



September 11, 2023

Submitted electronically to: rule-comments@sec.gov

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-11-23 -- Daily Computation of Customer and Broker-Dealer Reserve Requirements under the Broker-Dealer Customer Protection Rule

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the proposal of the Securities and Exchange Commission (the “Commission” or the “SEC”) to require certain broker-dealers to compute the reserve requirements (the “Customer Reserve Formula”) under Exchange Act Rules 15c3-3 and 15c3-3a (the “Customer Protection Rule”) on a daily basis (the “Proposal”).²

SIFMA strongly supports measures that meaningfully enhance customer protection and reduce the risk of loss to the Securities Investor Protection Corporation (“SIPC”) Fund. For this reason, many of our members carry private insurance to provide customers with protection against loss on top of what is available from SIPC, hold buffers in their reserve accounts well in excess of what is required by the Customer Protection Rule, and promptly sweep or deposit inflows of customer funds into sweep programs or designated Special Reserve Bank Accounts even when not required under the Customer Protection Rule. We therefore applaud the

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’s one million employees, we advocate on 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). For more information, visit <https://www.sifma.org>.

² See 88 Fed. Reg. 45863 (July 18, 2023).

Commission's consideration of whether there are possible amendments to the Customer Protection Rule that would further enhance customer protection.

At the same time, however, it is imperative that the Commission carefully measure the benefits of any such changes and weigh them against the complexities they may create and the costs they impose on firms and their customers. It is not beneficial to customers to make changes that provide minimal protection at high expense. In this regard, there are a number of respects in which the Proposal falls short.

First, the Proposal grossly underestimates the costs of shifting to a daily computation. Many firms currently spend dozens of man-hours per week to perform the reserve account computation on a weekly basis. Shifting to a daily calculation would require firms to train substantially more employees at a time when the pool of available candidates is quite limited. Daily computation would also necessitate costly, time-consuming systems modifications at a time when firms are overhauling systems to address a variety of other regulatory mandates. The Proposal does not acknowledge either of these costs.

Second, the Proposal does not address other measures in the Commission's rules that already limit mismatch risk. Most notably, the Proposal does not consider the interplay of a daily computation requirement with the existing requirement that firms that calculate net capital using the alternative method ("Alternative Method Firms") must reduce their aggregate debits by 3% when performing the reserve account calculation (the "3% Debit Reduction"). The aim and function of the 3% Debit Reduction is to address the same mismatch risk cited in the Proposal. Requiring firms to comply with both requirements accordingly provides minimal benefit and simply ties up liquidity that could be used to allow customers to access U.S. capital markets.

Third, the Proposal's breadth is such that it would require many firms whose activities do not give rise to significant mismatch risk to move to a daily computation, and ignores significant variation in business models that needs to be addressed before a rule is finalized. For example, although many firms have total credits in excess of the proposed \$250 million threshold (the "Threshold"), they also have debits that mostly, if not entirely, offset the credits. The result in such circumstances is a minimal (if any) net credit position and thus minimal mismatch risk.

Fourth, the Proposal does not address existing voluntary steps by firms that limit the possibility of customer or SIPC Fund losses. In particular, the Proposal does not consider that many firms promptly transfer customer inflows into Special Reserve Bank Accounts and Sweep Programs in accordance with Exchange Act Rule 15c3-3(j)(2)(ii). This practice is just as effective (arguably more so) at ensuring those funds are available in a broker-dealer liquidation than a complex computational requirement.

Fifth, the Proposal fails to recognize the significant complexities and ambiguities that arise from a daily calculation. These include how to address exigent circumstances, partial or full financial market or bank closures, and the difficulty of obtaining and reconciling all relevant data in a timely and cost-effective basis each day.

Any final rule must take due account of these considerations. In addition, the Commission should further consider alternative compliance mechanisms, particularly for firms

whose business models do not principally involve carrying positions for customers. Lastly, any final rule should have an implementation timeline that is reasonable in light of the operational efforts that will be required for many firms to move to a daily computation, especially since other potentially competing Commission regulatory mandates will require the devotion of shared firm resources.

