from an underwriting transaction, BDA believes a rule which specifies that the syndicate manager must pay out 70 percent of the gross underwriting spread within 30 days of deal closing and any remaining balance after deduction of expenses within 90 days (the "70-30 Approach") is a more practical way to shorten the time to pay out revenue to syndicate members. Recognizing the differences in the corporate and municipal markets, the 70-30 Approach would strike an appropriate balance between ensuring that all syndicate members, including mid-size broker-dealers that often serve as comanagers, have ready access to their funds and minimizing the number of resettlements where syndicate managers must invoice syndicate members for expenses that were recognized after the syndicate account was closed. It would also benefit investors by encouraging broader syndicate membership and making new-issue corporate bonds available to customers of a wider group of broker-dealers.

In discussions with some of the leading corporate bond underwriting syndicate managers, we have learned that it would be possible for syndicate managers to implement the 70-30 Approach relatively quickly. We therefore support and urge FINRA to adopt a January 1, 2023 implementation date for the 70-30 Approach.

Moreover, we believe that the current industry dialog around syndicate closings for corporate bond underwritings sets the stage to visit the issue of shortening the syndicate settlement time for equity underwritings as well. Once FINRA completes rulemaking related to the issues raised in the Notice, we urge you to take up the issue of an appropriate syndicate settlement time for equity transactions. BDA commits to work constructively with regulators and other stakeholders to address equity syndicate settlements.

We believe the 70-30 Approach to corporate bond underwriting syndicate settlements would be a fair and reasonable solution to the issue of syndicate members' funds being tied up for too long after deal closing. It would appropriately balance the needs of syndicate managers and other syndicate members, and it offers the added benefit of having the support of a broad cross-section of the industry, including firms of all sizes and types. We urge FINRA to adopt the 70-30 Approach and we commit to working with FINRA and stakeholders on implementing the change efficiently.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Michael Decker
Senior Vice President

CastleOak Securities

David R. Jones
President & Chief Executive Officer
P 212-829-7097
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January 28, 2022

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

Dear Ms. Mitchell,

CastleOak Securities, L.P. ("CastleOak") is pleased to offer comments on FINRA Regulatory Notice 21-40, "FINRA Requests Comment on Amendments to Rule 11880 Shortening the Settlement of Syndicate Accounts" (the "Notice"). Headquartered in New York City, CastleOak specializes in primary and secondary sales and trading of fixed income, equity, and money market securities. We are a small minority-owned firm, which participates in an average of 150 bond offerings per year. These types of deals account for a significant portion the firm's revenue, and a change to the Notice would be a significant leveling of the playing field for smaller firms, many of whom operate within the Minority, Women, or Veteran owned space.

As a FINRA-registered broker-dealer and frequent participant on corporate bond underwritings in capacities ranging from co-lead to senior manager to co-manager, CastleOak fully supports the proposal in the Notice to shorten the deadline in FINRA Uniform Practice Code Rule 11880 for syndicate lead managers to settle syndicate accounts and revert earned fees, commissions and concessions to the respective co-managers.

As a co-manager in corporate bond underwriting syndicates, our firm's role is to share with other syndicate members the risks associated with the underwriting and the responsibility for distributing bonds to investors. Further, in the days and weeks following each transaction, co-managers have ongoing responsibilities and service commitments to assist other issuer clients while providing secondary market liquidity to institutional investor clients. Under current Rule 11880, once a corporate bond transaction settles, co-managers must wait up to 90 days to receive funds earned from the underwriting. Under the SEC Net Capital Rule, we cannot count the receivable due from the senior manager towards our regulatory capital, which limits our ability to conduct business, including both more new-issue underwritings and secondary market trading. In addition, we lose the "float" on these delayed funds for as long as they sit with the syndicate manager, and we face an unnecessary extension of the counterparty risk that the senior manager could become insolvent before the payment of deal revenue to co-managers.

CastleOak Securities

The 90-day standard in Rule 11880 has been on the books since 1987. Since that time, we have seen the emergence of many new technologies that have greatly improved the speed and cost of the syndicate account settlement process. Despite these improvements in efficiency, the 90-day deadline has not been addressed in 35 years. Indeed, FINRA's proposal is consistent with a standard that has prevailed in the municipal securities market since 2009. Many of the leads on municipal deals are the same as on the corporate debt syndicate deals. There is no doubt that corporate debt syndicate managers, who are generally much larger and much better capitalized firms, have the ability to settle accounts within 30 days.

The time has come to modernize Rule 11880. We support the Notice’s proposal to shorten the syndicate settlement deadline to 30 days and we urge FINRA to adopt the proposal expeditiously.

Sincerely,

CLEARY GOTTLIEB STEEN & HAMILTON LLP

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January 18, 2022

Submitted electronically to: pubcom@finra.org

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

Re: Regulatory Notice 21-40 – FINRA Requests Comment on Amendments to Rule 11880 Shortening the Settlement of Syndicate Accounts

Dear Ms. Mitchell:

On behalf of BofA Securities, Inc., Barclays Capital Inc., Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Goldman Sachs & Co. LLC, Jefferies LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, RBC Capital Markets, LLC, UBS Securities LLC, and Wells Fargo Securities, LLC, we appreciate the opportunity to comment on Financial Industry Regulatory Authority ("FINRA") Regulatory Notice 21-40 ("Notice 21-40") regarding proposed amendments to Rule 11880 shortening the settlement of syndicate accounts (the "Proposal").[1] While we understand the concerns underlying the Proposal, we do not agree the proposed amendments offer a workable solution. Our comments are intended to clarify that the reasons justifying a shortened syndicate settlement period for syndicates offering municipal securities do not apply to syndicates offering corporate debt securities and to ensure FINRA understands that pursuing a one-size-fits-all approach will likely increase the number of resettlements[2] and otherwise have a deleterious effect on the sound administration of the syndicate settlement process. Our principal additional comments explain

[1] The Proposal is available at https://www.finra.org/rules-guidance/notices/21-40.

