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 Web site 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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–Phlx—2011–143 and should be submitted on or before December 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.20
Kevin M. O’Neill,
Deputy Secretary.
[FR Doc. 2011–29300 Filed 11–10–11; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 4524 (Supplemental FOCUS Information) and Proposed Supplementary Schedule to the Statement of Income (Loss) Page of FOCUS Reports

November 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)1 and Rule 19b–4 thereunder,2 statutory authority for the Commission to promulgate rules that affect member firms in its supervisory role as the federal securities regulator.3 FINRA is proposing to adopt FINRA Rule 4524 (Supplemental FOCUS Information), which requires each member, as FINRA shall designate, to file such additional financial or operational schedules or reports as FINRA may deem necessary as a supplement to the FOCUS report. The content of such supplemental schedules or reports would be specified in a Regulatory Notice (or similar communication), which FINRA would file with the SEC pursuant to proposed FINRA Rule 4524. As part of the proposed rule change, FINRA is filing one such proposed schedule, a supplement to the Statement of Income (Loss) page of the FOCUS Report.

The text of the proposed rule change is available on FINRA’s Web site at http://www.finra.org, at the principal office of FINRA and at the Commission’s Public Reference Room.

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

Pursuant to SEA Rule 17a–5, members are required to file with FINRA reports concerning their financial and operational status using SEC Form X–17A–5, Financial and Operational Combined Uniform Single (FOCUS) Report.4 SEA Rule 17a–5 generally requires members that clear transactions under Appendix E to SEA Rule 15c3–1 to calculate net capital file a FOCUS Report Part II CSE 5 that is similar to the FOCUS Report Part II (collectively, the FOCUS Reports). Part II, Part IIA, and Part II CSE are referred to hereinafter as “FOCUS Reports”).

FINRA is proposing to adopt FINRA Rule 4524, a rule that would provide the mechanism by which FINRA can obtain from members more detailed financial information to augment the FOCUS reports required to be filed pursuant to SEA Rule 17a–5. Proposed FINRA Rule 4524 would require members to file such additional financial or operational schedules or reports to supplement FOCUS reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest.5 Thus, the rule would provide FINRA the framework to request more specific information regarding, among other things, the assets and liabilities of a member, the generation of revenues and allocation of expenses by business segment or product lines, the sources of trading gains and losses, the types and amounts of fees earned, and the nature and extent of participation in securities offerings. Depending on the nature of the proposed supplemental schedule or report, FINRA may require that all members or any specified subset of members submit the schedule or report to FINRA.

FOCUS Reports provide FINRA with valuable information regarding a member’s business; however, FINRA believes that it can better discharge its regulatory obligations with the benefit of additional information that gives FINRA a more complete and detailed view of a member’s business operations. Accordingly, proposed FINRA Rule 4524 would provide FINRA a means and process to obtain greater transparency into a member’s business activities and to better illuminate industry trends, allowing for more focused and effective examinations.

FINRA would effectuate proposed FINRA Rule 4524 by way of a Regulatory Notice or similar communication, the content of which would be filed with the Commission. To that end, as an initial report required pursuant to proposed FINRA Rule 4524, FINRA is also proposing a Supplemental Statement of Income (“SSOI”) to magnify the data from the Statement of Income (Loss) page of the FOCUS Reports.6

The proposed SSOI is intended to capture more granular detail of a firm’s revenue and expense information. The lack of more specific revenue and expense categories for certain business

3 17 CFR 240.17a–5.
4 A broker-dealer that calculates its net capital under Appendix E of SEA Rule 15c3–1 is referred to as an Alternative Net Capital (“ANC”) firm.
5 Nothing in proposed FINRA Rule 4524 should be construed as altering in any manner a member’s obligations under SEA Rule 17a–5(a)(2)(iv).
6 See Exhibit 3.
activities on the Statement of Income (Loss) page of the FOCUS Reports has led many firms to report much of their revenue and expenses as “other” (miscellaneous), a very general categorization that provides FINRA limited visibility into revenue and expense trends. The proposed SSOI is divided into sections containing line items that seek additional detail to permit FINRA to better understand revenue sources and expense composition on an ongoing basis. This additional detail would allow FINRA to better assess risk at a firm, and as a result, better allocate examination resources. Each member would be required to file with FINRA the proposed SSOI within 17 business days of the end of each calendar quarter.