EXECUTIVE SUMMARY

In order to ensure that the benefits of any final rule clearly and demonstrably outweigh the costs and to provide clarity, the Commission should:

- **Eliminate the 3% Debit Reduction Requirement:** Since daily calculations largely eliminate the mismatch risk that the 3% Debit Reduction is designed to mitigate, the Commission should eliminate the 3% Debit Reduction for firms that perform daily reserve account calculations, such that these firms are instead subject to the requirement to reduce their Item 10 debit balance items by 1% (the “1% Debit Reduction”).
- **Incorporate a Net Credit Position Into the Threshold:** The Commission should adjust the Threshold so that it only applies if a firm *both* (A) has average credits of at least \$250 million over a twelve month period *and* (B) has average excess credits over debits of at least \$10 million or more over a 52 week period (excluding the Debit Reduction).
- **Codify and Simplify Guidance Permitting Firms to Take Account of Funds they Promptly Sweep or Deposit:** The Commission should codify and simplify previous guidance making clear that firms need not deposit or maintain in Special Reserve Bank Accounts customer inflows that firms sweep or deposit into Sweep Programs or Special Reserve Bank Accounts on a same or next day basis.
- **Permit Firms to Calculate Certain Low Volatility Inputs Less Frequently than Daily:** The Commission should confirm that firms may compute certain low volatility in low value inputs in the reserve account computation on a less-than-daily basis, such that firms are not required to spend significant resources to achieve daily computations that will provide de minimis benefits to customers.
- **Permit Use of Prior Day’s Calculation for Early Closures and Exigencies:** The Commission should make clear that firms can notify their designated examining authority (“DEA”) if they cannot perform their computation due to an exigent circumstance and that business days for purposes of the reserve account computation do not include days on which an early closure occurs or banks or exchanges are closed for business. If firms cannot make a computation on a particular day for such a reason, they should be permitted to use the prior day’s computation. In addition, given that different banks open for business at different times in different places, the Commission should

make clear that reserve deposits are due by 10:00 A.M. in the place of the firm's main address.

- **Adopt an Optional Alternative to the Daily Calculation for Firms that are Not Principally Carrying Firms:** The Commission should allow firms whose principal business is entering into delivery-versus-payment or receive-versus-payment (“DVP/RVP”) transactions with customers to comply with an alternative compliance mechanism under which a firm would calculate its free credit balances on a daily basis, and sweep into a Sweep Program or deposit into Special Reserve Bank Accounts an amount at least equal to any increase in such free credit balances over those in their most recent weekly customer reserve requirement calculation.
- **Set Forth a Reasonable Implementation Timeline:** In light of the complicated adjustments that must be made to firm operations to implement daily calculations and the strains on operational resources arising from the many other regulatory mandates that are underway, the Commission should commence counting the 12-month average for the Threshold one year after the adoption of any final rule. A lead time of one year is necessary to allow firms to implement daily computation in a safe and responsible manner, and to allow firms to adjust their operations if they do not wish to fall within scope of any final rule.

DISCUSSION

I. The Costs of Conducting Daily Computations Are Greater than the Proposal Estimates

In considering whether to adopt a final rule as well as the scope and contours of that rule, the Commission must take due account of the costs the rule will impose. In this regard, the Proposal seriously miscalculates the costs of shifting to daily computation.

The Proposal estimates that firms spend an average of 2.5 hours on the weekly customer and PAB reserve computations. This figure grossly (and worryingly) underestimates the actual burden associated with fulfilling current requirements. Numerous personnel from various departments and groups, including regulatory reporting teams, treasury teams, operations teams, fixed income finance desks, cash management teams, various middle office teams, and business teams, are needed to complete the reserve account calculations. These personnel must often obtain from internal sources or third parties thousands of credit and debit items and then reconcile these items with other firm data. Furthermore, firms must have internal controls over their reserve account computations in accordance with Exchange Act Rule 17a-5. These controls include checks, approval processes, data analytics, and data valuations to ensure accurate computations. In light of these processes, our members have advised that a more realistic estimate of the time it takes to complete the reserve account computation runs into the dozens of hours, depending on the complexity of the firm's business, with some firms spending 60 to 75 man-hours per week on the computation. Moving to daily computation would mean a burden of over 400 man-hours a week for some firms.

