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FINRA Seeks Comment on Margining of Extended Settlement Transactions.

FINRA [requested comment](#) on proposed amendments intended to clarify the application of the FINRA Rule 4210 (“Margin Requirements”) to “when issued” and other extended settlement transactions.

Among other things, the proposed amendments would:

- provide a definition for “extended settlement transaction” (generally T+2);
- subject to significant exceptions, require all extended settlement transactions and net positions resulting from extended settlement transactions to be margined as if they were in a margin account;
- exempt from the margining requirements (i) covered agency transactions, (ii) certain when-issued security transactions, (iii) certain refunding transactions and (iv) settlements extended as a result of the mechanics of a transaction with a bona fide delivery vs. payment (“DVP”) customer;
- clarify that the scope of the public offering exception for when-issued transactions is limited to equity IPOs;
- provide new exceptions for when-issued transactions in U.S. Treasury (14 calendar days) and municipal securities (42 calendar days); and
- codify interpretations as to concentration and other limits on a firm taking capital charges taken in lieu of collecting margin.

Comments on the proposed amendments must be submitted by May 14, 2021.

Commentary

There is currently a fairly wide divergence as to the understanding of the regulations applicable to extended settlement transactions, not only as between member firms and FINRA, but even as between the member firms. This long-awaited FINRA proposal (which, if adopted, would be the most extensive amendments to Rule 4210 in over a decade) is a positive step forward in that it provides a means for a public discussion as to the appropriate requirements.

Although the issue has been a notable topic for years among market participants and FINRA, all broker-dealers should closely review their practices in this area. Among other things, firms should consider their settlement processes as to new issues, both public and private, so as to determine whether these practices would conform to the FINRA proposal, and whether they should put in a comment.

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