

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 40	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2012 - * 050		Amendment No. (req. for Amendments *)
Proposed Rule Change by Financial Industry Regulatory Authority Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			19b-4(f)(1) <input type="checkbox"/>	19b-4(f)(2) <input type="checkbox"/>	19b-4(f)(3) <input type="checkbox"/>
			19b-4(f)(4) <input type="checkbox"/>	19b-4(f)(5) <input type="checkbox"/>	19b-4(f)(6) <input type="checkbox"/>
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
Description Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). Proposed Rule Change to Adopt a Supplementary Schedule for Derivatives and Other Off-Balance Sheet Items Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information)					
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 proposed rule change. First Name * Matthew Last Name * Vitek Title * Assistant General Counsel E-mail * matthew.vitek@finra.org Telephone * (202) 728-8156 Fax (202) 728-8264					
Signature Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer. Date 11/15/2012 By Patrice Gliniecki Senior Vice President and Deputy General Counsel (Name *) (Title *) NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed. Patrice Gliniecki,					

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change (required)

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “SEA”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt a supplementary schedule for derivatives and other off-balance sheet items pursuant to FINRA Rule 4524 (Supplemental FOCUS Information).

The proposed rule change does not propose amendments to existing rule text.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on April 18, 2012, 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.

The proposed rule change will be effective upon Commission approval. FINRA will announce the first quarterly reporting period (i.e., the implementation date for purposes of the proposed off-balance sheet schedule) in a Regulatory Notice to be published no later than 60 days following Commission approval of the proposed rule change. The due date for the first proposed schedule will be no later than 210 days following Commission approval of the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

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

(a) Purpose

FINRA Rule 4524 requires each firm, as FINRA shall designate, to file such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest as a supplement to the FOCUS Report. Pursuant to FINRA Rule 4524, FINRA is proposing the adoption of a supplemental schedule to the FOCUS Report to capture important information that is not otherwise reported on certain firms’ balance sheets. To that end, the proposal would require all carrying or clearing firms to file with FINRA the Derivatives and Other Off-Balance Sheet Items Schedule (“OBS”) within 22 business days of the end of each calendar quarter. The proposed OBS is necessary for FINRA to more effectively examine for compliance with, and enforce, its rules on capital adequacy. The proposed OBS enables FINRA to examine on an ongoing basis the potential impact off-balance sheet activities may have on carrying and clearing firms’ net capital, leverage and liquidity, and ability to fulfill their customer protection obligations.

In the aftermath of the financial crisis, FINRA began to closely monitor firms’ levels of leverage and available liquidity to meet their funding needs and began to collect certain additional information from certain carrying and clearing firms with regard to their proprietary positions, financing transactions and certain off-balance sheet transactions. The proposed OBS will allow FINRA to obtain more comprehensive and consistent information regarding carrying and clearing firms’ off balance sheet assets, liabilities and other commitments. The proposed OBS would require firms to report their gross exposures in financing transactions (e.g., reverse repos, repos and other transactions

that are otherwise netted under generally accepted accounting principles, reverse repos and repos to maturity and collateral swap transactions), interests in and exposure to variable interest entities, non-regular way settlement transactions (including to be announced or TBA securities and delayed delivery/settlement transactions), underwriting and other financing commitments, and gross notional amounts in centrally cleared and non-centrally cleared derivative contracts involving equities, commodities, interest rates, foreign exchange derivatives and credit default swaps. However, the proposed OBS contains a *de minimis* off-balance sheet activity exception for each reporting period. If the total of all off-balance sheet items is less than 10% of the firm's excess net capital on the last day of the reporting period, the firm will not be required to file the proposed OBS for the reporting period.²

As noted in Item 2 of this filing, the proposed rule change will be effective upon Commission approval. FINRA will announce the first quarterly reporting period (i.e., the implementation date for purposes of the proposed off-balance sheet schedule) in a Regulatory Notice to be published no later than 60 days following Commission approval of the proposed rule change. The due date for the first proposed schedule will be no later than 210 days following Commission approval of the proposed rule change.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³ which requires, among other things, that FINRA rules

² For purposes of the proposed OBS, the term "excess net capital" means net capital reduced by the greater of the minimum dollar net capital requirement or two percent of combined aggregate debit items as shown in the Formula for Reserve Requirements pursuant to SEA Rule 15c3-3.

³ 15 U.S.C. 78o-3(b)(6).

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 is consistent with the provisions of the Act noted above in that the proposed OBS will permit FINRA to assess more effectively on an ongoing basis the potential impact off-balance sheet activities may have on carrying and clearing firms' net capital, leverage and liquidity, and ability to fulfill their customer protection obligations. The rule change also is consistent with Section 712(b)(3)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act in that it is necessary to enable FINRA to more effectively examine for compliance with, and enforce, its rules on capital adequacy.⁴

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed OBS will allow FINRA to better understand the potential impact off-balance sheet activity may have on carrying and clearing firms' net capital, leverage and liquidity, and ability to fulfill their customer protection obligations. FINRA has carefully crafted the proposed OBS to achieve its intended and necessary regulatory purpose while minimizing the burden on firms. Ready access to the information is important for FINRA to efficiently monitor on an ongoing basis the financial condition of firms. In the absence of this reporting requirement, FINRA would need to request this information repeatedly on a firm-by-firm basis, resulting in similar costs for the firms.

⁴ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

The information required to complete the proposed OBS should be readily available to firms due to firms' obligations to maintain books and records and take applicable capital charges in relation to off-balance sheet activity. Further, firms that are owned by a publicly held company provide much of the information required by the proposed OBS to the SEC on the quarterly Form 10-Q or on the annual Form 10-K. Finally, for those firms that conduct limited off-balance sheet activity, the proposed OBS contains a *de minimis* exception for each reporting period.

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

The proposed OBS was published for comment in Regulatory Notice 12-23 (May 2012) (the "Notice"). FINRA received two comment letters in response to the Notice.⁵ 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. Below is a summary of the comments and FINRA's responses.

