

Margin Interpretation Updates

FINRA Announces Updates to the Interpretations of FINRA's Margin Rule Regarding Control and Restricted Securities and Consolidation of Accounts

Summary

FINRA Rule 4210 (Margin Requirements) prescribes requirements governing the extension of credit by members. The FINRA Rule 4210 interpretations provide further guidance regarding application of the rule. This *Notice* announces, effective immediately, clarifications of interpretations of (1) FINRA Rule 4210(e)(8), which specifies margin requirements for control and restricted securities, and (2) FINRA Rule 4210(f)(5), which specifies conditions for the consolidation of two or more accounts carried for the same customer.

Questions concerning this *Notice* should be directed to:

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Background & Discussion

FINRA Rule 4210 (Margin Requirements) specifies the margin requirements applicable to securities held in margin accounts, including both strategy-based margin accounts and portfolio margin accounts. FINRA maintains interpretations regarding FINRA Rule 4210. These interpretations are available on the [Interpretations of FINRA's Margin Rule webpage](#), in a portable digital format (PDF) document where the interpretations immediately follow the section of the rule to which they relate. This *Notice* clarifies and updates the interpretations as discussed below.

Control and Restricted Securities

FINRA Rule 4210(e)(8)(B) sets forth the margin requirements generally applicable to control and restricted securities that are subject to Securities Act Rule 144 or 145(c).¹ Paragraph (e)(8)(D) provides an exception to this general requirement for securities that are "then saleable" pursuant to the

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Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Compliance
- ▶ Institutional
- ▶ Legal
- ▶ Margin
- ▶ Operations
- ▶ Registered Representatives
- ▶ Risk
- ▶ Senior Management
- ▶ Systems
- ▶ Trading

Key Topics

- ▶ Consolidation of Accounts
- ▶ Control and Restricted Securities
- ▶ Margin
- ▶ Sub-Accounts

Referenced Rules & Notices

- ▶ Regulation T
- ▶ Rule 4210
- ▶ Securities Act Rule 144
- ▶ Securities Act Rule 145

terms and conditions of Securities Act Rule 144(b)(1) or Rule 145(d)(2). Firms have raised questions about the scope and application of this exemption, particularly as it applies to securities owned by an affiliate of the issuer. To clarify this exemption, consistent with the intent of amendments made in 2000,² FINRA is replacing Interpretation /01 to Rule 4210(e)(8)(B)(i)³ with a modified version as Interpretation /011, publishing the following new interpretations of Rule 4210(e)(8)(D) and rescinding Interpretations /01 and /02 of Rule 4210(e)(8)(D).

New Interpretation of FINRA Rule 4210(e)(8)(B)(i)

/011 “Saleable”

The term “saleable,” as used in this paragraph (e)(8)(B)(i) and in paragraphs (e)(8)(D)(i) and (ii), refers to those specified and quantifiable securities where all the terms and conditions of Securities Act Rule 144 have been completely satisfied, including any applicable holding period, and thus are immediately saleable pursuant to Securities Act Rules 144 and 145(d) by the member without restriction in the event the customer fails to meet a margin call or otherwise defaults.

New Interpretations of FINRA Rule 4210(e)(8)(D)

/011 Scope of Exemption

Paragraph (e)(8)(D) exempts from Rule 4210(e)(8) all securities that the member could sell immediately without restriction in the event the customer fails to meet a margin call or otherwise defaults, regardless of whether the customer is an affiliate or non-affiliate. For example, SEC Division of Corporate Finance’s Compliance and Disclosure Interpretation (CD&I) 532.01 provides:

A pledgor who is an affiliate defaults on a loan that is secured, either with or without recourse, by a bona fide pledge of company stock acquired in the open market (i.e., these securities are not “restricted securities” in the pledgor’s hands). In the pledgee’s hands, these securities are “restricted securities” because they have been “acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering.” If the pledgee is a non-affiliate and has not been an affiliate during the preceding three months, the pledgee may resell such securities pursuant to Rule 144(b)(1) without regard to the holding period requirement in Rule 144(d) but subject to the current public information requirement in Rule 144(c)(1), as applicable. No other requirements in Rule 144 are applicable to the pledgee’s resale.
[May 16, 2013]

To rely on CD&I 532.01 to treat non-restricted securities deposited in a margin account by an affiliate of their issuer as exempt from Rule 4210(e)(8)(B), a member must determine that each of the conditions of CD&I 532.01 (including that the securities are the subject of a bona fide pledge) are satisfied and document its basis for that determination.

