



November 21, 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. S7-08-23 -- Electronic Submission of Certain Materials Under the Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to provide supplemental comments to our prior comment letter² on the above-referenced proposal (the “Proposal”) by the Securities and Exchange Commission (the “SEC”).³ The comments in this supplemental letter address question number 81 in the Proposal, updating our associated recommendations and mark up of specific pages of the FOCUS Report, but do not otherwise amend any other comments made in our prior letter.

SIFMA reiterates our recommendation that the SEC align the FOCUS Report requirements with existing capital requirements, including by removing defunct references. As noted in our prior letter, currently, Rule 15c3-1 under the Securities Exchange Act of 1934 (“Exchange Act”) requires a broker-dealer that is also a futures commission merchant (a “BD-FCM”) to maintain net capital equal to the greater of what Exchange Act Rule 15c3-1 requires and 4% of the funds the Commodity Futures Trading Commission (the “CFTC”) requires the BD-FCM to segregate. However, this is an outdated, irrelevant requirement, as the CFTC has not

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 SIFMA, Comment Letter on the Proposal (May 22, 2023), <https://www.sec.gov/comments/s7-08-23/s70823-192619-383182.pdf>.

³ See 88 Fed. Reg. 23920 (Apr. 18, 2023), <https://www.federalregister.gov/documents/2023/04/18/2023-06330/electronic-submission-of-certain-materials-under-the-securities-exchange-act-of-1934-amendments>.

imposed the 4% requirement for nearly two decades. The Proposal would exacerbate the confusion arising from the defunct reference by incorporating it into the FOCUS Report.

Following discussions with SEC staff, SIFMA is updating its recommendation to the SEC that it should amend Exchange Act Rules 15c3-1 and 15c3-1d to remove references to the CFTC's segregated ratio requirement, which is also no longer in effect. Removing references to rules no longer in effect would eliminate the confusion noted above. SIFMA also recommends updating the FOCUS Report to reflect the removal of the references, which is included in the Appendix to this letter.

One practical consequence of this approach to modernizing Exchange Act Rules 15c3-1 and 15c3-1d is that the impacted firms will be reporting both the SEC and CFTC minimum required capital amounts and associated excess capital amounts in the FOCUS Report. To avoid confusion in public reporting, SIFMA asks that the SEC confirm that the impacted firms should clearly indicate the higher of the two minimum capital requirements, and therefore the lower of the two excess capital amounts, in their audited annual financial reports, along with an explanation that they are subject to both regimes as dual registrants.

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

Sincerely,



Kyle L Brandon
Managing Director, Head of Derivatives Policy

Appendix – FOCUS Report updated to reflect recommendations.

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

APPENDIX: FOCUS Report updated to reflect recommendations

FOCUS Report Part II	COMPUTATION OF MINIMUM REGULATORY CAPITAL REQUIREMENTS	
	Items on this page to be reported by a:	Stand-Alone Broker-Dealer Broker-Dealer SBSD (other than OTC Derivatives Dealer) Broker-Dealer MSBSP

Calculations of Excess Tentative Net Capital (If Applicable)

1. Tentative net capital	\$ <u>3640</u>
2. Minimum tentative net capital requirement	\$ <u>12055</u>
3. Excess tentative net capital (difference between Lines 1 and 2)	\$ <u>12056</u>
4. Tentative net capital in excess of 120% on minimum tentative net capital requirement reported on Line 2	\$ <u>12057</u>

Calculation of Minimum Net Capital Requirement

5. Ratio minimum net capital requirement	
A. 6 ² / ₃ % of total aggregate indebtedness (Line Item 3840)	\$ <u>3756</u>
B. 2% of aggregate debt items as shown in the Formula for Reserve Requirements pursuant to Rule 15c3-3	\$ <u>3870</u>
C. Percentage of risk margin amount computed under 17 CFR 240.15c3-1(a)(7)(i) or (a)(10), if applicable	\$ <u>12058</u>
D. Minimum ratio net capital requirement (Greater of Line 5A or Line 5B, as applicable, plus Line 5C)	\$ <u>12060</u>
6. Fixed-dollar minimum net capital requirement	\$ <u>3880</u>
7. For broker-dealers engaged in reverse repurchase agreements, 10% of the amounts in 17 CFR 240.15c3-1(a)(9)(i)-(iii)	\$ <u>12059</u>
8. Minimum net capital requirement (Line 7 plus greater of Line 5D or Line 6)	\$ <u>3760</u>
9. Excess net capital (Item 3750 minus Item 3760)	\$ <u>3910</u>
10. Net capital and tentative net capital in relation to early warning thresholds	
A. Net capital in excess of 120% of minimum net capital requirement reported of Line 8	\$ <u>12061</u>
B. Net capital in excess of 5% of combined aggregate debit items as shown in the Formula for Reserve Requirements pursuant to Rule 15c3-3	\$ <u>3920</u>