In the Notice, FINRA specifically requested comment on whether there is a category of carrying or clearing firms that should not be required to file the proposed OBS based upon *de minimis* off-balance sheet activity. One commenter believed that a *de minimis* threshold for the proposed OBS would benefit both firms and FINRA.⁶ The commenter stated that it would be reasonable to set a threshold for the reporting of off-

⁵ See Letter from Chris Charles, President, Wulff, Hansen & Co., to Marcia E. Asquith, Senior Vice President and Corporate Secretary, dated May 31, 2012 ("Wulff"); and letter from Holly H. Smith, Sutherland Asbill & Brennan LLP, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, dated June 4, 2012 ("Sutherland").

⁶ Wulff.

balance sheet items of 5% or 10% of net capital.⁷ The commenter suggested that the proposed OBS should not be required if no items exceed a threshold.⁸ Another commenter stated “that a *de minimus* standard alone may not result in identifying the firms that pose off-balance sheet risk to such a degree that regulatory attention is warranted.”⁹ The commenter assumed that the term “carrying or clearing firm” includes all broker-dealers that are not exempt from SEA Rule 15c3-3 and had concerns about the proposed OBS applying to firms that distribute variable insurance products and shares of investment companies, and firms that introduce their business to clearing firms.¹⁰ The commenter requested “that FINRA try to more closely identify the nature of the firms for whom off-balance sheet activity reporting is appropriate, and limit the application of the OBS to those firms, rather than assuming that all firms that are not exempt from Rule 15c3-3 are engaging in off-balance sheet activity as a regular course of business.”¹¹

FINRA has considered these comments and believes a *de minimis* exception for the proposed OBS is appropriate. As stated above, if the total of all off-balance sheet items is less than 10% of the firm’s excess net capital on the last day of the reporting period, the firm will not be required to file the proposed OBS for the reporting period. Basing a *de minimis* exception on the aggregate of all off-balance sheet items instead of each individual item will allow FINRA to capture those firms that may not meet the

⁷ Wulff.

⁸ Wulff.

⁹ Sutherland.

¹⁰ Sutherland.

¹¹ Sutherland.

threshold for any one particular item, but still would be viewed as having in the aggregate a material amount of off-balance sheet activity for the reporting period. Further, FINRA does not agree with the commenter's characterization of a "carrying or clearing" firm for purposes of the proposed OBS. The proposal would require all carrying or clearing firms, subject to the *de minimis* exception, to file the proposed OBS with FINRA within 22 business days of the end of each calendar quarter. For purposes of the proposed OBS, FINRA identifies carrying or clearing firms as those firms that self-clear or clear transactions for others or firms that carry customer accounts.

One commenter believes that reporting underwriting commitments for securities that have already been sold is not useful.¹² The commenter suggested that FINRA "[e]liminate the need to separately report an entire unsettled underwriting commitment, where all (or all but a non-material amount) of the securities have been sold as of the balance sheet date."¹³ FINRA agrees with the commenter's suggestion and has clarified the instructions to state that a firm would only need to report the market value of open contractual commitments at month-end, net of confirmed sales.

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.¹⁴

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.

¹² Wulff.

¹³ Wulff.

¹⁴ 15 U.S.C. 78s(b)(2).

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

Not applicable.

9. Exhibits

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

Exhibit 2a. Regulatory Notice 12-23 (May 2012).

Exhibit 2b. A list of the comment letters received in response to Regulatory Notice 12-23 (May 2012).

Exhibit 2c. Copies of the comment letters received in response to Regulatory Notice 12-23 (May 2012).

Exhibit 3. Derivatives and Other Off-Balance Sheet Items Schedule (OBS) and accompanying instructions.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2012-050)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt a Supplementary Schedule for Derivatives and Other Off-Balance Sheet Items Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information)

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 , 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 adopt a supplementary schedule for derivatives and other off-balance sheet items pursuant to FINRA Rule 4524 (Supplemental FOCUS Information).

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.

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

FINRA Rule 4524 requires each firm, as FINRA shall designate, to file such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest as a supplement to the FOCUS Report. Pursuant to FINRA Rule 4524, FINRA is proposing the adoption of a supplemental schedule to the FOCUS Report to capture important information that is not otherwise reported on certain firms' balance sheets. To that end, the proposal would require all carrying or clearing firms to file with FINRA the Derivatives and Other Off-Balance Sheet Items Schedule ("OBS") within 22 business days of the end of each calendar quarter. The proposed OBS is necessary for FINRA to more effectively examine for compliance with, and enforce, its rules on capital adequacy. The proposed OBS enables FINRA to examine on an ongoing basis the potential impact off-balance sheet activities may have on carrying and clearing firms' net capital, leverage and liquidity, and ability to fulfill their customer protection obligations.

In the aftermath of the financial crisis, FINRA began to closely monitor firms' levels of leverage and available liquidity to meet their funding needs and began to collect certain additional information from certain carrying and clearing firms with regard to their proprietary positions, financing transactions and certain off-balance sheet transactions. The proposed OBS will allow FINRA to obtain more comprehensive and consistent information regarding carrying and clearing firms' off balance sheet assets, liabilities and other commitments. The proposed OBS would require firms to report their gross exposures in financing transactions (e.g., reverse repos, repos and other transactions that are otherwise netted under generally accepted accounting principles, reverse repos and repos to maturity and collateral swap transactions), interests in and exposure to variable interest entities, non-regular way settlement transactions (including to be announced or TBA securities and delayed delivery/settlement transactions), underwriting and other financing commitments, and gross notional amounts in centrally cleared and non-centrally cleared derivative contracts involving equities, commodities, interest rates, foreign exchange derivatives and credit default swaps. However, the proposed OBS contains a de minimis off-balance sheet activity exception for each reporting period. If the total of all off-balance sheet items is less than 10% of the firm's excess net capital on the last day of the reporting period, the firm will not be required to file the proposed OBS for the reporting period.³

The proposed rule change will be effective upon Commission approval. FINRA will announce the first quarterly reporting period (i.e., the implementation date for

³ For purposes of the proposed OBS, the term "excess net capital" means net capital reduced by the greater of the minimum dollar net capital requirement or two percent of combined aggregate debit items as shown in the Formula for Reserve Requirements pursuant to SEA Rule 15c3-3.

purposes of the proposed off-balance sheet schedule) in a Regulatory Notice to be published no later than 60 days following Commission approval of the proposed rule change. The due date for the first proposed schedule will be no later than 210 days following Commission approval of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴ 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 is consistent with the provisions of the Act noted above in that the proposed OBS will permit FINRA to assess more effectively on an ongoing basis the potential impact off-balance sheet activities may have on carrying and clearing firms' net capital, leverage and liquidity, and ability to fulfill their customer protection obligations. The rule change also is consistent with Section 712(b)(3)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act in that it is necessary to enable FINRA to more effectively examine for compliance with, and enforce, its rules on capital adequacy.⁵

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. The proposed OBS will allow FINRA to better understand the potential impact off-

⁴ 15 U.S.C. 78o-3(b)(6).

