

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96279; File No. SR-FINRA-2022-025)

November 9, 2022

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

I. Introduction

On August 5, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² 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 proposed rule change was published for comment in the Federal Register on August 18, 2022.³ On September 28, 2022, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission received comment letters on the proposal.⁶ This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 95494 (Aug. 12, 2022), 87 FR 50896 (Aug. 18, 2022) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 95937 (Sept. 28, 2022), 87 FR 60230 (Oct. 4, 2022).

⁶ Comments received on the proposed rule change are available at <https://www.sec.gov/comments/sr-finra-2022-025/srfinra2022025.htm>.

II. Description of the Proposed Rule Change

In its filing, FINRA states that underwriting groups ordinarily form syndicate accounts to process the income and expenses of the syndicate.⁷ The syndicate manager 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.⁸ Syndicate members record the expected payments from the syndicate manager as “receivables” on their books and records but generally syndicate managers do not provide the payments for up to 90 days after the syndicate settlement date.⁹ FINRA Rule 11880(b) 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 “syndicate settlement date.”¹⁰

FINRA is proposing to amend FINRA Rule 11880 (Settlement of Syndicate Accounts) to revise the syndicate account settlement timeframe for corporate debt offerings. Specifically, FINRA is proposing to establish a two-stage syndicate account settlement approach whereby the syndicate manager for corporate debt offerings 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.

⁷ See Notice, 87 FR at 50896.

⁸ See id.

⁹ See id.

¹⁰ See FINRA Rule 11880(a)(4) (defining “syndicate settlement date” as “the date upon which corporate securities of a public offering are delivered by the issuer to or for the account of the syndicate members”).

FINRA states its belief 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.¹¹ FINRA also states 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.¹² In addition, FINRA states 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.¹³

FINRA has stated that it will announce an effective date for the rule change of January 1, 2023 in a Regulatory Notice.¹⁴

III. Discussion and Commission Findings

After careful review of the proposal and the comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁶ which requires, among other things, that the rules of a national securities association be

¹¹ See Notice, 87 FR at 50896-7.

¹² See id. at 50897.

¹³ See id.

¹⁴ See id.

¹⁵ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f); infra Section III.

¹⁶ 15 U.S.C. 78q-3(b)(6).

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.

The Commission believes that the proposed rule change is reasonably designed to reduce a number of risks associated with syndicate debt issuances, including counterparty and liquidity risk. Specifically, it would reduce the exposure of syndicate members to the potential deterioration of the credit of syndicate managers during the pendency of account settlement. Further, a shorter syndicate settlement timeframe would result in lower liquidity risk for certain syndicate members by providing syndicate members with earlier access to capital and improve the syndicate member's liquidity position where their own net capital is limited. Additionally, because the proposed rule change is expected to benefit smaller firms, especially those that are capital-constrained, the Commission believes that the proposed rule change is reasonably designed to have positive effects on competition and thereby to remove impediments to, and perfect the mechanism of a free and open market. Alleviation of liquidity constraints would create opportunities for the syndicate members, especially those that are capital-constrained, to participate in more 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.

At the same time, the Commission believes that the proposed rule change is reasonably designed not to impact negatively the ability of syndicate managers to run the syndicate settlement account process or unduly burden syndicate managers, given the technological advances that have been made since the 90-day syndicate account settlement timeframe was

adopted in 1987, such as electronic order entry and accounting systems.¹⁷ Specifically, FINRA stated that in more than 95% of 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, meaning a large part of syndicate income can be accounted for within days after the date of issuance.¹⁸

Commenters supported approval of the proposed rule change¹⁹ and some commenters encouraged the Commission to act quickly to approve it so that FINRA can meet its proposed January 1, 2023 effective date.

For the reasons noted above, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁰ that the

¹⁷ See Notice, 87 FR at 50900.

¹⁸ See id. at 50898.

¹⁹ See Letter from Michael Decker, Senior Vice President for Public Policy, Bond Dealers of America, to Secretary, Commission, dated September 8, 2022; Letter from Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, Commission, dated September 8, 2022; Letter from Anonymous, dated October 12, 2022.

²⁰ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-FINRA-2022-025) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier

Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).