



August 11, 2023

VIA ELECTRONIC DELIVERY

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

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

Dear Ms. Mitchell:

Virtu Financial, Inc. (“Virtu”)¹ respectfully submits this letter in response to the above-referenced request for comment submitted by the Financial Industry Regulatory Authority (“FINRA”) on July 12, 2023 (the “RFC”).² The RFC solicits comment on a concept proposal to establish liquidity risk management requirements under a new Rule 4610, intended to ensure that members have sufficient liquid assets to meet their funding needs in both normal and stressed conditions. Specifically, the RFC outlines three areas where a potential rule might address liquidity risk, including (i) a requirement to maintain sufficient liquidity on a current basis at all times, (ii) liquidity stress testing, and (iii) contingent funding plans.

Virtu has long been a vocal proponent of smart, data-driven regulation that supports the goals of enhancing liquidity and transparency, fostering robust competition among market participants, and ensuring the high quality of the retail investor experience, and we commend FINRA for thinking creatively about ways to enhance its rule set to promote liquidity in the marketplace. While we are generally supportive of FINRA adopting a new liquidity risk management rule, we offer our thoughts below on certain concepts addressed in the RFC that we believe could be improved.

¹ Virtu is a leading financial firm that leverages cutting edge technology to deliver liquidity to the global markets and innovative, transparent trading solutions to its clients. Virtu operates as a market maker across numerous exchanges in the U.S. and is a member of all U.S. registered stock exchanges. Virtu’s market structure expertise, broad diversification, and execution technology enables it to provide competitive bids and offers in over 25,000 securities, at over 235 venues, in 36 countries worldwide. As such, Virtu broadly supports innovation and enhancements to transparency and fairness which enhance liquidity to the benefit of all marketplace participants.

² FINRA Regulatory Notice 23-11 (June 12, 2023), available at <https://www.finra.org/rules-guidance/notices/23-11>.

Sufficient Liquidity on a Current Basis

Under new Rule 4610, member firms “would be required at all times to have and maintain sufficient liquidity on a current basis, which means that they must have available cash and liquid assets sufficient to meet their funding obligations as they come due.”³ Virtu agrees with and supports a requirement for firms to maintain sufficient liquidity on a current basis, but we believe that the conditions described in the RFC that would lead to the presumption of insufficient liquidity on a current basis under Rule 4610 are far too prescriptive and should be revised to be more principles-based.

For example, the second condition leading to a presumption of insufficient liquidity – i.e., that the “member borrows an amount in excess of 70 percent of its customer debit balances and such amount is secured by assets that are the property of its customers” – could result in unintended consequences in that a firm that is not experiencing a stressed liquidity situation could potentially be caught in the calculation and then have to rebut the presumption. For a firm similar to Virtu that does not custody customer assets and settles transactions on a DVP/RVP basis, a driver of customer debits may be fail to deliver items that are operational in nature. For example, there can be circumstances where a customer has not accepted a delivery or may not accept partial delivery. While the trade remains unsettled, we may loan the shares for funding purposes. Or, we may have stock on loan which has been recalled but not delivered to us and as such we will owe the shares to the client. In these situations, the client has not yet paid for the shares. The firm will have debits for the unpaid amounts owed and will also reserve for the undelivered items. These conditions would not be indicative of a stressed liquidity situation but rather are normal course operational items. While we recognize FINRA is seeking to use the forms of quantitative measurements to identify stressed liquidity situations, this type of calculation can lead to a firm appearing be stressed when in fact it is not. We also recognize that firms have the ability to rebut the presumption, we are concerned that the appearance of a stress situation (when in reality there is no such situation) could set in motion a set of circumstances that might cause counterparties to reduce funding and which could lead to unintentional creation of a situation.

Thus, we strongly recommend that FINRA review this condition (as well as the other seven conditions included in the RFC) and consider whether there is a way to narrow the circumstances where the quantitative criteria would be used or set forth a principles-based approach to determining sufficient liquidity on a current basis, or some combination of these methods which we believe may be more appropriate.

Liquidity Stress Tests

We are generally supportive of the contemplated requirement for firms to conduct liquidity stress tests. However, as with any new regulatory regime, implementing a stress testing program will introduce significant costs and burdens to member firms subject to the rule. We believe that

³ See RFC.

the same benefits would flow from conducting stress tests quarterly, rather than monthly, and that such a change would substantially minimize the associated costs and burdens for member firms.

Contingency Funding Plan

Similarly, a requirement for member firms to design and implement a contingency funding plan will introduce significant costs and place demands on human resources to periodically assess the adequacy of the plan and introduce any needed updates. We believe that this requirement is an example of excessive oversight. Instead, we support a more principles-based requirement for firms to consider contingency funding as part of their regular compliance and risk assessment activities rather than requiring the adopting of a specific contingency funding plan related to liquidity risk management.

* * *

Virtu applauds FINRA's efforts to enhance liquidity in our markets. Liquidity risk management is a critically important function for FINRA's member firms, and we believe that FINRA has an important role to play in ensuring the fair and orderly operation of our markets. However, we urge FINRA to revisit the highly prescriptive approach contemplated by the RFC and instead consider a principles-based approach that would allow firms to tailor their liquidity risk management activities to the unique risks that impact them and their customers.

Respectfully submitted,



Thomas M. Merritt
Deputy General Counsel

cc: Robert Cook, Chief Executive Officer, FINRA
The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime E. Lizarraga, Commissioner
Dr. Haoxiang Zhu, Director, Division of Trading and Markets