Firms required to conduct daily computations under any final rule will likely have to hire or train substantially more employees given this labor- and skill-intensive process. This will take time, especially since the pool of qualified candidates to conduct the computations is limited—and if the Proposal is adopted, there will be fierce competition among implicated firms hiring from the same pool. While some of these concerns can be mitigated by automation, this will require firms to overhaul their existing systems and processes and potentially purchase new ones, which itself will be costly and labor-intensive. One member that currently computes its computations on a daily basis advised that it required over 25,000 man-hours and a year-and-a-half to complete the technology and systems changes necessary to make the shift. Current weekly firms estimate requiring anywhere from 12,000 to over 25,000 man-hours for such changes, at conservative cost estimates of \$2-3 million, depending on the complexity of their operations.

II. For Alternative Method Firms that Perform the Daily Computation, the Commission Should Eliminate the 3% Debit Reduction in Favor of the 1% Debit Reduction

The Customer Reserve Formula requires firms to reduce one of the largest debit items in the formula—Item 10 Debits—by 1% when performing their computation (the “1% Debit Reduction”). This effectively requires firms to include a cushion in their Special Reserve Bank Accounts equal to 1% of their Item 10 Debits.³ As Item 10 Debits are usually the largest debit items in the Customer Reserve Formula, this cushion can be quite large.

Firms that use the alternative standard when calculating their net capital requirement under Exchange Act Rule 15c3-1 (Alternative Method Firms) must reduce *all* debit items—not just Item 10 Debits—and do so by 3% rather than 1% (the 3% Debit Reduction).⁴ The Commission originally introduced this requirement to “provide, in the event of a liquidation, an additional cushion of secured debit items which would be available to satisfy customers with whom the broker or dealer effects transactions.”⁵ More specifically, the Commission has explained:

The alternative method is founded on the concept that if the debit items in the Reserve Formula can be liquidated at or near their contract values, these assets, along with any cash required to be on deposit under the net capital rule, will be sufficient to satisfy all customer-related liabilities (which are represented as credit items in the Reserve Formula). As an additional safeguard, election of the alternative method requires a firm to reduce by 3% its aggregate

³ 17 C.F.R. § 240.15c3-3a, Note E(3).

⁴ 17 C.F.R. § 240.15c3-1(a)(1)(ii)(A).

⁵ See 40 Fed. Reg. 29795, 29798 (July 16, 1975).

debit items to provide, in essence, a bad debt reserve of firm capital to assure adequate resources to pay customer claims.⁶

However, if a firm conducts its reserve account computation on a daily basis, the need for such a cushion should be much smaller. Under a daily computation, the value of debit items and the amounts owing to customers on any given day are accounted for in the next day's computation and the difference is protected via the following day's deposit into the Special Reserve Bank Accounts. The amount of assets in the Special Reserve Bank Accounts would therefore more quickly reflect the amounts owing to customers on any given day and the value of debit items, thereby reducing the need for any cushion to account for a potential mismatch. As the Proposal obviates the need for the 3% Debit Reduction for Alternative Method Firms doing a daily reserve account computation, the Commission should eliminate it for these firms, such that they would be subject to the default 1% Debit Reduction.

Eliminating the 3% Debit Reduction and instead applying the 1% Debit Reduction would increase firms' liquidity by allowing them to use the assets that would otherwise have to be needlessly locked up. These amounts are significant—one member firm estimates that eliminating the 3% Debit Reduction in favor of the 1% Debit Reduction would free up \$3 billion in liquidity. Firms could use the added liquidity to provide customers with more financing at a lower cost. The elimination of the 3% Debit Reduction would thereby benefit customers as well as firms. Firms would use this liquidity benefit to fund the expense associated with moving to daily computation, potentially allowing firms to make the transition more efficiently and at a lower relative cost.