[2] Resettlement refers to when the billing and delivery lead bank in the syndicate is required to invoice all syndicate members to recoup syndicate expenses not known when settlement of syndicate accounts first occurs. This is a much more burdensome process than the initial settlement for all syndicate members, because it involves not only invoicing each syndicate member for its share of the previously unknown syndicate expenses but also each syndicate member having to make the required payment back to the billing and delivery bank. These repayments may be received on different dates and require a greater administrative effort at both the billing and delivery bank and each syndicate member.

why certain offerings are particularly unsuited for a shortened syndicate settlement period, and why we believe a two-stage syndicate settlement approach would be a much more appropriate solution to the problems articulated by FINRA in Notice 21-40.[3]

1. Settlement Mechanics of Syndicates Offering Corporate Debt Securities Are Not Amenable To 30-Day Settlement Periods

There are a number of important differences between the settlement mechanics of syndicates in offerings of corporate debt and those of syndicates in offerings of municipal debt. These differences, which are described below, stem largely from the difference in complexity involved between the two offering processes and the economics necessary to facilitate these offerings. Ignoring these differences risks a number of consequences that could undermine the sound administration of the syndicate settlement process.

Currently, the settlement of offerings of corporate debt securities typically utilizes the full 90-day settlement period. During this period, expenses are collected from different groups within the billing and delivery bank, from other syndicate members (who are also themselves collecting expenses before passing them on to the billing and delivery bank), as well as from various third-party vendors. Those expenses must be collated, checked, and double-checked by front office personnel with knowledge of the offering in question, as well as back office personnel, sometimes leading to follow up with other syndicate members and third-party vendors resulting in a readjustment of expenses, all to ensure the sound administration of the settlement process.

Given the myriad components of this process and the need for involvement of the billing and delivery bank's front office and back office personnel, automation cannot significantly shorten the settlement period. As such, imposing a shortened settlement period for syndicates in offerings of corporate debt may make resettlements the norm rather than the exception, as settlement payments will be required far more often before all syndicate costs and expenses can practically be determined. A shortened settlement period also will constrain the diligence necessary to ensure the accuracy of final settlements.

- Multiple Syndicate Lead Managers. In syndicates involving municipal debt, it is typical market practice to assign only one active manager with responsibility for all principal syndicate functions, including documentation, marketing and billing and delivery. This manager incurs out-of-pocket expenses that are then readily allocated among the syndicate members after closing. Other members of a municipal syndicate typically do not incur expenses.

  Syndicates offering corporate debt, and particularly investment grade corporate debt, generally involve multiple active lead managers incurring and submitting out-of-pocket expenses for allocation among the syndicate members, contributing a degree of complexity that necessarily adds to the time needed before final syndicate settlement. This complexity is compounded in multi-tranche offerings of investment grade corporate

[3] *See infra* Section 7.

debt where a different active lead manager frequently is responsible for billing and delivery of each tranche in contrast to multi-tranche offerings of municipal debt where a single syndicate member is typically responsible for billing and delivery for all tranches. For multi-tranche offerings of investment grade corporate debt, this results in multiple active lead managers having to coordinate and pool expenses and report them to the billing and delivery manager collecting all syndicate expenses.

- Aftermarket Support. Syndicates in corporate debt offerings routinely engage in aftermarket support through short covering purchases in the secondary market. Syndicates create the short position by overallotting a percentage of the securities being offered. The Master Agreement Among Underwriters used by all firms allows the lead manager of the syndicate to sell short for the account of the syndicate up to a specified percentage of the offered securities (generally up to 20%). Although corporate debt syndicates typically do not sell short to this level, the amount of the short position varies from offering to offering, and it is fairly common for this to be more than a couple of percent of the offering. This activity, intended to promote greater aftermarket stability and liquidity, results in losses or gains when the short position is covered, which must be allocated among syndicate members. That allocation can only be effected after the short is fully covered, a period generally ranging from a couple of days or more in investment grade debt offerings to up to 30 days or more in high yield debt offerings, subject in each case to market conditions. Further complicating the settlement process in this respect is that in investment grade debt offerings the syndicate short position is initially allocated to each of the active lead managers to effect the short covering purchases, thus requiring multiple managers to tally the losses or gains incurred in connection with their respective short covering and report them to the billing and delivery manager collecting all syndicate expenses or income.

  By contrast, syndicates offering tax-exempt municipal debt, which comprises a substantial majority of municipal debt, do not overallot. This is largely because the IRS recognizes the tax-exempt status of interest payments only on the municipal debt originally issued by the municipal issuer. Accordingly, IRS rules do not allow both a lender and a borrower of municipal debt securities to claim tax-exempt status for interest payments on the municipal debt securities. Rather, if firms were to engage in short selling tax-exempt municipal debt securities, they would be required to send taxable "substitute interest"[4] to the securities lender, which is a complexity that has deterred short selling by syndicates offering tax-exempt municipal debt securities.

- Interest Rate Exposure Hedging. Unlike syndicates offering tax-exempt municipal debt, which do not overallot, syndicates offering corporate debt generally will hedge the interest rate exposure on the syndicate short position through the purchase of U.S. Treasuries. This hedging activity often gives rise to syndicate expense or income that must be factored into the syndicate settlement process. In addition, investors in corporate

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[4] *See, e.g.*, Regulatory Notice 15-27, *Guidance Relating to Firm Short Positions and Fails-to-Receive in Municipals Securities* (July 2015) (reminding firms of their obligation to inform parties of these tax implications).

debt could also seek to hedge the interest rate exposure on their purchase by selling U.S. Treasuries to the syndicate at the time of pricing, which could result in additional income or expense affecting the syndicate settlement process.