/04 Concentration Evaluation

Any member extending or maintaining credit on any securities exempted from Rule 4210(e)(8) under paragraph (e)(8)(D) is still required by paragraph (f)(1) to require “substantial additional margin” if there is a concentration in those securities (whether in the particular customer’s account, or in all margin accounts carried by the firm) that may not be liquidated promptly due to its size.

Consolidation of Accounts

FINRA Rule 4210(f)(5) allows member firms to consolidate two or more accounts carried for a customer (*i.e.*, determine the margin to be required based on the net positions in the accounts) if the customer has consented that the money and securities in each of such accounts may be used to carry or pay any deficit in all such accounts. FINRA is publishing the following new interpretations to clarify that, although Section 220.4(a)(2) of Regulation T only permits firms to maintain multiple margin accounts for a single customer under three specific circumstances, firms may maintain multiple sub-accounts of a customer’s margin account as provided in the interpretations.

New Interpretations of FINRA Rule 4210(f)(5)

/02 Separate Margin Accounts

Separate margin accounts may be carried for the same customer only as provided in Section 220.4(a)(2) of Regulation T. If the customer has consented that the money and securities in each of such accounts may be used to carry or pay any deficit in all such accounts, the margin to be maintained under this Rule may be determined on the net position of said accounts even though they are separate margin accounts for purposes of Regulation T.

This limitation does not apply to sub-accounts of a single margin account. See Interpretation /03 below.

/021 Portfolio Margin Accounts

Section 220.1(b)(3)(i) of Regulation T excludes portfolio margin accounts maintained in accordance with paragraph (g) of this Rule from the scope of Regulation T. Accordingly, a portfolio margin account may be maintained as a separate margin account without regard to the limitation on separate margin accounts under Section 220.4(a)(2) of Regulation T. The consolidation of portfolio margin accounts is addressed by Rule 4210(g)(6).

/03 Margin Sub-Accounts

Although Regulation T limits the circumstances in which members may carry multiple margin accounts for the same customer (see Interpretation /02 above), a member may maintain separate sub-accounts of a single customer margin account, provided that:

- ▶ the customer has consented that the money and securities in each of such sub-accounts may be used to carry or pay any deficit in all such sub-accounts; and
- ▶ the member complies with the margin regulations (Regulation T and Rule 4210) as applied to the single margin account (i.e., to the combination of the separate sub-accounts).

A member that maintains multiple sub-accounts of a single customer margin account must implement procedures to combine positions and transactions in all of the sub-accounts where necessary to ensure compliance with Regulation T and Rule 4210, including, without limitation, in connection with:

- ▶ the determination of whether substantial additional margin must be required under Rule 4210(f)(1) and FINRA Interpretation /01 thereunder when the account contains a concentrated position in a security that, due to its size, may not be liquidated promptly; and
- ▶ the determination of whether a customer is a “pattern day trader” under Rule 4210(f)(8)(B)(ii) and the application of the other provisions of Rule 4210(f)(8)(B) in the event the customer is so classified.

Interpretation Updates

These interpretation updates are available in portable digital format (PDF) on the [Interpretations of FINRA's Margin Rule webpage](#).

FINRA member firms and others that maintain the hardcopy version of the Interpretations of FINRA's Margin Rule may refer to the accompanying [updated pages](#), containing the aforementioned interpretation updates, which are being made available to enable the replacement of existing pages in the hardcopy version of the Interpretations of FINRA's Margin Rule. The filing instructions for the new pages are as follows:

- ▶ Remove old page 73 and add new page 73.
- ▶ Remove old pages 85 -86 and add new pages 85-86.
- ▶ Remove old pages 165-66 and insert new pages 165-67.

Endnotes

1. Rule 4210(e)(8)(B) generally requires equity to be maintained in customer accounts equal to 40 percent of the current market value of control and restricted securities (other than shelf-registered securities) “long” in the account.
2. See SEC Rel. 34-42453 (Feb. 24, 2000), 65 Fed. Reg. 11620, 11624 (Mar. 3, 2000) (approving changes to corresponding provisions of NYSE Rule 431(e)(8)); SEC Rel. 34-41704 (Aug. 4, 1999), 64 Fed. Reg. 43797, 43801 (proposing changes to corresponding provisions of NASD Rule 2520(e)(8)).
3. Current interpretation /01 under Rule 4210(e)(8)(B)(i) (which is replaced by this new Interpretation /011) says:

/01 “Saleable”

The term “saleable”, which is used in this paragraph (e)(8)(B)(i) and in paragraphs (e)(8)(D)(i) and (ii), refers to those specified and quantifiable securities where all the terms and conditions of Securities Act Rule 144 have been completely satisfied, including any applicable holding period, and thus are immediately saleable pursuant to Securities Act Rules 144 and 145(d).