

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58263; File No. SR-FINRA-2008-042)

July 30, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to Portfolio Margin

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 25, 2008, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. FINRA has designated the proposed rule change as “constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule” under Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to codify FINRA's interpretation of the portfolio margin program set forth in NASD Rule 2520(g) and Incorporated NYSE Rule 431(g)⁵ regarding (1) monitoring concentrated equity positions and (2) timing of day trading margin calls. The text of the proposed rule change is available at www.finra.org, the principal offices of FINRA, and 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

On February 12, 2007, FINRA (then known as NASD) filed SR-NASD-2007-013 for immediate effectiveness to establish a portfolio margin pilot program that permits member firms to elect to margin certain products according to a prescribed portfolio margin methodology.⁶ The portfolio margin pilot program is substantially similar to

⁵ The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to members of both FINRA and the NYSE, referred to as Dual Members.

⁶ See Exchange Act Release No. 55471 (March 14, 2007), 72 FR 13149 (March 20,

margin rule amendments by the NYSE and the Chicago Board Options Exchange (“CBOE”), which were approved by the Commission.⁷ Consistent with the amended NYSE and CBOE portfolio margin programs, the pilot, as proposed in SR-NASD-2007-013, started on April 2, 2007 and ended on July 31, 2007. The pilot program was extended for a one-year period to July 31, 2008, also consistent with the NYSE and CBOE portfolio margin programs.⁸ Concurrently with this proposed rule change and consistent with the CBOE, FINRA proposes to make the portfolio margin pilot program contained in NASD Rule 2520(g) and Incorporated NYSE Rule 431(g) permanent.⁹

FINRA proposes to codify FINRA’s interpretation of NASD Rule 2520(g) and Incorporated NYSE Rule 431(g) regarding (1) monitoring concentrated equity positions

2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-013).

⁷ See Exchange Act Release No. 54918 (December 12, 2006), 71 FR 75790 (December 18, 2006) (SR-NYSE-2006-13, relating to further amendments to the NYSE’s portfolio margin pilot program); Exchange Act Release No. 54125 (July 11, 2006), 71 FR 40766 (July 18, 2006) (SR-NYSE-2005-93, relating to amendments to the NYSE’s portfolio margin pilot program); Exchange Act Release No. 52031 (July 14, 2005) 70 FR 42130 (July 21, 2005) (SR-NYSE-2002-19, relating to the NYSE’s original portfolio margin pilot). See also Exchange Act Release No. 54919 (December 12, 2006), 71 FR 75781 (December 18, 2006) (SR-CBOE-2006-14, relating to amendments to the CBOE’s portfolio margin pilot); Exchange Act Release No. 52032 (July 14, 2005) 70 FR 42118 (July 21, 2005) (SR-CBOE-2002-03, relating to the CBOE’s original portfolio margin pilot).

⁸ See Exchange Act Release No. 56108 (July 19, 2007) 72 FR 41375 (July 27, 2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-045). See also Exchange Act Release No. 56107 (July 19, 2007) 72 FR 41377 (July 27, 2007) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2007-56, relating to extension of the NYSE portfolio margin pilot program to July 31, 2008) and Exchange Act Release No. 56109 (July 19, 2007) 72 FR 41365 (July 27, 2007) (Notice of Filing and Immediate Effectiveness of SR-CBOE-2007-75, relating to extension of the CBOE portfolio margin pilot program to July 31, 2008).

⁹ See SR-FINRA-2008-041 and SR-CBOE-2008-73.

and (2) timing of day trading margin calls.

Concentrated Equity Positions

NASD Rule 2520(g)(1) and Incorporated NYSE Rule 431(g)(1) outline various procedural guidelines that firms are required to meet in order to offer portfolio margin to customers. FINRA has issued guidance in the form of frequently asked questions regarding its expectation that, among other things, firms develop reports that identify a concentration of any individual security in both individual portfolio margin accounts and across all portfolio margin accounts.¹⁰ FINRA proposes to codify this requirement in NASD Rule 2520(g)(1)(I) and Incorporated NYSE Rule 431(g)(1)(I) because FINRA believes it is an essential component in monitoring the risk to broker-dealers that offer portfolio margin to customers. FINRA expects that firms impose a higher maintenance margin requirement on any identified concentrated positions.

Day Trading

NASD Rule 2520(g)(13) and Incorporated NYSE Rule 431(g)(13) require firms to monitor accounts that do not maintain \$5 million minimum equity to ensure that the day trading requirements pursuant to NASD Rule 2520(f)(8)(B) and Incorporated NYSE Rule 431(f)(8)(B) are applied. Pursuant to the day trading requirements, customers are permitted to engage in day trading provided they day trade within a specific dollar limit, referred to as the day trading buying power.¹¹ Customers that day trade in excess of their day trading buying power are required to deposit additional funds and/or securities to

¹⁰ See <http://www.finra.org/RulesRegulation/PublicationsGuidance/p038849>.

¹¹ “Day-trading buying power” is defined in NASD Rule 2520(f)(8)(B)(iii) and Incorporated NYSE Rule 431(f)(8)(B)(iii) to mean the equity in the customer’s account at the close of business of the previous day, less any maintenance margin requirement as prescribed in the rule, multiplied by four for equity securities.

meet a special maintenance margin deficiency, also referred to as a day trade margin call. In a strategy-based margin account, day trade margin calls are due within five business days.¹² In a portfolio margin account, margin deficiencies are due within three business days.¹³ FINRA believes that day trade margin calls incurred in a portfolio margin account should also be met within three business days. The proposed rule change would amend NASD Rule 2520(g)(13) and Incorporated NYSE Rule 431(g)(13) to explicitly provide that day trade margin deficiencies are due within three business days.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change is August 1, 2008.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁴ 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 it is in the public interest to codify its stated interpretation with respect to monitoring concentrated equity positions and the timing of day trading margin calls in the rule text.

¹² See NASD Rule 2520(f)(8)(C) and Incorporated NYSE Rule 431(f)(8)(C).

¹³ See NASD Rule 2520(g)(10)(A) and Incorporated NYSE Rule 431(g)(10)(A).

¹⁴ 15 U.S.C. 78o-3(b)(6).

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and paragraph (f)(1) of Rule 19b-4 thereunder.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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:

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(1).

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2008-042 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-042. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 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-2008-042 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon
Acting Secretary

¹⁷ 17 CFR 200.30-3(a)(12).