- Expenses Are Not Known Up Front. In syndicates offering municipal debt, roadshow, legal and other expenses are generally agreed upon up front with the issuer. In syndicates offering corporate debt, these expenses are not known up front and must be submitted, collected, and allocated in a process that typically continues until 60–90 days after closing. For the reasons explained above and below, expenses for syndicates offering corporate debt cannot easily be estimated and agreed upon up front, as they typically are for syndicates offering municipal debt.

- Cross-Border Offerings. A number of additional settlement complexities are introduced in cross-border offerings of corporate debt. Even when denominated in US dollars, these offerings involve multiple sets of legal counsel (e.g., transaction counsel and local counsel) in multiple jurisdictions representing the underwriters. The work associated with these syndicates often is novel and more time-consuming. When these offerings involve multiple currencies, they also give rise to inter-syndicate complexities, where separate syndicates are used for placements outside the United States. These syndicates are subject to different settlement procedures in each applicable foreign jurisdiction. Given the underlying tax rationale for the issuance of tax-exempt municipal debt, those securities are not typically offered outside the United States.

- More Complex Legal Work Is Not Compatible With Fixed Legal Fees. For syndicates offering municipal debt, legal fees are sufficiently predictable to permit fixed legal fees, which are invoiced prior to closing. For syndicates offering corporate debt, the legal work generally is more complex and therefore typically is billed on an hourly basis. Counsel invoices are necessarily received after closing and must be reviewed and approved by the syndicate lead manager before being factored into the settlement process. This often takes well over 30 days post-closing. This problem is only heightened as offering structures become more complex. Examples of corporate debt offerings with significant complexity include cross-border offerings, as noted above, high yield offerings with multijurisdictional guarantees or collateral packages or highly negotiated covenant arrangements, and hybrid debt offerings with significant structural subordination. Further, in offerings of secured debt, perfection of the security interests often occurs after closing of the offering. Although issuers often pay this expense, that is not the case in all offerings of secured debt securities. In those offerings where the syndicate bears some or all of the collateral-related expenses, these expenses may not be fully known, much less invoiced, 30 days post-closing.

- Investor Carve-Out Letters. In syndicated offerings, investors may deliver letters requiring that an underwriter not be compensated on the investor’s participation in the offering, in compliance with Rule 17d-1(a) under the Investment Company Act. Investors may also deliver letters identifying a conflict with the ERISA requirement that underwriting firms advising or managing the assets of a plan not cause the plan to pay these firms without approval of an independent fiduciary or an applicable exemption. These letters require reallocation of syndicate economics. For corporate debt offerings, these letters are often delivered by investors well after closing, sometimes very close to the 90th day post-closing. For municipal debt offerings, investor practice is to inform the lead underwriter by the trade date, consistent with the practice that all costs or other factors affecting settlement are known prior to closing.

These factors illustrate the many ways settlement of syndicates offering corporate debt differs in material ways from settlement of syndicates offering municipal debt. They demonstrate the critical distinction between the municipal debt context, where typically substantially all syndicate costs and other factors affecting settlement are known prior to closing, and the corporate debt context, where virtually none of those costs or other factors are known until well after closing, with enormous variation that is offering-specific. Trying to reduce the settlement cycle by two-thirds can readily be expected to substantially increase the need and burden of resettlements and unduly shorten the time required to effectively diligence proposed syndicate expenses consistent with the sound administration by FINRA member firms of the syndicate settlement process.

2. Automation Is Not Sufficient To Support Reducing the Settlement Cycle From 90 Days to 30 Days

Notice 21-40 states that the proposed amendments are made, in part, "[i]n light of the technological advancements since 1987 that improve the efficiency of the settlement process,"[5] and invites comment on whether technology has emerged that can support syndicate managers in syndicate account settlement for corporate debt securities.[6] Notwithstanding certain efficiencies that have helped in reducing settlement timing for generally less complex municipal debt offerings, the syndicate settlement process for typically more complex corporate debt offerings involves substantially more manual inputs, many of which are beyond the control of syndicate managers. For example:

- Personnel from a syndicate member may travel for multiple deals at a time, and expenses may not be compiled and submitted until after that travel ends. Expenses are then collated, coded, and approved before they are finalized.

- Certain third-party vendors used by a syndicate, whose practices ultimately are outside the control of syndicate members, may only bill the syndicate on a monthly or quarterly basis. In addition, it is the practice of some third-party vendors to deliver bills aggregated to cover multiple deals, which must be disaggregated and allocated to the appropriate deals by the recipient syndicate lead or other member.

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[5] *See* Proposal, at 3.

[6] *See* Proposal, at 10 (asking "[w]hat technology has emerged that can support syndicate managers in syndicate account settlement billing and payment for corporate debt securities?").

- Expenses must be reviewed manually by front office personnel familiar with the offering, who can recognize outliers, as well as back office personnel, who can follow up with other syndicate members before final settlement to ensure settlements are accurate.

Accordingly, the technological advances that helped to facilitate a more efficient but generally less complex municipal debt settlement process, thus enabling a 30-day maximum settlement period, cannot be expected to expedite, to nearly the same degree, the settlement process for corporate debt offerings.

As a consequence of a substantially shortened settlement period, syndicate managers will need to hire and train a significant number of additional employees to help collect, process, collate, check and track expenses, in an effort (which still may not be successful) to complete the settlement process in this significantly truncated settlement period. These additional costs will be passed on to the syndicate, which will reduce the net earnings from participation.

