



August 10, 2023

Marcia E. Asquith  
Executive Vice President, Board and External Relations  
1735 K Street, NW  
Washington DC 20006-1500

**RE: FINRA Regulatory Notice 23-11, Concept Proposal for a Liquidity Risk Management Rule**

Dear Ms. Asquith,

The American Securities Association<sup>1</sup> (ASA) appreciates this opportunity to offer comments in response to FINRA's concept proposal to establish liquidity risk management requirements, as outlined in Regulatory Notice 23-11.

First and foremost, we share FINRA's goal to ensure the stability and resilience of our financial markets by addressing liquidity risk management. We believe that a well-designed rule can contribute significantly to the overall health of the industry. However, we have identified certain areas in the proposal that require further consideration and thoughtful adjustments.

**Industry Feedback and Collaboration**

We appreciate FINRA's initiative to seek industry feedback before issuing a proposed rule. However, we emphasize the importance of holding meetings with industry groups, such as the ASA, as well as with individual FINRA-member firms. These meetings would enable a more comprehensive understanding of the potential impact of the proposal on various business models. We urge FINRA to engage in continuous dialogue with industry stakeholders to avoid unintended consequences that could hinder market functionality throughout the concept proposal process as well as when FINRA decides to issue a proposed rule.

**Robust Economic Analysis**

In conjunction with wide-ranging outreach efforts, we recommend that FINRA conduct a robust economic analysis. This analysis should incorporate discussions with firms regarding the anticipated costs associated with implementing any future proposal. Understanding the financial implications is vital to strike a balance between regulatory effectiveness and minimizing burdens on member firms. FINRA should only proceed with a rulemaking if it is able to determine that the economic benefits of a rule outweigh the costs the rule would impose on industry participants and their customers.

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<sup>1</sup> The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.





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## **Frequency of Stress Testing**

We believe that instituting a monthly stress test requirement could be too onerous for firms, causing them to be in a constant state of preparation. Instead, we propose a stress test requirement to occur no more than quarterly. Additionally, we suggest streamlining stress test notification requirements with other securities regulators to avoid duplicative or burdensome reporting for member firms.

## **Contingency Funding Plan Consideration**

While a contingency funding plan could benefit some firms, mandating it for all without proper justification might lead to significant disruptions. We recommend that FINRA engage in dialogue with firms to understand the rationale behind this requirement fully. This will allow firms to provide valuable feedback and assist FINRA in achieving its objectives in a measured and orderly manner.

## **Clarity in Liquidity Risk Management Requirements**

The requirement to maintain sufficient liquidity is critical, but FINRA should be clearer in its expectations regarding how firms would calculate the necessary liquidity and measure compliance with the rule. We request that FINRA discuss the Liquidity Risk Management (LQR) program in greater detail to provide firms with a clear understanding of what is expected. Tailoring the program to suit the unique business models of each firm and the complexity of their operations will lead to more effective risk management.

## **Positive Liquidity Offsets**

In crafting the final rule, we encourage FINRA to adopt a "big picture" approach and consider positive liquidity offsets. Some events may trigger a threshold but, when balanced with other positive developments, may not warrant immediate escalation to FINRA. Evaluating liquidity in context will result in a more balanced and nuanced regulatory approach.

## **Review of Existing Guidance**

Before issuing a liquidity requirement rule, we recommend that FINRA review Regulatory Notice 10-57<sup>2</sup> and Regulatory Notice 15-33<sup>3</sup> to assess their relevance and effectiveness in informing the final proposal. Incorporating lessons from previous guidance will contribute to a more refined and coherent regulatory framework.

## **Overlap with Proposals and Filings**

Under FINRA Regulatory Notice 21-31<sup>4</sup>, FINRA recently established a new Supplemental Liquidity Schedule (SLS) which requires certain members to file a supplement to the FOCUS Report. That requirement became effective March 1, 2022 and, according to FINRA, is designed to improve FINRA's ability to monitor for events that signal an adverse change in the liquidity risk of the members with the

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<sup>2</sup> Regulatory Notice 10-57, Funding and Liquidity Risk Management Practices, Published Date: November 01, 2010 (<https://www.finra.org/rules-guidance/notices/10-57>).

<sup>3</sup> Regulatory Notice 15-33, Guidance on Liquidity Risk Management Practices, Published Date: September 15, 2015 (<https://www.finra.org/rules-guidance/notices/15-33>).

<sup>4</sup> FINRA Establishes New Supplemental Liquidity Schedule (SLS), Published Date: September 03, 2021 (<https://www.finra.org/rules-guidance/notices/21-31>).





largest customer and counterparty exposures. This is a monthly filing and as compared to the new concept proposal, it requires firms to monitor and potentially provide notifications if a liquidity event is triggered. Thus, the two filings seemingly overlap. As a result, we question the need for the supplemental filing if Notice 23-11 moves from a concept proposal to a proposed rule. FINRA should thus eliminate any duplicative efforts.

Further, FINRA should also consider how the above SLS, combined with FINRA's concept proposal and recently proposed SEC amendments<sup>5</sup> to Rule 15c3-3 (the Customer Protection Rule), will affect firms that must manage all three. These three proposals – all very recent – bring into question what problem FINRA and the SEC are trying to fix. Collectively this duplication is very taxing on organizations who will certainly need to add resources, make technology enhancements, and modify processes. Thus, FINRA and the SEC should streamline and eliminate the duplication of efforts where there is overlap between their two proposals, or where one regulator can use information already being required of another.

In conclusion, we acknowledge FINRA's commitment to enhancing liquidity risk management and stability in our financial markets. By considering industry feedback, conducting comprehensive economic analysis, and fostering collaboration, we believe that the final rule can strike the right balance between regulatory effectiveness and minimal disruption to member firms.

We appreciate your attention to our comments and look forward to continued collaboration with FINRA to build a resilient and thriving financial industry.

Sincerely,

*Jessica Giroux*

Jessica Giroux  
General Counsel and Head of Fixed Income  
American Securities Association

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<sup>5</sup> SEC Proposes Rule Amendments to the Broker-Dealer Customer Protection Rule, Published July 12, 2023 (<https://www.sec.gov/files/rules/proposed/2023/34-97877.pdf>).