III. The Commission Should Only Require Firms to Perform Daily Computations if They Have Average Net Credits of \$10 Million or More, in Addition to \$250 Million in Average Total Credits

Given the sizable costs of shifting to a daily computation, the Commission should only impose such a requirement on firms for which there could be material mismatch risk. We note in this regard that some firms that meet the \$250 million Threshold proposed by the Commission do not present any such risk. Simply because a firm has large *total* credits does not mean it accumulates a large *excess* of credits over debits. A number of firms rarely if ever have such excesses due to the nature of their activities. And to the extent they do have excess credits, that excess is often due to items that do not present significant mismatch risk, such as dividends that a firm has yet to receive, or because of the Debit Reduction. For such firms, the customer protection benefit of a daily computation is quite minimal, and should be weighed against the significant costs described above, which are not commensurate with the risk profiles they present.

To avoid subjecting these firms to such costs without corresponding benefits, the Commission should only require a firm to perform a daily computation if, in addition to the \$250 million Threshold, the firm has average excess credits over debits of \$10 million or more over a 52 week period (excluding the applicable Debit Reduction). The relatively low \$10 million

⁶ 47 Fed. Reg. 3512, 3513 (Jan. 25, 1982).

figure would capture those firms for which there could possibly be material mismatch risk, but exclude those firms for which such risk is not a realistic possibility.

IV. The Commission Should Codify and Simplify Guidance That Allows Firms to Exclude From the Reserve Account Requirement Funds that the Firm has Swept or Deposited Promptly Upon Receipt

Another group of firms for which the daily requirement would not provide significant benefit, and would impose substantial unintended costs, are those that regularly deposit inflows of customer funds into Special Reserve Bank Accounts or sweep them into a Sweep Program in accordance with Exchange Act Rule 15c3-3(j)(2)(ii). For these firms, a daily computation could result in firms needing to segregate large portions of funds that are already protected by virtue of the sweep/deposit. For example, if a firm receives \$100 million shortly before market close on Monday, that \$100 million will be incorporated into the reserve account computation for Monday. Even if the firm sweeps the funds into a Sweep Program first thing Tuesday morning as part of its normal operations, it would still need to deposit \$100 million into its Special Reserve Bank Account on Wednesday morning, since the relevant calculation would be as of close of business on Monday. This would effectively require the firm to use its own \$100 million, thereby tying up liquidity for no corresponding benefit. Although this issue exists under the currently weekly computation regime, daily computation would create greater uncertainty, as the amount tied up would vary each day.

Prior Commission Staff guidance has recognized this issue and permitted firms to withdraw from the Special Reserve Bank Account or not to deposit into the Special Reserve Bank Account funds that are promptly swept into separate Special Reserve Bank Accounts or are otherwise used to meet customer instructions.⁷ However, this guidance has imposed a number of unduly restrictive conditions, *e.g.*, requiring that the funds received per transaction or with respect to a particular customer equal at least 25% of total credit items of the most recent reserve requirement computation. These restrictions are unnecessary to achieve the customer protection benefits associated with prompt sweeps and deposits. Put simply, if funds received by or for customers are swept on a same or next day basis into a Sweep Program or into a Special Reserve Bank Account, they are protected against loss and there is no reason for including such sums in the reserve computation. Accordingly, the Commission should codify the Staff's prior guidance and simplify it to allow all firms to exclude from the reserve account computation any funds that the firm, on a same day or next day basis, deposits into a Special Reserve Bank Account or sweeps pursuant to a Sweep Program in accordance with Exchange Act Rule 15c3-3(j)(ii).

⁷ See, *e.g.*, FINRA Rule 15c3-3(g)/05 (not requiring firms to perform a computation to make a withdrawal from the Special Reserve Bank Account to fulfill certain customer transactions where such transaction represents 25% or more of total credits in the most recent reserve account computation, and where the customer funds received are deposited into a separate reserve account); The Ohio Company, SEC Staff No-Action Letter (March 21, 1985) (allowing a firm to make a withdrawal from the Special Reserve Bank Account without performing a computation in order to obtain sufficient cash to effect the purchase of money market shares for customers, and deposits such funds into a separate reserve account to purchase the money market shares).