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

balance sheet activity may have on carrying and clearing firms' net capital, leverage and liquidity, and ability to fulfill their customer protection obligations. FINRA has carefully crafted the proposed OBS to achieve its intended and necessary regulatory purpose while minimizing the burden on firms. Ready access to the information is important for FINRA to efficiently monitor on an ongoing basis the financial condition of firms. In the absence of this reporting requirement, FINRA would need to request this information repeatedly on a firm-by-firm basis, resulting in similar costs for the firms.

The information required to complete the proposed OBS should be readily available to firms due to firms' obligations to maintain books and records and take applicable capital charges in relation to off-balance sheet activity. Further, firms that are owned by a publicly held company provide much of the information required by the proposed OBS to the SEC on the quarterly Form 10-Q or on the annual Form 10-K. Finally, for those firms that conduct limited off-balance sheet activity, the proposed OBS contains a de minimis exception for each reporting period.

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

The proposed OBS was published for comment in Regulatory Notice 12-23 (May 2012) (the "Notice"). FINRA received two comment letters in response to the Notice.⁶ 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

⁶ See Letter from Chris Charles, President, Wulff, Hansen & Co., to Marcia E. Asquith, Senior Vice President and Corporate Secretary, dated May 31, 2012 ("Wulff"); and letter from Holly H. Smith, Sutherland Asbill & Brennan LLP, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, dated June 4, 2012 ("Sutherland").

in response to the Notice are attached as Exhibit 2c. Below is a summary of the comments and FINRA's responses.

In the Notice, FINRA specifically requested comment on whether there is a category of carrying or clearing firms that should not be required to file the proposed OBS based upon de minimis off-balance sheet activity. One commenter believed that a de minimis threshold for the proposed OBS would benefit both firms and FINRA.⁷ The commenter stated that it would be reasonable to set a threshold for the reporting of off-balance sheet items of 5% or 10% of net capital.⁸ The commenter suggested that the proposed OBS should not be required if no items exceed a threshold.⁹ Another commenter stated "that a de minimus standard alone may not result in identifying the firms that pose off-balance sheet risk to such a degree that regulatory attention is warranted."¹⁰ The commenter assumed that the term "carrying or clearing firm" includes all broker-dealers that are not exempt from SEA Rule 15c3-3 and had concerns about the proposed OBS applying to firms that distribute variable insurance products and shares of investment companies, and firms that introduce their business to clearing firms.¹¹ The commenter requested "that FINRA try to more closely identify the nature of the firms for whom off-balance sheet activity reporting is appropriate, and limit the application of the

⁷ Wulff.

⁸ Wulff.

⁹ Wulff.

¹⁰ Sutherland.

¹¹ Sutherland.

OBS to those firms, rather than assuming that all firms that are not exempt from Rule 15c3-3 are engaging in off-balance sheet activity as a regular course of business.”¹²

FINRA has considered these comments and believes a de minimis exception for the proposed OBS is appropriate. As stated above, if the total of all off-balance sheet items is less than 10% of the firm’s excess net capital on the last day of the reporting period, the firm will not be required to file the proposed OBS for the reporting period. Basing a de minimis exception on the aggregate of all off-balance sheet items instead of each individual item will allow FINRA to capture those firms that may not meet the threshold for any one particular item, but still would be viewed as having in the aggregate a material amount of off-balance sheet activity for the reporting period. Further, FINRA does not agree with the commenter’s characterization of a “carrying or clearing” firm for purposes of the proposed OBS. The proposal would require all carrying or clearing firms, subject to the de minimis exception, to file the proposed OBS with FINRA within 22 business days of the end of each calendar quarter. For purposes of the proposed OBS, FINRA identifies carrying or clearing firms as those firms that self-clear or clear transactions for others or firms that carry customer accounts.

One commenter believes that reporting underwriting commitments for securities that have already been sold is not useful.¹³ The commenter suggested that FINRA “[e]liminate the need to separately report an entire unsettled underwriting commitment, where all (or all but a non-material amount) of the securities have been sold as of the

¹² Sutherland.

¹³ Wulff.

balance sheet date.”¹⁴ FINRA agrees with the commenter’s suggestion and has clarified the instructions to state that a firm would only need to report the market value of open contractual commitments at month-end, net of confirmed sales.

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-2012-050 on the subject line.

¹⁴ Wulff.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2012-050. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2012-050 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.¹⁵

Elizabeth M. Murphy

Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

Regulatory Notice

12-23

Supplemental FOCUS Information

FINRA Requests Comment on Proposed Supplementary Schedule for Derivatives and Other Off-Balance Sheet Items

Comment Period Expires: June 4, 2012

Executive Summary

On February 9, 2012, the SEC approved FINRA Rule 4524 (Supplemental FOCUS Information), which requires each firm, as FINRA shall designate, to file such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest as a supplement to the FOCUS Report.¹ FINRA requests comment on one such proposed schedule, a supplementary schedule for derivatives and other off-balance sheet items.

The proposed supplementary schedule for derivatives and other off-balance sheet items (including instructions to the form) is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- ▶ Kris Dailey, Vice President, Risk Oversight & Operational Regulation (ROOR), at (646) 315-8434;
- ▶ Marshall Levinson, Vice President, ROOR, at (646) 315-8453; or
- ▶ Matthew E. Vitek, Assistant General Counsel, Office of General Counsel, at (202) 728-8156.

May 2012

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Finance
- ▶ Legal
- ▶ Operations
- ▶ Regulatory Reporting
- ▶ Senior Management

Key Topics

- ▶ FOCUS Reporting

Referenced Rules & Notices

- ▶ FINRA Rule 4524

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by June 4, 2012.