The proposed SSOI contains a de minimis exception for providing details of revenue and expenses for certain designated sections. If a member’s total dollar amount for a designated section is $5,000 or less for the reporting period, the member would only be required to enter the total dollar amount to complete the section. Additionally, not every line item would apply to every member, especially those with limited product offerings, thus limiting the burden of completing the form.

The proposed SSOI includes a new Operational Page that would collect additional information from certain members with respect to participation in unregistered offerings during the reporting period. Members whose revenue from unregistered offerings exceeds 10% of total revenue for the reporting period would be required to complete the Operational Page by providing specific information about each unregistered offering. FINRA believes that such information would provide it with greater transparency and a stronger understanding regarding the types of unregistered offerings that generate significant revenue for members.

The proposed rule change will be effective upon Commission approval. FINRA will announce the implementation dates of both proposed FINRA Rule 4524 and the proposed schedule (i.e., the proposed SSOI) in a Regulatory Notice to be published no later than 60 days following Commission approval of the proposed rule change. The implementation date of the proposed schedule will be no sooner than 180 days, and no later than 365 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, 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 supplemental FOCUS information will further strengthen FINRA’s ability to protect investors through a more informed understanding of the drivers of members’ business that can be used for more targeted examinations.

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.

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

The proposed rule change and the proposed SSOI were published for comment in Regulatory Notice 10–33 (July 2010) (the “Notice”). FINRA received 28 comment letters in response to the Notice.8 A copy of the Notice is attached as Exhibit 2a.8 A list of the comment letters received in response to the Notice is attached as Exhibit 2b.8 Copies of the comment letters received in response to the Notice are attached as Exhibit 2c.15 Below is a summary of the comments and FINRA’s responses.

A. Schedule Not Needed or Justified

A number of commenters argued that the proposed SSOI is not needed or justified.11 Some commenters stated that FINRA or the SEC can already request the information required by the proposed SSOI.12 One commenter believed that the current requests provide sufficient detail for FINRA to understand a member’s business.13 Two commenters believed that routine exams already give a detailed view of a member’s business operations.14 Several other commenters did not see how the requested information protected investors.15 Finally, one commenter argued that FINRA has not justified why the proposed SSOI is the best means of achieving FINRA’s regulatory objectives without undue burden on members.16 FINRA disagrees with the contentions that the information sought is unnecessary or superfluous. As stated in the Notice, FINRA believes that it can better discharge its regulatory obligations with the benefit of additional information that gives FINRA a more complete and detailed view of a member’s business operations. Moreover, FINRA believes the proposed SSOI is the most effective and timely way to obtain the additional detail of the generation of revenues and allocation of expenses by business segment or product line, the sources of trading gains and losses, the types and


9 The Commission notes that while provided in Exhibit 2a to FINRA’s filing with the Commission, the Notice is not attached hereto. The Notice can be accessed online at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p121742.pdf.

10 The Commission notes that while provided in Exhibit 2b to the filing, the list of the commenters and comment letters received by FINRA are not attached hereto. Those comment letters can be accessed online at http://www.finra.org/Industry/Regulation/Notices/2010/P121743. As stated previously, all references to “commenters” are to the commenters to the Notice, which are listed in Exhibit 2b.

11 Allegheny, FAF, Farragut, Integrity, Ivy, Kinkade, Probitas, REISA, Sutherland and WDC.

12 Allegheny, Sutherland, Farragut, Integrity and Kinkade.

13 Ivy.

14 REISA and WDC.

15 Farragut, Kinkade, Probitas and WDC.

16 RBDA.
amounts of fees earned, and the nature 
and extent of participation in securities 
offerings.

B. Small Firm Concerns

Several commenters stated that the 
proposed SSOI will be costly and time 
consuming for small firms. Some of 
these commenters argued that FINRA 
should provide an exemption from the 
rule for smaller firms. Several 
commenters asserted that the 
Operational Page creates an unfair bias 
against smaller firms. FINRA believes 
that the required information is 
important to identify regulatory risk and 
trends, irrespective of firm size. 
Therefore, FINRA does not believe a 
small firm exemption is appropriate. 
However, as mentioned above, the 
proposed SSOI contains a de minimis 
exception that will make the form less 
time consuming for many smaller firms. 
Additionally, FINRA points out that 
many of the line items will not apply to 
smaller firms with limited product 
offerings.