V. The Commission Should Permit Firms to Calculate Certain Low Volatility Inputs Less Frequently than Daily

There are some elements of the reserve account computation that are very challenging, time-consuming, and costly to calculate on a daily basis and are unlikely to differ materially from day to day. For example, many firms rarely see significant fluctuations in Item 6 of the Customer Reserve Formula (market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days), as this reflects relatively small, stable amounts owed to customers. Despite its low value and low volatility, this Item is operationally very complex and time-consuming to calculate. Item 8 (market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days) and Item 9 (market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days) similarly are difficult to calculate because they are represented by individual line items in customer accounts that must be separated from other activity in the account, yet do not see much fluctuation from day to day. In addition, commonly used third-party service bureaus do not always upload certain data needed for the computation on a daily basis.

Given this dynamic, many firms that currently perform daily computation calculate certain inputs less frequently than daily. These firms determine which inputs are appropriate for this treatment based on their historic volatility and their relative size and impact on the computation. Only inputs that present limited volatility and are relatively small in size are subject to this treatment. The Commission should confirm in any final rule that firms may continue to follow this approach, so that they are not required to spend significant resources to achieve daily computations that will provide de minimis benefits to customers.

VI. The Commission Should Allow Firms to Notify Their DEA if They Will Not be Able to Perform the Computation on a Specific Day Due to Exigent Circumstances

Firms occasionally face unexpected circumstances that could make it difficult or impossible to perform their reserve account computation (or some component thereof) on a specific day, or to make the required deposit into the Special Reserve Bank Account. For example, an unexpected market close (which could result from a systems outage or a natural disaster) could temporarily prevent personnel from accessing systems necessary to make the computation; a bank may be unable to accept deposits due to a systems outage; or the failure of a third-party system may make it impossible for a firm to access data necessary to calculate some element of the computation. This is no mere hypothetical—on August 21, 2023, a large financial market utility had a significant processing issue that affected the ability of firms across the entire industry to accurately calculate their end-of-day balances. The problems such events cause often cannot be resolved in a single day. As these events are outside of their control, firms should not be penalized for being unable to perform the computation or make a required deposit on a particular day because of them.

Any final rule should permit a firm to notify its DEA that the firm will not be able to perform the reserve account computation (or some component thereof) or to make a required deposit on a specific day because of an exigent circumstance. A firm should be given 24 hours

after learning that the exigent circumstance prevents it from performing the reserve account computation or making the deposit to give such notice. This would be accompanied with an explanation of the circumstance and why it prevents the firm from performing the computation or making the deposit. In the event a firm is unable to perform the computation, the firm should be permitted to use the prior day's figures for the computation (or the relevant portion thereof). The Commission could require such firms to subsequently notify their DEA of steps taken to remediate any deficiencies specific to the firm that led to the inability to perform a daily computation or make the deposit.

VII. The Commission Should Not Require Computation on Certain Days on Which Markets are Closed or Close Early

The Proposal would require firms to perform the reserve account computation daily as of the close of the previous business day. However, there are some business days for which it is not practical to perform the computation (or components of the computation). In particular, exchanges and financial market utilities often close early on the business day before a major holiday. This makes it difficult to receive on a timely basis certain information needed to conduct the reserve account computation, as exchanges and financial market utilities may not be updating the systems and data needed to conduct the computation. SIFMA believes that the Commission should not treat such days as business days for purposes of the reserve account computation. These days include New Year's Eve, the Friday before Memorial Day, the Wednesday before Thanksgiving, the Friday after Thanksgiving, and Christmas Eve, and should include any other day on which exchanges or financial market utilities close early. In addition, in the event a non-U.S. market is closed, firms should be able to look to the prior business day's figures in relation to items in the computation that such market implicates.

There may also be days in which either exchanges or banks, but not both, are open, or where one or both of exchanges or banks close early. The Commission staff has previously recognized that firms should not be required to make deposits and certain transfers in connection with the Special Reserve Bank Account on such days, as firms may be unable to actually process or make such deposits or transfers.⁸ Because making transfers and deposits may be difficult or impossible on these days, and because obtaining necessary and timely information may be difficult when so many market participants are closed, the Commission should not treat such days as business days for purposes of the reserve account computation. These days include the days listed above, and should also include Veterans Day and Columbus Day (on which exchanges are generally open, but banks are not) and Good Friday (on which exchanges are