Member firms and other interested parties can submit their comments using the following methods:

- ▶ Emailing comments to pubcom@finra.org; or
- ▶ Mailing comments in hard copy to:

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. Generally, FINRA will post comments as they are received.²

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).³

Background & Discussion

FINRA Rule 4524 (Supplemental FOCUS Information) requires each firm, as FINRA shall designate, to file such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest as a supplement to the FOCUS Report. Pursuant to this rule, FINRA is proposing to adopt a supplemental schedule to capture important information that is not otherwise reported on certain firms' balance sheets. To that end, the proposal requires all carrying and clearing firms to file with FINRA a proposed Derivatives and Other Off-Balance Sheet Items Schedule (OBS) within 22 business days of the end of each calendar quarter.

In the aftermath of the financial crisis, FINRA began to closely monitor firms' levels of leverage and available liquidity to meet their funding needs and began to collect certain additional information from certain carrying and clearing firms with regard to their proprietary positions, financing transactions and certain off-balance sheet transactions. In proposing the OBS, FINRA's aim is to obtain more comprehensive and consistent information regarding carrying and clearing firms' off-balance sheet assets, liabilities and other commitments. This information will permit FINRA to assess more effectively on an ongoing basis the potential impact off-balance sheet activities may have on carrying and clearing firms' net capital, leverage and liquidity, and ability to fulfill their customer protection obligations.

The proposed OBS would require firms to report their gross exposures in financing transactions (*e.g.*, reverse repos, repos and other transactions that are otherwise netted under generally accepted accounting principles, reverse repos and repos to maturity and collateral swap transactions), interests in and exposure to Variable Interest Entities, non-regular way settling transactions (including to be announced or TBA securities and delayed settlement/delivery transactions), underwriting and other financing commitments, and gross notional amounts in centrally cleared and non-centrally cleared derivative contracts involving equities, commodities, interest rates, foreign exchange derivatives and credit default swaps.

Request for Comment

While FINRA is interested in receiving comments on all aspects of the proposed OBS, FINRA seeks specific comment on whether there is a category of carrying or clearing firms that should not be required to file the proposed OBS based upon *de minimis* off-balance sheet activity. The comment period expires on June 4, 2012.

Following FINRA's receipt of comments on the proposed OBS in response to this *Notice*, in accordance with the requirements of FINRA Rule 4524, FINRA will file the proposed OBS with the SEC pursuant to Exchange Act Section 19(b).

Endnotes

1. See Securities Exchange Act Release No. 66364 (February 9, 2012), 77 FR 8938 (February 15, 2012) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2; File No. SR-FINRA-2011-064).
2. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See *NTM 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
3. 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, however, take effect upon filing with the SEC. See SEA Section 19(b)(3) and SEA Rule 19b-4.

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Attachment A

Supplemental Quarterly Schedule To Focus Report Derivatives And Other Off-Balance Sheet Items

General Instructions

1. Commitments

A. Securities Underwriting

Report the market value of open contractual commitments at month-end, including both registered and non-registered issuances.

Note: Exclude U.S. Treasuries and direct obligations of U.S. Federal Agencies.

B. Financing commitments not included on lines 3F or 3G

Report the dollar amount of any other commitments to lend funds that haven't been identified in lines 3F or 3G including margin or other undrawn loan commitments.

2. Variable Interest Entities (VIEs)

A. Unconsolidated VIEs

Report the gross amounts of assets and liabilities of unconsolidated VIEs.

B. Maximum exposure to loss relating to unconsolidated VIEs

The maximum exposure to loss assumes all assets in the unconsolidated VIEs are worthless and includes potential losses associated with off-balance sheet commitments such as unfunded liquidity commitments and other contractual arrangements.

Memo item: Investment in unconsolidated VIEs

Report any investment(s) that have been included on the balance sheet for any entity(ies) whose assets and liabilities are included in line 2A above.

C. Maximum exposure to loss relating to consolidated VIEs

Report the maximum exposure to loss in consolidated VIEs including retained interests and other exposures (*e.g.*, derivatives and liquidity commitments).

3. Off-Balance Sheet Financing Transactions**A. Reverse Repos and Repos offset pursuant to ASC 210-20-45-11**

Report the gross contract value that was netted pursuant to ASC 210-20-45-11.

Note: Include the gross contract value of Buy/Sell-backs and Sell/Buy-backs that were netted pursuant to ASC 210-20-45-11.

B. Transactions offset pursuant to ASC 210-20-45-1

Report the gross contract value of transactions that have been netted pursuant to ASC 210-20-45-1.

C. Reverse Repos/Repos to maturity pursuant to ASC 860-10-40-5

Report the gross contract value of Reverse Repo or Bonds Borrowed contracts (as a debit) and the gross contract value of Repos or Bonds Loaned contracts (as a credit) that were de-recognized from the balance sheet pursuant to ASC 860-10-40-5.

D. Securities Borrowed vs. Pledge agreements

Report the gross collateral market value of Non-Cash Securities Borrows and Non-Cash Securities Loans agreements not included on the balance sheet pursuant to ASC 860.

E. Reverse Repo vs. Pledge agreements

Report the gross collateral market value of Non-Cash Reverse Repo and Repurchase agreements not included on the balance sheet pursuant to ASC 860.

F. Forward starting Reverse Repurchase and Securities Borrowing agreements

Report the gross contract value of the on-side leg of forward starting Reverse Repo and Securities Borrow transactions.

G. Forward starting Repurchase and Securities Lending agreements

Report the gross contract value of the on-side leg of forward starting Repurchase and Securities Lending transactions.

H. Other

Report any other off-balance sheet financing agreements not otherwise included above.

4. Non-Regular Way Settling Trades**A. When Issued Securities**

Report the gross long and short market values of securities positions purchased and sold on a "When Issued" basis and not otherwise included on the balance sheet.

B. Delayed Delivery/Delayed Settlement

Report the gross long and short market values of all unsettled trades transacted on a Delayed Delivery/Delayed Settlement basis, not otherwise included on the balance sheet.

C. To Be Announced (TBA) transactions

Report the gross long and short market values of all unsettled TBA transactions in securities issued by Freddie Mac (FHLMC), Fannie Mae (FNMA) and Ginnie Mae (GNMA).

D. TBA related fails not included on balance sheet

Report the gross long and short market value of TBA transactions that have passed their contracted settlement date and are not otherwise included on the balance sheet.