3. Asset-Backed Securities Should Be Excluded From The Proposal

Notice 21-40 invites comment on whether there are types of corporate debt offerings that could not settle in 30 days.[7] In particular, Notice 21-40 asks for comment on how certain types of corporate debt are more complex and require a longer settlement period.[8] Offerings of Asset-Backed Securities ("ABS"), including Mortgage-Backed Securities, often involve more complex structures than offerings of corporate debt described above. The complexities relevant to the syndicate settlement period include:

- ABS offerings are often comprised of multiple tranches. In addition to added complexities for syndicates involving corporate debt with multiple tranches, described above, these multi-tranche offerings may include high yield and even equity offerings in lower-rated tranches. The settlement timing for the ABS offering syndicate is therefore dependent on the settlement timing for these lower-rated tranches.

- ABS offerings must often navigate novel, multi-jurisdictional legal issues. These issues require the services of multiple legal counsel and are often complex and necessarily add to the time required to calculate syndicate costs for settlement purposes.

For these reasons, ABS offerings are particularly not well suited to a reduced settlement period. We also understand that excluding ABS offerings from these amendments should not cause difficulties associated with inconsistent settlement processes, because settlements for syndicates offering these structured products are often conducted by dedicated groups separate from those

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[7] *See* Proposal, at 9 (asking, among other things, "[a]re there some types of corporate debt offerings that could not settle in 30 days?").

[8] *See* Proposal, at 3 ("FINRA is requesting comment on whether 30 days is feasible for all types of corporate debt offerings or whether there are some that are more complex and would require a slightly longer timeframe, for example, an offering with an overallotment option.").

that are responsible for settlement of syndicates for corporate debt offerings other than structured products.

4. Syndicates Offering Securities That Include an Overallotment Option Should Be Excluded From The Proposal

Notice 21-40 invites comment on the impact the exercise period for overallotment options would have on shortening the syndicate settlement period.[9]

We do not support making syndicates whose offerings include overallotment options subject to any shortened settlement cycle adopted by FINRA. Although these options are most frequently included in offerings of common stock, as well as offerings of debt or preferred securities convertible into common stock, they also are often included in offerings of $25 par value preferred stock or $25 denominated bonds (so-called "baby bonds"), which are publicly offered to the retail market.

Overallotment options typically have an exercise term of 30 days (45 days for SPAC and certain other offerings) and generally have legal and other expenses associated with their exercise and subsequent closing. These options typically permit the syndicate to purchase additional securities (up to 15% of the committed securities) from issuers or selling securityholders at the public offering price to cover overallotments effected during the distribution.[10] These options substantially mitigate the risk to the syndicate of overallotment and thus facilitate the aftermarket trading that promotes market stability and liquidity. Should syndicate offerings including these overallotment options be required to settle within 30 days following the closing date, the option period would necessarily be reduced because it would be impossible to simultaneously exercise and close the overallotment option and settle with the syndicate. This would reduce the risk-mitigating benefit of these important options and make the market more volatile and less liquid. Accordingly, Rule 11880 should not be amended to require syndicates offering securities that include an overallotment option to settle on a time period shorter than 90 days.

5. Syndicates Offering Equity Securities Should Not Be Included In The Proposal

Notice 21-40 invites comment on whether the Proposal should be expanded to include settlement of syndicates offering equity securities.[11]

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[9] *See* Proposal, at 10 (asking "[w]hat impact, if any, would the exercise period for overallotment options have on shortening the period for final settlement of syndicate accounts for equity offerings?").

[10] *See* Proposal, at 3 n.8.

[11] *See* Proposal, at 10.

Settlement of syndicates offering equity securities, including debt convertible into equity securities,[12] is likely to be more complicated than settlement of syndicates offering straight debt securities. Syndicates offering equity securities, particularly IPOs, generally require more diligence and marketing than for offerings of corporate debt securities. Therefore, third-party expenses are likely to be much larger and more prevalent than for syndicates offering corporate debt securities. In addition, as described above, offerings of equity securities typically have overallotment options, further complicating the syndicate settlement process. As a result, the risk of resettlement would be substantially greater, adding unnecessary expense and complexity and jeopardizing the sound administration of syndicate settlement. Further, a shortened settlement period for syndicates offering equity securities will not generate efficiencies if included with other types of syndicate offerings because these syndicate accounts often are settled by different groups within syndicate managers. Accordingly, Rule 11880 should not be amended to require syndicates offering equity securities to settle on a time period shorter than 90 days.

6. A 30-day Settlement Period Will Cause More Frequent Resettlements

For the reasons explained above, Notice 21-40's proposed amendments to Rule 11880 will result in more frequent resettlement of syndicate expenses after final settlement. These resettlements will be necessary to properly allocate late-arriving invoices or other, manually compiled, expenses among syndicate members. These are burdensome processes that contribute to uncertainty and serve as a counterweight to the benefit of a shortened settlement period. In any event, should FINRA proceed with the proposed amendments, the final notice adopting the amendments should be explicit in recognizing the permissibility of the resettlement process.

7. Alternative Two-Stage Syndicate Settlement Approach Is Preferable

Notice 21-40 invites comment on whether there are additional approaches that FINRA should consider to accomplish the goals of the Proposal.[13] Specifically, the release asks for commenters' views on a two-stage syndicate account settlement approach, whereby the syndicate manager must remit a percentage of the gross underwriting spread from the offering within 30 days of the syndicate settlement date, with the balance due to syndicate members by a later date.[14]

We believe the two-stage syndicate settlement approach, as described in Notice 21-40, is a superior alternative and one that can be implemented far faster and more prudently than a 30-day

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[12] For the avoidance of doubt, offerings of convertible debt securities should be excluded from the Proposal because they share characteristics of equity securities offerings, including overallotment options and heightened execution complexity.