⁸ See FINRA Rule 15c3-3(e)(3)/021 (Commission Staff granting relief allowing deposits to be made into the reserve account on Wednesday instead of Tuesday when "securities exchanges are open on the preceding Monday but it is considered a bank holiday"); FINRA Reserve Formula (Exhibit A – Item 11)/030 (Commission Staff granting relief allowing broker-dealers to "return borrowed securities on Tuesday in lieu of Monday if it is unable to process the return because securities exchanges are open on Monday but it is also a domestic or foreign bank holiday" when "determining the includable debit items in the reserve formula related to securities borrowed which allocate versus physical control locations.").

generally closed, but banks are not),⁹ as well as any other day on which either banks or exchanges are closed or close early.

VIII. The Commission Should Adopt an Optional Alternative to the Daily Calculation for Firms that are Not Principally Carrying Firms

In the Proposal, the Commission requested comment on whether there are other reasonable alternatives to the daily computation that the Commission should consider. In light of the very significant costs that a daily computation would have for broker-dealers and their customers, and the significant differences in business models between firms that would be in scope for the Proposal based solely on a total credits threshold, we appreciate the Commission's willingness to consider potential alternatives and believe it is critically important to do so. In particular, we believe that providing an alternative to daily computation is appropriate for firms whose business model principally involves entering into DVP/RVP transactions with customers. Although these firms may engage in limited carrying activity (*e.g.*, for affiliates), inflows of customer cash and credits to customer accounts for interest and dividends represent the vast bulk of any net equity that would be owed to customers in the event the firm were to be subject to a liquidation. These inflows consist of the main items identified by the Commission in the Proposal, namely cash proceeds from sales of securities, cash deposited by customers to purchase securities, and dividends received in respect of customer positions, and they constitute "free credit balances" within the meaning of Exchange Act Rule 15c3-3(a)(8).

For these firms, a more cost-efficient (and more effective) way of preventing a deficit in customer property upon a liquidation (and thus of preventing any loss to customers or the SIPC Fund) would be for the firm to calculate daily its free credit balances as of the prior business day, identify whether such balances are greater than the free credit balances reflected in its most recent reserve requirement calculation, and, on a same day basis, either (i) sweep any such excess into a Sweep Program in accordance with Exchange Act Rule 15c3-3(j)(2) or (ii) deposit such excess into their Special Reserve Bank Accounts.¹⁰ These sweeps/deposits would ensure that all cash due to customers is segregated promptly on a daily basis and is available in the case of a liquidation, regardless of whether there are any debits in the formula. In addition, these firms would be required to continue performing weekly reserve requirement computations, which would ensure that the Special Reserve Bank Account balances reflect any other credit items in the formula.

The foregoing alternative approach would protect customers and the SIPC Fund to substantially the same extent as daily reserve requirement computations. Indeed, given that the full increase in free credit balances will be swept or deposited daily without regard to any debit items, such an approach may be even more protective of customers and the SIPC Fund, as it

⁹ See New York Stock Exchange, *Holidays & Trading Hours*, <https://www.nyse.com/markets/hours-calendars>; Board of Governors of the Federal Reserve System, *Holidays Observed – K.8* (last updated Dec. 30, 2022), <https://www.federalreserve.gov/aboutthefed/k8.htm>.

¹⁰ Should such computation result in lower free credit balances than those computed in the most recent weekly computation, withdrawal would not be permitted until the next weekly computation.

would ensure that all amounts owed to customers are segregated on a next day basis. And it would provide this protection at a far lower cost and with far fewer complications and opportunities for confusion, error, or delay as compared to a daily computation. Accordingly, we ask the Commission to consider this approach as an alternative and would be pleased to provide supplemental information that might be useful to support the Commission’s consideration.

IX. The Commission Should Specify That Deposits Must be Made by 10:00 AM at the Firm’s Main Address on the Second Following Business Day

The Proposal would require that any deposits into the Special Reserve Bank Account or the PAB reserve account be made “no later than one hour after the opening of banking business on the second following business day.” This creates ambiguity in that the language does not address the fact that banks open at different times. It is unclear from the Proposal whether “the opening of banking business” would be when the bank the firm maintains its reserve account has opened, or when banks as a whole have opened.