E. Other

Report the gross long and short market value of any other Non-Regular Way settling transactions not otherwise included on the balance sheet or in 4A through D above.

5. Forwards**A. Foreign Exchange**

Report the gross amount stated in \$USD, of all foreign exchange forwards committing the firm to purchase or sell foreign (non-\$USD) currencies for a \$USD exchange, where the predominant risk is foreign exchange risk.

The term "foreign exchange forward" means a transaction that solely involves the exchange of two different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.

Note: For purposes of the OBS, a foreign exchange forward is a contract with a settlement date greater than two business days following the trade date. (i.e., > T+2).

B. Other

Report the gross purchase and sale of other forward settling transactions, not otherwise included in the balance sheet.

FINRA
FORM
OBS

SUPPLEMENTAL QUARTERLY SCHEDULE TO FOCUS REPORT

DERIVATIVES AND OTHER OFF-BALANCE SHEET ITEMS

(Please read instructions before completing Form)

NAME OF BROKER-DEALER _____ 13 ADDRESS OF PRINCIPAL PLACE OF BUSINESS _____ 20 (No. and Street) _____ 21 _____ 22 _____ 23 (City) (State) (Zip Code)	SEC FILE NO. _____ 14 FIRM ID NO. _____ 15 FOR PERIOD ENDING (MM/DD/YY) _____ 24
NAME OF PERSON COMPLETING THIS REPORT _____ 10001 TELEPHONE NO. OF PERSON COMPLETING THIS REPORT _____ 10002	

All reporting is in millions

	Gross Amounts Debit or Long Market Value		Gross Amounts Credit or Short Market Value
1. Commitments			
A. Securities Underwriting	\$ _____	10100	\$ _____ 10101
B. Financing commitments not included on lines 3F or 3G	\$ _____	10102	\$ _____ 10103
2. Variable Interest Entities (VIEs)			
A. Unconsolidated VIEs.....	\$ _____	10104	\$ _____ 10105
B. Maximum exposure to loss relating to unconsolidated VIEs	\$ _____	10106	\$ _____ 10107
Memo item: Investment in unconsolidated VIEs... \$ _____		10108	
C. Maximum exposure to loss relating to consolidated VIEs	\$ _____	10110	\$ _____ 10111
3. Off-Balance Sheet Financing Transactions			
A. Reverse Repos and Repos offset pursuant to ASC 210-20-45-11.....	\$ _____	10112	\$ _____ 10113
B. Transactions offset pursuant to ASC 210-20-45-1.....	\$ _____	10114	\$ _____ 10115
C. Reverse Repos/Repos to maturity pursuant to ASC 860-10-40-5.....	\$ _____	10116	\$ _____ 10117
D. Securities Borrowed vs. Pledge agreements.....	\$ _____	10118	\$ _____ 10119
E. Reverse Repo vs. Pledge agreements.....	\$ _____	10120	\$ _____ 10121
F. Forward starting Reverse Repurchase and Securities Borrowing agreements.....	\$ _____	10122	\$ _____ 10123
G. Forward starting Repurchase and Securities Lending agreements.....	\$ _____	10124	\$ _____ 10125
H. Other.....	\$ _____	10126	\$ _____ 10127
4. Non-Regular Way Settling Trades			
A. When Issued Securities	\$ _____	10128	\$ _____ 10129
B. Delayed Delivery/Delayed Settlement	\$ _____	10130	\$ _____ 10131
C. To Be Announced (TBA) transactions	\$ _____	10132	\$ _____ 10133
D. TBA related fails not included on balance sheet	\$ _____	10134	\$ _____ 10135
E. Other	\$ _____	10136	\$ _____ 10137
5. Forwards			
A. Foreign Exchange.....	\$ _____	10138	\$ _____ 10139
B. Other	\$ _____	10140	\$ _____ 10141

**SUPPLEMENTAL QUARTERLY SCHEDULE TO FOCUS REPORT
DERIVATIVES AND OTHER OFF-BALANCE SHEET ITEMS**
For the period (MMDDYY) ending _____ **3932**

Derivatives

	Interest Rate Contracts		Foreign Exchange Contracts		Equity Derivative Contracts		Commodity and other Contracts	
6. Total gross notional amount.....	\$ _____	10142	\$ _____	10143	\$ _____	10144	\$ _____	10145
7. Dollar amount in 6 that is centrally cleared.....	\$ _____	10146	\$ _____	10147	\$ _____	10148	\$ _____	10149
8. Gross Mark-to-Market receivable.....	\$ _____	10150	\$ _____	10151	\$ _____	10152	\$ _____	10153
9. Gross Mark-to-Market payable.....	\$ _____	10154	\$ _____	10155	\$ _____	10156	\$ _____	10157

Credit Derivatives

	Sold Protection		Purchased Protection	
10. Total gross notional amount.....	\$ _____	10158	\$ _____	10159
11. Dollar amount in 10 that is centrally cleared.....	\$ _____	10160	\$ _____	10161
12. Gross Mark-to-Market receivable.....	\$ _____	10162	\$ _____	10163
13. Gross Mark-to-Market payable.....	\$ _____	10164	\$ _____	10165

EXHIBIT 2b

Alphabetical List of Written Comments

1. Letter from Chris Charles, Wulff, Hansen & Co. (May 31, 2012)
2. Letter from Holly H. Smith, Sutherland Asbill & Brennan LLP (June 4, 2012)

WULFF, HANSEN & Co.

ESTABLISHED 1931

INVESTMENT BANKERS

351 CALIFORNIA STREET, SUITE 1000

SAN FRANCISCO 94104

(415) 421-8900

May 31, 2012

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Dear Ms. Asquith:

We are writing in response to FINRA's request for comment on Regulatory Notice 12-23 regarding additional financial reporting requirements for certain Members. Wulff, Hansen & Co. is a registered broker/dealer and FINRA member. The writer currently serves on FINRA's Small Firm Advisory Board but the views and comments expressed herein are those of the firm and do not necessarily reflect those of the SFAB.

We are a small self-clearing firm and would be affected by the rule change. Our business is focused on municipal securities and does not involve off balance sheet transactions, forwards, or derivatives, so our comments address only Items 1 (Commitments) and 4 (Non-regular Way Settling Trades).