[13] *See* Proposal, at 10 (asking "[a]re there additional approaches that FINRA should consider to accomplish the goals of this proposal?").

[14] *Id*.

final settlement period. In this connection, we support a requirement that the syndicate manager remit 50% of the gross underwriting spread within 30 days of the syndicate settlement date, with the balance due to syndicate members within 90 days of the syndicate settlement date. Importantly, this approach would accomplish FINRA's goal by allowing syndicate members to use a significant portion of these earnings as allowable assets for the Net Capital Rule, to participate in new offerings, to offset expenses related to the syndicate offering or to otherwise operate their business. Equally importantly, this alternative would continue to allow syndicate managers to retain a sufficient amount of syndicate funds to effect timely and accurate settlements, thus avoiding burdensome resettlements, and would obviate the need for syndicate managers to hire additional staff and incur additional expenses that would be passed on to the syndicate (including the syndicate members who need access to these earnings) to manage a full syndicate settlement within 30 days. We believe this alternative strikes an appropriate balance among the needs of all different sizes of syndicate members and strongly encourage FINRA to adopt this alternative in lieu of the Proposal.

8. Amending Rule 15c3-1 Would Address FINRA's Concerns

Notice 21-40 recognizes that syndicate members may not treat syndicate receivables as allowable assets for purposes of the Net Capital Rule. This is because non-municipal syndicate receivables are carved out from the general treatment of commissions receivable from other brokers and dealers and instead treated as an unsecured receivable under a different section of the Net Capital Rule. In contrast, receivables due from participation in municipal securities underwriting syndicates are treated as allowable until 60 days from settlement of the underwriting with the issuer.

Notice 21-40 suggests that this treatment of syndicate receivables may disproportionately constrain smaller firms that may not be as highly capitalized as larger firms. However, the Proposal will have a number of unintended consequences, as described above, that will have a deleterious effect on the sound administration of the settlement process and, insofar as it would constrain the ability of syndicates to provide aftermarket support for a new issue, sacrifice market stability and liquidity.

The goals of the Proposal can be achieved without these consequences by the Securities and Exchange Commission ("SEC") amending the Net Capital Rule to allow receivables due from participation in corporate debt securities underwriting syndicates to be treated as allowable assets until 90 days from settlement of the offering. This net capital treatment would be similar to that afforded to syndicate members in municipal securities underwritings, but recognizes the greater complexities inherent in underwriting corporate debt securities. By amending the Net Capital Rule to introduce a similar allowance for receivables due from participation in syndicates offering corporate debt securities, the SEC could remove these barriers for smaller firms without creating new barriers to syndicate participation or the unintended consequences described above.

Notice 21-40 also invites comment on whether it would be feasible to adopt an SEC staff interpretation under the Net Capital Rule that provides that syndicate receivables may be considered an allowable asset to the extent a creditor issues a sole recourse loan to the syndicate member secured by the syndicate receivable.[15] We do not believe this approach would provide a workable solution to FINRA's concerns. For the same reason a syndicate manager cannot determine all possible expenses within 30 days, that manager will not know the amount required for such a loan because it will not know the net amount ultimately to be paid to each syndicate member. Because the amount required will not be known, syndicate managers will not know whether the receivable adequately secures any such loan. Syndicate managers also need to treat unsecured and partly-secured receivables as unallowable assets, and this approach would cause uncertainty with regard to net capital for syndicate managers. Because syndicate managers would not be able to extend sole recourse loans to syndicate members secured by the syndicate receivable without creating their own net capital uncertainty, this approach would not provide a workable solution to FINRA's concerns.

9. The Proposal Would Substantially Alter Settlement Practices And, If Adopted, Merits An Adequate Period Of Transition

As we have explained above, the reasons justifying a shortened syndicate settlement period for syndicates offering municipal securities do not apply to syndicates offering corporate debt securities. A sharp reduction in settlement time from 90 days to 30 days for syndicates offering corporate debt can be expected to increase the number of resettlements, have a deleterious effect on the sound administration of the syndicate settlement process and insofar as it would constrain the ability of syndicates to provide aftermarket support for new issues, sacrifice market stability and liquidity. In the absence of SEC action to amend Rule 15c3-1, we believe the two-stage approach described above is the best alternative to address FINRA's main concern – namely, the effect of the net capital calculation on the capital of less well-capitalized members of the syndicate.

However, in the event FINRA concludes that reduction in the settlement period for syndicates offering corporate debt securities is the most appropriate way to address this concern, then we urge FINRA to implement a phased reduction in the length of the settlement period (either as part of the two-stage syndicate settlement approach or standing alone) to minimize the risks described above.

In that circumstance, we suggest FINRA begin with a reduction to 75 days, with an implementation period of at least nine months. Looking specifically to the evolution of Rule 11880, FINRA did not propose reducing the original, 120-day settlement period until it reviewed syndicate settlement practice for more than one year before concluding that a 30-day reduction to the current, 90-day period was feasible.[16] By contrast, the Proposal would reduce the settlement period far more dramatically and without any empirical evaluation of feasibility.

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[15] *Id*. (asking whether adopting the SEC's staff interpretation is a feasible approach).

[16] *See* Regulatory Notice 85-59, *Effectiveness of Amendment to the Uniform Practice Code to Require Prompt Settlement of Syndicate Accounts* (Sep. 9, 1985) (announcing 120-day settlement period with re-evaluation after one year before reduction to 90 days).