To avoid these ambiguities, the Commission should simply require deposits to be made by, or at any time before, 10:00 AM in the place of the firm’s main address on the second following business day.¹¹ This would ensure firms have clarity as to their deposit timing requirement, make it clear they may make the required deposit before the deadline, and avoid any uncertainty based on time zones or the opening times of banks or firms.

X. The Commission Should Not Make Any Changes to the Reserve Account Computation Requirements for Security-Based Swap Dealers

The Proposal would not modify the security-based swap customer reserve computation and deposit requirements. The Commission requested comment on this aspect of the Proposal, and we agree that it is unnecessary to make any such modifications. As the Proposal notes, almost all carrying broker-dealers that have security-based swap credits already take these credits into account in their customer reserve computation under the Customer Protection Rule, and standalone security-based swap dealers generally operate pursuant to an exemption from the reserve computation and deposit requirements under Exchange Act Rule 18a-4(f). As such, requiring daily computation for customer security-based swap activity would have virtually no benefit. We also note that the Commission previously proposed a daily computation requirement for security-based swap customers,¹² but ultimately rejected this approach in response to SIFMA’s comment letter noting the operational intensity of daily computation;¹³ we reiterate this

¹¹ We note that the Commission has previously provided relief stating that firms may use a Special Reserve Bank Account outside of its home office time zone, and that any required deposit must be made no later than 10:00 A.M. local time. See FINRA Rule 15c3-3(e)(1)/062.

¹² See 77 Fed. Reg. 70214, 70286 (Nov. 23, 2012).

¹³ See 84 Fed. Reg. 43872, 43940 (Aug. 22, 2019); SIFMA, Comment Letter on Capital, Margin and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers 50 (Feb. 22, 2013), <https://www.sifma.org/wp-content/uploads/2017/05/sifma-submits-comments-to-the-sec-on-capital-margin-and-segregation-requirements-for-sbs-dealers-and-msbs-participants-and-capital-requirements-for-bds.pdf>.

comment and believe there is no need for the Commission to revisit this carefully considered conclusion.

XI. The Rolling 12-Month Average of FOCUS Reports Should Start One Year After Publication of the Final Rule

As detailed in Part I above, the transition to daily computation would impose significant costs on firms. It will take a great deal of time to train or hire new staff to conduct the computation, as well as complete the extensive systems and operations changes. Moreover, third-party data providers, such as service bureaus, would need to transition to be able to provide firms with more frequent information than is currently the case. In addition, firms are currently implementing the T+1 initiative, which is a major strain on operational resources, as is the implementation of changes to margin requirements under FINRA Rule 4210, both of which are anticipated to be implemented in mid-2024. There is also the ongoing effort to implement Consolidated Audit Trail requirements, specifically the CAT Customer & Account Information System (CAIS) reporting anticipated to require significant implementation work in early-mid 2024.¹⁴ All these initiatives call on the same personnel, technology, and monetary resources to implement them properly.

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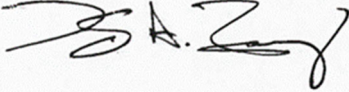
¹⁴ See FINRA Rule 6800 Series.

Given these costs and operational constraints, the Commission should ensure any implementation period allows firms sufficient time to prepare for daily computation. The Commission should start running the 12-month average for the Threshold one year after the publication of any final rule. By starting these averages after publication of the final rule, firms that do not anticipate they can meet the daily computation requirement, or determine that the costs of doing so are too great, will have sufficient time to realign their operations should they project a daily computation requirement.

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SIFMA greatly appreciates the opportunity to submit this comment letter on the Proposal. If you have any questions or require additional information, please do not hesitate to contact the undersigned.

Sincerely,



Kevin A. Zambrowicz
Deputy General Counsel (Institutional) & Managing Director
SIFMA

Cc: The Hon. Gary Gensler, Chair
The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
The Hon. Mark T. Uyeda, Commissioner
The Hon. Jaime Lizárraga, Commissioner

James R. Burns
Brandon M. Hammer
Brant K. Brown
Rishi Kumar
Cleary Gottlieb Steen & Hamilton