A de minimis threshold would benefit both firms and FINRA:

In general, we believe that the proposal, while well-intended and probably useful with regard to large and complex firms, would be vastly improved by the addition of some sort of de minimis exception for the newly reportable items. If no items exceed that threshold, the form should not be required. A threshold of 5% or 10% of net capital would seem reasonable, is consistent with current interpretations of materiality, and could eliminate the need for a firm to report information (such as a single small trade with an extended settlement) which is of little value in forming an accurate picture of its financial status. Neither firms nor FINRA should be burdened with reporting or reviewing insignificant items.

Reporting underwriting commitments for securities which have already been sold is not useful:

With regard to underwriting, we also believe that where an underwriting commitment has been made and the securities have been sold but the trades have not yet settled, the trades are not qualitatively different from any other open offsetting transactions made before the balance sheet date with a settlement after that date. For example, if we understand the proposal correctly:

- On March 29 we, as underwriter, purchase and resell \$1,000,000 in municipal bonds to settle on April 1. The trades would be reportable under Item 1A on the new form.
- Also on March 29, we, in the secondary market, purchase and resell \$1,000,000 of some other municipal bonds – perhaps to the very same customers – also to settle regular-way on April 1. As we understand it, these trades would be NOT reportable under Item 1A or anywhere else on the new form.

We respectfully submit that this seems illogical. Why are unsettled but offsetting trades associated with an underwriting to be reported while other pairs of offsetting trades with the same characteristics are not? Logically, reporting should apply to both or to neither.

It seems to us that the area of regulatory concern here should be with underwriting commitments where the securities have been purchased by the underwriter but not yet sold. Existing guidance, as we understand it, already requires that such proprietary trades be reflected in the FOCUS if they result in a “material difference” between trade-date and settlement-date accounting. Thus, where an already-ticketed underwriting involves unsold proprietary positions the only new information produced about those positions would relate to items which have already been identified as non-material.

Reporting non-material non-regular-way settling trades is not useful:

Similar reasoning applies to the requirement that firms report small open transactions with settlement other than regular. For example:

- On March 29 we purchase and resell to a customer \$25,000 in municipal bonds, with both trades settling on April 5. It appears that the transactions would be reportable under either Item 4B or E on the new form.

We fail to see any benefit in completing the form and having FINRA analyze it with regard to such a small non-material item. Again, a de minimis exception based on a percentage of net capital would allow both the firm and FINRA to avoid the burden of completing and evaluating data which serves no useful purpose in understanding the firm’s financial condition.

For these reasons we suggest that the proposal be amended to:

1. Include a reasonable de minimis threshold for items on the schedule.
2. Eliminate the need to separately report an entire unsettled underwriting commitment, where all (or all but a non-material amount) of the securities have been sold as of the balance sheet date. Where an unsold balance is material, it is already being reported under existing guidance.

Respectfully submitted,

Chris Charles
President

SUTHERLAND

SUTHERLAND ASBILL & BRENNAN LLP
1275 Pennsylvania Ave., NW
Washington, DC 20004-2415
202.383.0100 Fax 202.637.3593
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HOLLY H. SMITH
DIRECT LINE: 202.383.0245
E-mail: holly.smith@sutherland.com

June 4, 2012

VIA ELECTRONIC MAIL

Marcia E. Asquith
Senior Vice President and Corporate Secretary
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

**Re: FINRA Regulatory Notice 12-23: Supplemental FOCUS:
FINRA Requests Comments on Proposed Supplementary Schedule for
Derivatives and Other Off-Balance Sheet Items**

Dear Ms. Asquith:

We are submitting this letter on behalf of certain broker-dealers who are our clients (the "Broker-Dealers"), in response to Regulatory Notice 12-23, "Supplemental FOCUS: FINRA Requests Comments on Proposed Supplementary Schedule for Derivatives and Other Off-Balance Sheet Items ("Notice 12-23")." The Broker-Dealers appreciate FINRA's efforts to more effectively assess the potential impact off-balance sheet activities may have on member firms' ability to fulfill their customer protection obligations and funding needs. While the Broker-Dealers support FINRA's goals in this regard, we believe that the classification of all firms not exempt from Securities and Exchange Commission ("SEC") Rule 15c3-3 as "carrying or clearing firms" does not properly reflect the business models of all such firms and leads, as shown by the proposal in Notice 12-23, to an overly broad regulatory approach to identifying potential risks. For this reason, we urge FINRA staff to try to refine the category of broker-dealers which would be required to file the proposed supplemental schedule.

The Proposed Supplementary Schedule. FINRA Rule 4524 (Supplemental FOCUS Information) requires each firm, as FINRA shall designate, to file such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate as a supplement

Marcia E. Asquith
June 4, 2012
Page 2

to the FOCUS Report. Pursuant to Rule 4524, FINRA is proposing to require all carrying and clearing firms to file with FINRA on a quarterly basis a proposed Derivatives and Other Off-Balance Sheet Items Schedule (“OBS”). FINRA states that the information provided in OBS will permit FINRA to assess more effectively on an ongoing basis the potential impact off-balance sheet activities may have on carrying and clearing firms’ net capital, leverage and liquidity, and ability to fulfill their customer protection obligations. Notice 12-23 does not define the term “carrying or clearing firm” but we assume that it includes all broker-dealers that are not exempt from SEC Rule 15c3-3.

Comments. As noted above, the Broker-Dealers believe that as proposed, the category of firms that would be required to file the OBS is not sufficiently tailored so as to capture those firms, but *only those firms*, that engage in the business activities giving rise to the risks FINRA seeks to make more transparent.

As the staff is aware, under current interpretations of Rule 15c3-3, a broker-dealer can be classified as a carrying or clearing firm for reasons unrelated to the particular risk profile of the firm. For example, broker-dealers that distribute variable insurance products and shares of investment companies (mutual funds), and firms that introduce their business to clearing firms, typically do business on a “check and app” basis, *i.e.*, customers are asked to pay for their investments by writing a check payable to a third party, which is the product manufacturer (in the case of insurance company securities and investment company shares), or the clearing firm in the case of other types of securities (such as equities). The point is that check and app firms do not seek to hold customer money or securities or engage in business lines that leverage off the holding of customer funds or securities.