As described in detail above, the syndicate settlement process for corporate debt involves multiple inputs from multiple sources, including third parties over which syndicates have little control, and is heavily manual. It simply would not be prudent to require a significant change to this complex process without providing adequate time for implementation. Past rule changes with pervasive effects on practice, such as Rule 2711 regarding research or the significant changes made to Rule 5110, provided for at least a six month implementation period, and the history of Rule 11880 highlights the need for even greater time to ensure a smooth transition of the syndicate settlement process to its shorter timeframe.

Following that initial step down of the syndicate settlement period, FINRA and the industry would then be in a better position to evaluate the feasibility of a further reduction, although, for the reasons discussed above, we believe reducing the settlement period to less than 60 days would be extremely problematic.

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We appreciate the opportunity to comment on Notice 21-40 and FINRA's consideration of our views. We look forward to continuing dialogue with FINRA on amendments to Rule 11880 shortening the settlement of syndicate accounts. If you have questions or would like additional information, please contact Jeffrey D. Karpf or Leslie N. Silverman, at (212) 225-2864 or (212) 225-2380, respectively.

Very truly yours,

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Jeffrey D. Karpf

american securities association
America's Voice for Main Street's Investors

January 18, 2022

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006

Re: Regulatory Notice 21-40 (Settlement of Syndicate Accounts)

Dear Ms. Mitchell:

The American Securities Association (ASA)[1] welcomes this opportunity to comment on the Financial Industry Regulatory Authority's (FINRA) recent proposal to shorten the time period for final settlement of syndicate accounts. We appreciate FINRA's ongoing work to review and modernize existing rules to help markets run more efficiently and reduce unnecessary compliance burdens for broker-dealers.

The ASA supports shortening the final settlement cycle period for corporate debt offerings from 90 days to 30 days. The existing 90-day requirement was established 35 years ago, prior to significant technological and logistical improvements that could allow settlement cycles to be significantly shortened. We believe a 30-day timeline is a reasonable target.

As the Proposal notes, in 2009 the Municipal Securities Rulemaking Board shortened the settlement cycle for municipal securities from 60 days to 30 days, citing more efficient billing and accounting systems for broker-dealers and the importance of protecting syndicate members from the credit risk of the syndicate manager. This time period has functioned effectively in the municipal space and should be adopted for corporate debt as well.

We also appreciate and agree with FINRA's assertion that shortening the settlement cycle could be particularly beneficial for small and mid-size broker-dealers. Because syndicate receivables cannot be counted towards a firm net capital, prolonging the settlement cycle can limit the ability of smaller brokers participate in new offerings and create a competitive disadvantage that favors large firms.

[1] The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a diverse membership of almost one hundred members located in every geographic region of the United States.

american securities association
America's Voice for Main Street's Investors

Conclusion

We commend FINRA for reviewing its existing rulebook and putting forth a constructive proposal. We look forward to working collaboratively with FINRA and the Securities and Exchange Commission (SEC) as this initiative moves forward.

Sincerely,

Kelli McMorrow
Head of Government Affairs
Director, Fixed Income Policy
American Securities Association

SEELAUS

A WOMEN-OWNED
BUSINESS ENTERPRISE

January 18, 2022

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

Dear Ms. Mitchell,

R. Seelaus & Co., LLC is pleased to offer comments on FINRA Regulatory Notice 21-40, "FINRA Requests Comment on Amendments to Rule 11880 Shortening the Settlement of Syndicate Accounts" (the "Notice"). As a FINRA-registered broker-dealer who frequently participates as comanager on corporate bond underwritings, we fully support the proposal in the Notice to shorten the deadline in FINRA Uniform Practice Code Rule 11880 for syndicate managers to settle syndicate accounts and pay revenue to comanagers.

As a comanager in corporate bond underwriting syndicates, our firm's role is to share with other syndicate members the risks associated with the underwriting and the responsibility for distributing bonds to investors. Under current Rule 11880, once a corporate bond transaction settles, comanagers must wait up to 90 days to receive funds we earn from the underwriting. Under the SEC Net Capital Rule, we cannot count the receivable we are owed from the senior manager towards our regulatory capital, which limits our ability to conduct business, including both more new-issue underwritings and secondary market trading. We also lose the "float" on these funds for as long as they sit with the syndicate manager, and we face the risk that the senior manager could become insolvent before they pay out deal revenue to comanagers.

The 90-day standard in Rule 11880 has been on the books since 1987. Since that time we have seen the emergence of many new technologies that have made the process of settling syndicate accounts much cheaper and faster. Yet the 90-day deadline has not been addressed in 35 years. There is no doubt that syndicate managers have the ability to settle accounts within 30 days, as the Notice proposes. That is the standard that has prevailed in the municipal securities market since 2009.

The time has come to modernize Rule 11880. We support the Notice's proposal to shorten the syndicate settlement deadline to 30 days and we urge FINRA to adopt the proposal expeditiously.

Sincerely

Karolina Pajdak

Chief Compliance Officer

Siebert Williams Shank
A SHANK WILLIAMS CISNEROS COMPANY
100 Wall Street, 18th Floor
New York, New York 10005
(646) 775-4850

January 18, 2022

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

Dear Ms. Mitchell,

Siebert Williams Shank & Co., LLC ("SWS") is pleased to offer comments on FINRA Regulatory Notice 21-40, "FINRA Requests Comment on Amendments to Rule 11880 Shortening the Settlement of Syndicate Accounts" (the "Notice"). As a FINRA-registered broker-dealer that frequently participates as comanager on corporate bond underwritings, we fully support the proposal in the Notice to shorten the deadline in FINRA Uniform Practice Code Rule 11880 for syndicate managers to settle syndicate accounts and pay revenue to comanagers. SWS is a women- and minority-owned firm and feels strongly that the proposed change will help put minority-, women- and veteran-owned broker-dealers ("MWVBDs")—which tend to be smaller firms—on a more level playing field, benefitting both the securities industry and investors.