C. Clarifications and Recommended 
Changes

Certain commenters requested 
clarification of the information required 
on the proposed SSOI. Several 
commenters suggested that FINRA 
should include instructions and 
definitions for the proposed SSOI. One 
commenter had concerns that the 
“numbers reported on the FOCUS 
Report and the Proposed Schedule will 
not automatically ‘match.’” Further, 
several commenters recommended 
changes to specific line items on the 
proposed SSOI. In response to these 
comments, FINRA has developed 
instructions for the proposed SSOI, 
which are included in the attached 
Exhibit 3. The instructions include 
guidance, clarifications and definitions 
with respect to certain line items that 
FINRA believes should ameliorate the 
commenters’ concerns. Additionally, in 
response to recommended changes to 
specific line items, FINRA has amended 
the proposed SSOI by making the 
requested tax information less 
burdensome, allowing flexibility 
regarding the reporting of dividends and 
interest for principal trades and 
allowing revenue from unit investment 
trusts that are open-end companies to be 
included with revenue from investment 
company shares.

D. Data Capture

Several commenters suggested that 
the profit and loss information required 
by the proposed SSOI should be based 
on established units within a firm rather 
than by product. In response, FINRA 
believes that requiring information by 
product is the best way to understand 
revenue sources and expense 
composition. However, FINRA is 
allowing firms, in certain instances, a 
choice as to which section and/or line 
item on the proposed SSOI to reflect 
revenue or expense. Firms must 
document the methodology chosen and 
apply it consistently across reporting 
periods. Additionally, the methodology 
must be made available to FINRA staff 
upon request.

E. Confidentiality

One commenter expressed 
competitive concerns with providing 
FINRA detailed departmental data. 
Another commenter was concerned that 
the proposed SSOI could compromise 
otherwise confidential deal making. The 
commenter stated that members “specializing in restructuring/distressed 
situations are frequently bound to 
confidentiality by U.S. bankruptcy laws 
that would preclude the release of 
certain information.” FINRA does not 
believe these concerns are valid as the 
proposed SSOI would be treated with 
the same confidentiality as the FOCUS 
Report to which it relates. In regard to 
the commenter’s concern about being 
bound to confidentiality by U.S. 
bankruptcy laws, FINRA notes that the 
commenter did not provide any specific 
examples of such U.S. bankruptcy laws 
or discussion of the manner in which 
such laws would preclude a member 
from complying with the proposed 
rulemaking.

F. Use of the Proposed SSOI

Several commenters were concerned that the proposed SSOI would be used as the basis for the calculation of various assessments, fees and dues on members. As previously mentioned, the proposed SSOI is intended to provide information about a member’s revenue and expenses in greater detail. The proposed SSOI supplements the FOCUS report and would not be used as the basis for any assessments, fees or dues; however, total revenue on the proposed SSOI should equal total revenue on the FOCUS report.

G. Reporting Period

Several commenters recommended that reporting of the proposed SSOI be on a quarterly basis. These 
commenters stated that “many firms as a matter of course have more detailed 
reporting requirements—both internal and external—on a quarterly basis, 
which would facilitate this additional 
FINRA reporting while limiting the 
need for additional resources.” FINRA 
agrees with the commenters and 
has proposed quarterly basis reporting 
for the proposed SSOI.

H. Filing Time Frame

Two commenters suggested that the 
proposed SSOI should be filed within 
the time frames for current 
supplemental reporting and not on the 
FOCUS filing date. They believed that 
fining within such time frames would 
address resource constraints and would 
be consistent with other reporting time 
frames. FINRA disagrees with the 
commenters and instead has proposed 
to require the proposed SSOI to be filed 
within 17 business days after the end of 
the calendar quarter, consistent with the 
time frame allowed for the filing of the 
FOCUS Reports. FINRA believes that 
this time frame strikes the proper 
balance of ensuring FINRA receives 
timely information while giving firms’ 
sufficient time to file the proposed 
SSOI.

I. Operational Page of the Proposed 
SSOI

Several commenters believed that 
FINRA is unfairly targeting Regulation D 
offerings. One commenter suggested that the Operational Page only apply to 
all offerings that exceed a fixed dollar 
amount, rather than offerings in excess 
of 10% of total revenue. Another 
commenter stated that the information 
requested by the Operational Page for 
firm underwriting and selling group 
arrangements is identical to the 
information requested following a blue 
sheet transaction. The commenter 
urged that if the proposed SSOI is 
incorporated as represented, FINRA 
may reasonably require firms to 
provide identical information for firm 
underwriting and selling group
arrangements following a blue-sheet transaction. Finally, one commenter stated that Operational Page reporting should be disassociated with financial reporting for any member filing FOCUS Report Part IIA (not filing FOCUS Report Part II) by having its own format, frequency and deadline schedule.