Despite building business models pursuant to which customers pay for their investments by making a check payable to a third party, “check and app” broker-dealers may nonetheless be classified as “carrying” broker-dealers because current interpretations of SEC Rule 15c3-3 require that, in order to be classified as exempt from Rule 15c3-3, customer funds and securities must be forwarded to third parties by noon of the next business day following receipt. As has been noted in previous comment letters filed with FINRA and the SEC, it is virtually impossible for broker-dealers with sales forces “in the field” to consistently comply with a requirement that all customer checks be transmitted to the product manufacturer or other third party by noon of the next following business day.¹

¹See Release No. 34-56376 (Sept. 7, 2007) and FINRA Rule 2330, which together permit broker-dealers distributing variable annuities up to seven business days to hold customer checks made payable to the insurance company issuer, after an office of supervisory jurisdiction receives a complete and correct application. Such relief has made it possible for these types of distributors to rely on exemptive provisions of Rule 15c3-3.

Marcia E. Asquith
June 4, 2012
Page 3

In its request for comments on Notice 12-23, FINRA seeks specific comment on whether there is a category of carrying or clearing firms that should not be required to file the proposed OBS based upon *de minimis* off-balance sheet activity. While we believe the *de minimis* concept is a helpful starting place for consideration of the issues, we believe it is more important to try to identify the types of business or the types of transactions that FINRA believes give rise to a specific need to bring greater transparency to FOCUS reporting, and then, after identifying those business lines and/or types of transactions, require firms that engage in those particular activities to file the OBS. This closer examination is likely to result in a more targeted approach with respect to all firms, not just carrying and clearing firms. In other words, while the Broker-Dealers believe that the answer to FINRA's question regarding whether there are categories of firms that should be exempt from filing the OBS is "yes," the Broker-Dealers also believe that a *de minimus* standard alone may not result in identifying the firms that pose off-balance sheet risk to such a degree that regulatory attention is warranted.

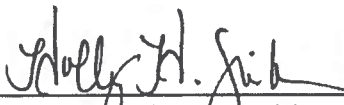
Accordingly, the Broker-Dealers request that FINRA try to more closely identify the nature of the firms for whom off-balance sheet activity reporting is appropriate, and limit the application of the OBS to those firms, rather than assuming that all firms that are not exempt from Rule 15c3-3 are engaging in off-balance sheet activity as a regular course of business. We would be happy to discuss specific ideas with FINRA staff at its convenience.

* * * * *

Please do not hesitate to contact Holly H. Smith (202.383.0245) if you have any questions regarding the issues addressed in this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: 
Holly H. Smith

HHS/nn

SUPPLEMENTAL QUARTERLY SCHEDULE TO FOCUS REPORT**DERIVATIVES AND OTHER OFF-BALANCE SHEET ITEMS****GENERAL INSTRUCTIONS**

The Derivatives and Other Off-Balance Sheet Items Schedule (OBS) is intended to provide information that will permit FINRA to assess more effectively on an ongoing basis the potential impact off-balance sheet activities may have on carrying and clearing firms' net capital, leverage and liquidity, and ability to fulfill their customer protection obligations. Subject to the *de minimis* exception, the OBS must be filed by all FINRA members that self-clear their proprietary transactions or clear transactions for others or members that carry customer accounts.

De minimis exception from filing the OBS: If the total of all off-balance sheet items is less than 10% of the firm's excess net capital on the last day of the reporting period, the firm is exempted from this filing requirement. The term "excess net capital" means net capital reduced by the greater of the minimum dollar net capital requirement or 2% of combined aggregate debit items as shown in the Formula for Reserve Requirements pursuant to SEA Rule 15c3-3.

The OBS must be filed within 22 business days after the end of each calendar quarter.

SPECIFIC INSTRUCTIONS**1. Commitments****A. Securities Underwriting**

Report the market value of open contractual commitments to issuer(s) at quarter-end, net of confirmed sales, including both registered and non-registered issuances not otherwise reported on the balance sheet.

Note: Exclude U.S. Treasuries and direct obligations of U.S. Federal Agencies.

B. Financing commitments not included on items 3F or 3G

Report the dollar amount of any other commitments to lend funds that haven't been identified on items 3F or 3G including margin lending or other undrawn loan commitments.

C. Guarantees

Report on line 10105 (as a credit) the notional dollar amount of all guarantees of third party and affiliate obligations that are not reflected on the balance sheet.

2. Variable Interest Entities (VIEs)**A. Unconsolidated VIEs**

Report the gross amounts of assets and liabilities of unconsolidated VIEs in which the firm holds an interest.

B. Maximum exposure to loss relating to unconsolidated VIEs

The maximum exposure to loss assumes all assets in the unconsolidated VIEs are worthless and includes potential losses associated with off-balance sheet commitments such as unfunded liquidity commitments and other contractual arrangements.

Memo item: Investment in unconsolidated VIEs

Report any investment(s) that has been included on the balance sheet for any entity(ies) that is not consolidated in the audited consolidated financial statements and whose assets and liabilities are included on item 2A of this schedule.

C. Maximum exposure to loss relating to consolidated VIEs

Report the maximum exposure to loss in consolidated VIEs including retained interests and other exposures (e.g., derivatives and liquidity commitments).

3. Off-Balance Sheet Financing Transactions

A. Reverse Repos and Repos offset pursuant to ASC 210-20-45-11

Report the gross contract value that was netted pursuant to ASC 210-20-45-11.

Note: Include the gross contract value of Buy/Sell-backs and Sell/Buy-backs that were netted pursuant to ASC 210-20-45-11.

B. Transactions offset pursuant to ASC 210-20-45-1

Report the gross contract value of transactions that have been netted pursuant to ASC 210-20-45-1.

C. Reverse Repos/Repos to maturity pursuant to ASC 860-10-40-5

Report the gross contract value of Reverse Repo or Bonds Borrowed contracts (as a debit) and the gross contract value of Repos or Bonds Loaned contracts (as a credit) that were de-recognized from the balance sheet pursuant to ASC 860-10-40-5.

D. Securities Borrowed vs. Pledge agreements

Report the gross collateral market value of Non-Cash Securities Borrowed and Non-Cash Securities Loans agreements not included on the balance sheet pursuant to ASC 860.

E. Reverse Repo vs. Pledge agreements

Report the gross collateral market value of Non-Cash Reverse Repo and Repurchase agreements not included on the balance sheet pursuant to ASC 860.

