

Customer Margin Accounts

Filing Requirements for Members that Carry Customer Margin Accounts; New Customer Margin Balance Form

Effective Date of Rule Requirements: February 8, 2010

Availability of New Form: March 1, 2010

Executive Summary

Beginning March 1, 2010, members subject to new FINRA Rule 4521(d)¹ must file FINRA's new Customer Margin Balance Form (covering the February 2010 reporting period).²

FINRA Rule 4521(d) governs filing requirements for customer margin accounts and became effective on February 8, 2010. The rule, adopted as part of the new consolidated financial responsibility rules, replaces Incorporated NYSE Rules 421(2) and 421.40 and applies to all FINRA members that carry customer margin accounts.³

The text of FINRA Rule 4521(d) is in Attachment A.

Questions concerning this *Notice* should be directed to:

- Glen Garofalo, Director, Credit Regulation, at (646) 315-8464;
- Debra German, Senior Credit Coordinator, Credit Regulation, at (646) 315-8467; or
- Theresa Reynolds, Credit Regulation Coordinator, Credit Regulation, at (646) 315-8567.

February 2010

Notice Type

- Guidance

Suggested Routing

- Compliance
- Legal
- Margin
- Operations
- Regulatory Reporting
- Senior Management

Key Topic(s)

- Financial Responsibility
- Customer Margin Accounts

Referenced Rules & Notices

- FINRA Rule 4521(d)
- FINRA Rule 4521(e)
- FINRA Rule 4521(f)
- Incorporated NYSE Rules 421(2) and 421.40
- Section 4(g) of Schedule A to the FINRA By-Laws
- Regulatory Notice 09-71

Background & Discussion

FINRA Rule 4521(d) Requirements

FINRA Rule 4521(d) provides that, unless otherwise permitted by FINRA in writing, each member carrying margin accounts for customers is required to submit, on a settlement date basis, as of the last business day of the month: (A) the total of all debit balances in securities margin accounts; and (B) the total of all free credit balances in all cash accounts and all securities margin accounts.

*Please note: members must submit **three** separate data points, as the free credit balance total for cash accounts and the free credit balance total for securities margin accounts are two **separate** items.*

If a member has no information to submit, it should note that on the report. Reports are due as promptly as possible after the last business day of the month, but in no event later than the sixth business day of the following month. In connection with this requirement, members should note:

- ▶ The data in the member's report should reflect the status of all accounts on a settlement date basis, as of the last business day of each month.
- ▶ Each member must submit a single combined report (including all domestic and foreign main offices and branches).
- ▶ Customer balances in the account(s) of guarantors and in the related guaranteed accounts should not be combined.

Rule 4521(d) requires that a member must only include free credit balances in cash and securities margin accounts in the report. Balances in short accounts and in special memorandum accounts (see Regulation T of the Board of Governors of the Federal Reserve System) are not considered free credit balances. Members should note:

- ▶ "Balances in short accounts" refers to balances derived from the proceeds of short sales.
- ▶ Credit balances in cash accounts and securities margin accounts are considered free (withdrawable) when the firm has no lien or claim against them, nor has imposed any other encumbrance, irrespective of whether the same customer has offsetting debits in another account.

Lastly, Rule 4521(d) requires that reported debit or credit balance information not include the accounts of other FINRA members, or of the associated persons of the member submitting the report where such associated person's account is excluded from the definition of "customer" pursuant to Exchange Act Rule 15c3-3.

New FINRA Customer Margin Balance Form

Members that are required to file information pursuant to FINRA Rule 4521(d) must do so through the FINRA Firm Gateway (www.finra.org/firmgateway), where the new Customer Margin Balance Form will be available beginning March 1, 2010.⁴

Late Fee

Members should note that, unless FINRA grants a specific temporary extension of time, a late fee of \$100 shall apply for each day (for a period not to exceed ten business days) that information required pursuant to Rule 4521(d) is not timely filed.⁵

Public Availability of Data

Data collected pursuant to NYSE Rules 421(2) and 421.40 has historically been made available to the public in aggregate form on the NYSE Web site.⁶ Beginning in March 2010, FINRA will post the data collected pursuant to FINRA Rule 4521(d), also in aggregate form, on FINRA's Web site.

Endnotes

- 1 Effective with the rule change, NYSE Form R-1, which Dual Members currently file pursuant to Incorporated NYSE Rule 421.40, has been discontinued.
- 2 The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA member firms, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The FINRA Rules apply to all FINRA member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice 3/12/08* (Rulebook Consolidation Process).
- 3 FINRA Rule 4521(d) is substantively similar to Incorporated NYSE Rule 421.40. See *Regulatory Notice 09-71* (SEC Approves Consolidated FINRA Rules Governing Financial Responsibility) (December 2009). See also Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (Order Granting Approval to Proposed Rule Change; File No. SR-FINRA-2008-067); Exchange Act Release No. 61408 (January 22, 2010), 75 FR 4596 (January 28, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2010-004).
- 4 Members should note that their Regulation Filing Applications Account Administrator can provide access to the Customer Margin Balance Form in the Firm Gateway, and also provide a FINRA user ID, if needed. Members can also contact the FINRA Help Desk at (800) 321-6273 and refer to www.finra.org/regulationfiling for additional information on requesting entitlement.
- 5 See FINRA Rules 4521(e) and (f) and Section 4(g) of Schedule A to the FINRA By-Laws.
- 6 Similar information, in modified form, has also been posted on FINRA's Web site at www.finra.org/statistics/margin.

ATTACHMENT A

Below is the text of new FINRA Rule 4521(d).

4521. Notifications, Questionnaires and Reports

(d) (1) Unless otherwise permitted by FINRA in writing, members carrying margin accounts for customers are required to submit, on a settlement date basis, the information specified in paragraphs (d)(2)(A) and (d)(2)(B) of this Rule as of the last business day of the month. If a member has no information to submit, a report should be filed with a notation thereon to that effect. Reports are due as promptly as possible after the last business day of the month, but in no event later than the sixth business day of the following month. Members shall use such form as FINRA may prescribe for these reporting purposes.

(2) Each member carrying margin accounts for customers shall submit reports containing the following customer information:

(A) Total of all debit balances in securities margin accounts; and

(B) Total of all free credit balances in all cash accounts and all securities margin accounts.

(3) For purposes of this paragraph (d):

(A) Only free credit balances in cash and securities margin accounts shall be included in the member's report. Balances in short accounts and in special memorandum accounts (see Regulation T of the Board of Governors of the Federal Reserve System) shall not be considered as free credit balances.

(B) Reported debit or credit balance information shall not include the accounts of other FINRA members, or of the associated persons of the member submitting the report where such associated person's account is excluded from the definition of customer pursuant to SEA Rule 15c3-3.