As a comanager in corporate bond underwriting syndicates, SWS's role is to share with other syndicate members the risks associated with the underwriting and the responsibility for distributing bonds to investors. Under current Rule 11880, once a corporate bond transaction settles, comanagers must wait up to 90 days to receive funds we earned from the underwriting. Under the SEC Net Capital Rule, we cannot count the receivable we are owed from the senior manager towards our regulatory capital, which limits our ability to conduct business, including both more new-issue underwritings and secondary market trading. We also lose the "float" on these funds for as long as they sit with the syndicate manager, and we face the risk that the senior manager could become insolvent before it pays out deal revenue to comanagers. The 90-day period currently permitted under Rule 11880 hurts MWVBDs because they frequently serve as co-managers and, thus, often have significant syndicate receivables. Accordingly, the proposed amendment would help to promote diversity and inclusion in the broker-dealer industry.

The 90-day standard in Rule 11880 has been on the books since 1987. Since that time we have seen the emergence of many new technologies that have made the process of settling syndicate accounts much cheaper and faster. Yet the 90-day deadline has not been addressed in 35 years. There is no doubt that syndicate managers have the ability to settle accounts within 30 days, as the Notice proposes. That is the standard that has prevailed in the municipal securities market since 2009.

The time has come to modernize Rule 11880. We support the Notice's proposal to shorten the syndicate settlement deadline to 30 days and we urge FINRA to adopt the proposal expeditiously.

Yours sincerely,

Suzanne Shank

Suzanne Shank
President & CEO

From: Wong, David
To: Comments, Public
Cc: Neill, Blanton; Chan, Ronald; Daly, Brendan; Forte, Victor; Gomez, Dannyvia; Billek, Mitchell; Doig, Gregory; Wong, David
Subject: Regulatory Notice 21-40 - Comments from Mizuho Securities USA LLC
Date: Tuesday, January 18, 2022 11:32:20 PM

Hi FINRA,

With regards to Regulatory Notice 21-40: FINRA Requests Comment on Amendments to Rule 11880 Shortening the Settlement of Syndicate Accounts, the following is our response to the request for comments:

1. In addition to the economic impacts identified in this proposal:
    a. Are there other significant sources of impacts, including direct or indirect costs and benefits, of the proposed amendments to firms, issuers and investors?
    b. What are these economic impacts and what factors contribute to them?
    c. What would be the magnitude of these costs and benefits?
    d. Would such economic impacts differ across firm size or business model?

    Please provide data or other supporting evidence.

- While our Firm recognizes the regulatory capital benefit associated with shortening the settlement of syndicate accounts in co-manager roles (versus a bill and deliver role), we are concerned about the operational aspect of submitting all reimbursable expenses on time during the 30 day window. We believe it may not be feasible to do so in this time frame and Firm's will be incurring expenses as they will not have enough time to submit for reimbursement within the 30 day window.

2. FINRA could consider defining a "corporate debt security" as a type of "TRACE-Eligible Security" that is United States ("U.S.") dollar-denominated and issued by a U.S. or foreign private issuer. Is this the appropriate definition of "corporate debt security" for purposes of this proposal? Why or why not? Should the definition exclude a "Securitized Product," as defined in Rule 6710(m)? Please explain.

- Our Firm believes the definition of "corporate debt security" is appropriate.

3. What are the various syndicate manager activities, processes and related timing that must precede the final settlement of syndicate accounts? Are there specific procedures or other measures used to address unresolved or uncertain expenses? How do these activities, processes and related timing considerations differ between various types of corporate public offerings?

- Within the current 90 period, Firm's must gather all expenses and submit to the Lead syndicate for review and approval of reimbursable expenses. It would be helpful to establish a requirement for an interim date for such draft expenses to be submitted, so that all syndicate members have enough time to review and challenge before final settlement.

4. FINRA is proposing to shorten the syndicate account settlement cycle for public offerings of corporate debt securities from 90 days to 30 days. Is 30 days the most appropriate shortened timeframe? Is a shorter timeframe feasible?

- A shorten time frame is not feasible from an operational standpoint. If force to do so, Firm's will be missing out on potentially reimbursable expenses.

5. Are there certain types of offering costs that a syndicate manager may be unable to itemize within 30 days? For example, are fees for legal services always determined within 30 days of the syndicate settlement date? If not, when are such fees finalized? Could legal fees increase where the syndicate manager is required to settle syndicate accounts in a shorter period of time?

- Yes, legal fees are just one example, but essentially any other reimbursable expenses such as market data, marketing expenses, printing costs, professional fees, roadshows, telecom, travel and entertainment, etc. It is difficult from an operational perspective to obtain all expenses within the 30 days syndicate settlement window.

6. Are there some types of corporate debt offerings that could not settle in 30 days? If so, what are the specific types of corporate debt offerings and the reasons 30 days is not feasible? For example, is the feasibility of a 30-day settlement impacted by the type of corporate debt security, whether the security is investment grade or non-investment grade; the number of tranches in the offering; or other factors? Please specify.

- The type of corporate offerings, whether investment grade or non-grade, or the number of tranches in the offering, etc. are not concerns with regards to the 30 days settlement window.

7. As stated above, the MSRB shortened the syndicate account settlement period for municipal offerings from 60 days to 30 days in 2009. Are there differences between municipal and corporate debt security offerings that justify a longer syndicate account settlement timeframe for corporates? For example, to what degree are corporate debt security offerings more or less complex or time-consuming from a syndicate account settlement perspective and how do these differences impact the time needed to settle syndicate accounts? Are there circumstances in which it is not possible to completely settle all expenses of the syndicate in a municipal offering within 30 days, and if so, how is that handled?