F. Forward starting Reverse Repurchase and Securities Borrowing agreements

Report the dollar amount of cash the broker-dealer has agreed to lend on forward starting Reverse Repo and Securities Borrowed transactions.

G. Forward starting Repurchase and Securities Lending agreements

Report the dollar amount of cash the broker-dealer has agreed to borrow on forward starting Repurchase and Securities Lending transactions.

H. **Other**

Report any other Off-Balance Sheet Financing agreements not otherwise included above.

4. **Non-Regular Way Settlement Trades**

A. **When Issued Securities**

Report the gross long and short notional values of securities positions purchased and sold on a "When Issued" basis and not otherwise included on the balance sheet.

B. **Delayed Delivery/Delayed Settlement**

Report the gross long and short notional values of all unsettled trades transacted on a Delayed Delivery/Delayed Settlement basis, not otherwise included on the balance sheet.

C. **To Be Announced (TBA) transactions**

Report the gross long and short notional values of all unsettled TBA transactions in securities issued by Freddie Mac (FHLMC), Fannie Mae (FNMA) and Ginnie Mae (GNMA).

D. **TBA related fails not included on balance sheet**

Report the gross long and short notional values of TBA transactions that have passed their contracted settlement date and are not included as fails on the balance sheet.

E. **Other**

Report the gross long and short notional value of any other Non-Regular Way settlement transactions not otherwise included on the balance sheet or on items 4A through D.

5. **Forwards**

A. **Foreign Exchange**

Report the gross amount stated in \$USD, of all foreign exchange forwards committing the firm to purchase or sell foreign (non-\$USD) currencies for a \$USD exchange, where the predominant risk is foreign exchange risk.

The term "foreign exchange forward" means a transaction that solely involves the exchange of two different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.

Note: For purposes of the OBS, a foreign exchange forward is a contract with a settlement date greater than two business days following the trade date (i.e., > T+2).

B. **Other**

Report the gross purchase and sale of other forward settling transactions, not otherwise included in the balance sheet.

FINRA
FORM
OBS

SUPPLEMENTAL QUARTERLY SCHEDULE TO FOCUS REPORT

DERIVATIVES AND OTHER OFF-BALANCE SHEET ITEMS

(Please read instructions before completing Form)

NAME OF BROKER-DEALER _____ 13 ADDRESS OF PRINCIPAL PLACE OF BUSINESS _____ 20 (No. and Street) _____ 21 _____ 22 _____ 23 (City) (State) (Zip Code)	SEC FILE NO. _____ 14 FIRM ID NO. _____ 15 FOR PERIOD ENDING (MM/DD/YY) _____ 24
NAME OF PERSON COMPLETING THIS REPORT _____ 10001 TELEPHONE NO. OF PERSON COMPLETING THIS REPORT _____ 10002	

Amounts should be reported in millions except for item 1A, which should be reported in thousands.

	Gross Amounts Debit or Long Market Value		Gross Amounts Credit or Short Market Value
1. Commitments			
A. Securities Underwriting	\$ _____	10100	\$ _____
B. Financing commitments not included on items 3F or 3G	\$ _____	10102	\$ _____
C. Guarantees	\$ _____	10104	\$ _____
2. Variable Interest Entities (VIEs)			
A. Unconsolidated VIEs	\$ _____	10106	\$ _____
B. Maximum exposure to loss relating to unconsolidated VIEs	\$ _____	10108	\$ _____
Memo item: Investment in unconsolidated VIEs...\$ _____		10110	
C. Maximum exposure to loss relating to consolidated VIEs	\$ _____	10111	\$ _____
3. Off-Balance Sheet Financing Transactions			
A. Reverse Repos and Repos offset pursuant to ASC 210-20-45-11	\$ _____	10113	\$ _____
B. Transactions offset pursuant to ASC 210-20-45-1	\$ _____	10115	\$ _____
C. Reverse Repos/Repos to maturity pursuant to ASC 860-10-40-5	\$ _____	10117	\$ _____
D. Securities Borrowed vs. Pledge agreements	\$ _____	10119	\$ _____
E. Reverse Repo vs. Pledge agreements	\$ _____	10121	\$ _____
F. Forward starting Reverse Repurchase and Securities Borrowing agreements	\$ _____	10123	\$ _____
G. Forward starting Repurchase and Securities Lending agreements	\$ _____	10125	\$ _____
H. Other	\$ _____	10127	\$ _____
4. Non-Regular Way Settlement Trades			
A. When Issued Securities	\$ _____	10129	\$ _____
B. Delayed Delivery/Delayed Settlement	\$ _____	10131	\$ _____
C. To Be Announced (TBA) transactions	\$ _____	10133	\$ _____
D. TBA related fails not included on balance sheet	\$ _____	10135	\$ _____
E. Other	\$ _____	10137	\$ _____
5. Forwards			
A. Foreign Exchange	\$ _____	10139	\$ _____
B. Other	\$ _____	10141	\$ _____

**SUPPLEMENTAL QUARTERLY SCHEDULE TO FOCUS REPORT
DERIVATIVES AND OTHER OFF-BALANCE SHEET ITEMS**
For the period (MMDDYY) ending _____ **3932**

Derivatives

	Interest Rate Contracts		Foreign Exchange Contracts		Equity Derivative Contracts		Commodity and other Contracts	
6. Total gross notional amount	\$ _____	10143	\$ _____	10144	\$ _____	10145	\$ _____	10146
7. Dollar amount in Item 6 that is centrally cleared	\$ _____	10147	\$ _____	10148	\$ _____	10149	\$ _____	10150
8. Total Mark-to-Market receivable (Debit)	\$ _____	10151	\$ _____	10152	\$ _____	10153	\$ _____	10154
9. Total Mark-to-Market payable (Credit)	\$ _____	10155	\$ _____	10156	\$ _____	10157	\$ _____	10158

Credit Derivatives

	Sold Protection		Purchased Protection	
10. Total gross notional amount	\$ _____	10159	\$ _____	10160
11. Dollar amount in item 10 that is centrally cleared	\$ _____	10161	\$ _____	10162
12. Total Mark-to-Market receivable (Debit)	\$ _____	10163	\$ _____	10164
13. Total Mark-to-Market payable (Credit)	\$ _____	10165	\$ _____	10166