FINRA believes the Operational Page of the proposed SSOI would provide greater transparency and valuable information regarding unregistered offerings. A fixed dollar amount threshold would be inappropriate as FINRA needs to capture revenue that is significant to the member. Members that exceed the 10% of total revenue threshold are considered to be obtaining significant revenue from unregistered offerings. Additionally, the information requested from the Operational Page is not identical to the information requested in a blue sheet transaction. Finally, the Operational Page is part of the proposed SSOI, and therefore would be subject to the same frequency and deadline schedule of the proposed SSOI.

J. Implementation

Several commenters requested that FINRA provide sufficient lead time for members to prepare for the new rule. A number of commenters stated system changes would be needed to capture the requested information. One commenter suggested that the implementation of the proposed SSOI be staged as a series of pilots, beginning with clearing firms, then gradually covering the membership by firm size. FINRA is sensitive to the operational and systems changes that may be necessary for members to complete the proposed SSOI, and as a result, is proposing to implement the SSOI no sooner than 180 days, and no later than 365 days, following Commission approval of the proposed rule change.

K. Alternatives to Schedule

A number of commenters offered alternatives to the proposed SSOI. Several commenters suggested that more detailed information should not be required unless the particular line item represents a specified percentage of a firm’s business or at least a dollar amount threshold. One commenter suggested that FINRA consider requiring that the information requested by the proposed SSOI be submitted annually with the audit report. Another commenter believed that instead of adopting the proposed SSOI FINRA should meet with members to discuss whether a new regulatory report is needed; what format works best with the FOCUS Report; and consider the costs of implementing a system. FINRA has considered these alternatives and believes that obtaining information regarding the detail of revenues earned or expenses incurred by product or other more specific categories is best achieved through the proposed SSOI. FINRA notes that it consulted with its advisory committees in connection with the development of the proposed SSOI.

L. New Financial and Operational Reports or Schedules

Several commenters suggested that any new financial or operational report or schedule required by FINRA be submitted to the SEC as a proposed rule change to allow members an opportunity to provide FINRA with feedback. One commenter suggested that such submission is necessary due to possible conflicts that FINRA schedules and reports may have with other laws and rules. Another commenter argued that the opportunity for member comment is needed because specific line items may be missing or irrelevant over time.

As stated above, pursuant to proposed FINRA Rule 4524, FINRA will file with the SEC the content of any Regulatory Notice (or similar communication) issued pursuant to the proposed rule. Further, if such content contains material substantive changes, FINRA will file the content for comment with the SEC. Commenters will have an opportunity to express their concerns and provide feedback at that time.

M. Comment Period

One commenter expressed disappointment that the comment period ended the same day FINRA sent the Notice. The commenter believed that FINRA did not give the public ample opportunity to study the matter. FINRA believes the commenter is mistaken as the Notice was issued on July 19, 2010, requesting comment until August 18, 2010.

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 email to rule-comments@sec.gov. Please include File Number SR–FINRA–2011–064 on the subject line.

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–2011–064. This file number should be included on the subject line if email 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 Web site (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 Web site 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–2011–064 and should be submitted on or before December 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.56

Kevin M. O’Neill,
Deputy Secretary.

[FR Doc. 2011–29254 Filed 11–10–11; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 14, 2011. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Chief, Administrative Information Branch.

SUPPLEMENTARY INFORMATION:


Title: “New Markets Venture Capital Program Application Funding and Reporting”. Form No’s: 2216, 2185, 2219, 2210, 468.1, 480 Frequency: On Occasion. Description of Respondents: Programs Application and participants, SSBIC receiving grants under the NMVC program. Responses: 1,151. Annual Burden: 14,012.


SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12820 and #12821]

Pennsylvania Disaster Number PA–00042

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Pennsylvania (FEMA–4025–DR), dated 09/12/2011.


DATES: Effective Date: 11/04/2011.

Physical Loan Application Deadline Date: 12/14/2011.

Eidl Loan Application Deadline Date: 06/12/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.


SUPPLEMENTARY INFORMATION: The notice of the President’s major disaster declaration for the State of Pennsylvania, dated 09/12/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 12/14/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera Associate Administrator for Disaster Assistance.

[FR Doc. 2011–29251 Filed 11–10–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12874 and #12875]

Maryland Disaster Number MD–00018

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Maryland (FEMA–4038–DR), dated 10/05/2011.


Jacqueline White,
Chief, Administrative Information Branch.