- Not all Firm's does municipal underwritings and hence the volume of municipal offerings is much less than corporate debt security offerings. Hence, while MSRB has required a 30 day settlement window for municipals, Firms who decide to participate in such underwritings will need to ensure their systems are sufficiently automated in order to handle the reimbursable expenses for such shorten settlement window. Many Firms may not participate or has a very small volume of municipal underwritings.

8. How do the billing and payment processes for public offerings of corporate debt securities that involve international participants affect the timeframe for settlement of syndicate accounts for corporate offerings?

- For international participants, same issue with regards to expenses and ensuring they submit reimbursable expenses timely.

9. What technology has emerged that can support syndicate managers in syndicate account settlement billing and payment for corporate debt securities?

- There is no standardized technology in the industry for this. Firms are left to build their own application to handle the syndicate account settlement billing and payments.

10. What systems, process or other changes must firms make to implement the proposed amendments? Will these changes affect the costs of the capital raising process for corporate debt securities?

- Our Firm will need to further refine and automate our reimbursable expense process in order to ultimately meet a 30 day syndicate settlement window. Such automation will require some time and costs to implement.

11. Should the period permitted for the final settlement of syndicate accounts for public offerings of corporate equity securities be shortened? If so, what time frame is feasible? What impact, if any, would the exercise period for overallotment options have on shortening the period for final settlement of syndicate accounts for equity offerings?

- Our Firm has the same process for expense reimbursement whether for corporate debt securities or corporate equity securities. Hence, we would not be supportive of a shortened settlement window to 30 days for corporate equity securities.

12. FINRA understands that overallotment options are less commonly used in public offerings of debt securities because they could increase the issued amount, making it difficult to assess the debt rating and negotiate the offering price.[23] Please provide comment on the frequency of use of overallotment options in connection with corporate debt offerings and what impact, if any, the exercise period for overallotment options would have on shortening the period for final settlement of syndicate accounts.

- Not a major factor for our Firm.

13. An SEC staff interpretation under the Net Capital Rules provides that syndicate receivables may be considered an allowable asset to the extent a creditor issues a sole recourse loan to the syndicate member secured by the syndicate receivable.[24] Is adopting this approach feasible? What are the impacts of adopting this approach?

- Not something our Firm would consider. The sole recourse loan issued by a creditor would have a costs to it (interest expense). Our Firm would not be interested in obtaining such a loan to accelerate the recognition of regulatory capital.

14. Are there additional approaches that FINRA should consider to accomplish the goals of this proposal? For example, what are commenters' views on a two-stage syndicate account settlement approach—whereby the syndicate manager must remit a percentage of the gross underwriting spread from the offering within 30 days of the syndicate settlement date, with

the balance due to syndicate members on a later date between 30 days and 90 days of the syndicate settlement date? If FINRA takes such an approach, what percentage should be required to be paid by the syndicate manager within the first 30 days? Please describe any other alternatives that FINRA should consider and why they are better suited?

- Yes, a phased approach is recommended. The phase approach can be:
  - As stated, perhaps 50% settlement within 30 days – the remaining 50% held back for expense settlement within the 90 day window; Or
  - Shorten the syndicate settlement window to 60 days first initially, then after a period of time, further shorten to 45 days and then after further period of time, shorten to 30 days – this will allow Firms sufficient time to build systems necessary to support such shorten settlement windows.

15. Are there any potential risks to member firms, the investor community or others, associated with the existing 90-day settlement period? Could such risks decrease or increase by shortening the settlement period?

- This proposal will have minimal impact on large investment banks as (1) they are likely in the Lead role, so they have collected all the cash from the issuer and able to recognize the regulatory capital earlier anyway, (2) they have sufficiently over capitalized their broker dealers so the timing of regulatory capital recognition is not material to them, and (3) they have sufficiently invested in their technology systems to allow for shorten settlement period. To force a shorten settlement window on Firms before they are ready from a technological and operational perspective, will result in a loss of revenues as expenses that are reimbursable will not be captured in the process timely.

16. Will shortening the period for the final settlement of syndicate accounts lead to an increase or decrease in member firm participation in syndicate debt offerings?

- This proposal will not have an impact on our Firm's participation in syndicate debt offerings. We will still do the same as whether the syndicate window is shorten or not. Again the main risk is expense reimbursements.

Please let me know if you need clarity on any of our responses.

Regards,
Dave

David Wong
Executive Director, Finance
Securities Controller
Mizuho Securities USA LLC

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EXHIBIT 5

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

* * * * *

11800. CLOSE-OUT PROCEDURES

* * * * *

11880. Settlement of Syndicate Accounts

(a) Definitions

(1) "Corporate debt security" means a debt security that is United States ("U.S.") dollar-denominated and issued by a U.S. or foreign private issuer, including a Securitized Product as defined in Rule 6710(m). "Corporate debt security" does not include a Money Market Instrument as defined in Rule 6710(o).

(1) through (4) renumbered as (2) through (5).

(b) Final Settlement

(1) Final settlement of syndicate accounts shall be effected by the syndicate manager within 90 days following the syndicate settlement date, except as provided in paragraph (b)(2) of this Rule.

(2) Final settlement of syndicate accounts for a public offering of a corporate debt security shall be effected by the syndicate manager by remitting to each syndicate member at least 70 percent of the gross amount due to such syndicate member within 30 days following the syndicate settlement date, with any final balance due remitted within 90 days following the syndicate settlement date.

(c) through (d) No Change.

* * * * *