

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61408; File No. SR-FINRA-2010-004)

January 22, 2010

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Certain Non-Substantive Technical Changes to FINRA Rule 4521(d)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “SEA”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 20, 2010, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> 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.

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

FINRA is proposing to make certain non-substantive technical changes to FINRA Rule 4521(d). The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets:

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4000. FINANCIAL AND OPERATIONAL RULES

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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4500. BOOKS, RECORDS AND REPORTS

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4520. Financial Records and Reporting Requirements

4521. Notifications, Questionnaires and Reports

(a) through (c) No Change.

(d) (1) No Change.

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

(A) No Change.

(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 [S]special [M]memorandum [A]accounts ([as defined in Section 2.2 of] see Regulation T [under the Exchange Act] 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 [organizations that are] 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.

(e) through (f) No Change.

••• Supplementary Material: -----

.01 No Change.

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## 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 those 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 parts of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

On November 4, 2009, the Commission approved FINRA Rule 4521 (Notifications, Questionnaires and Reports) as part of a new, consolidated set of financial responsibility rules<sup>4</sup> for inclusion in FINRA's consolidated rulebook ("Consolidated FINRA Rulebook").<sup>5</sup> FINRA

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<sup>4</sup> See Regulatory Notice 09-71 (December 2009) (SEC Approves Consolidated FINRA Rules Governing Financial Responsibility). See also Securities 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).

<sup>5</sup> 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 members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual

announced in Regulatory Notice 09-71 that the new financial responsibility rules will be implemented on February 8, 2010.<sup>6</sup>

FINRA Rule 4521(d) sets forth certain reporting requirements for members carrying margin accounts for customers. The proposed rule change would make several non-substantive technical changes to the rule. FINRA Rule 4521(d)(2)(B) would be revised to clarify that members must submit the total of all free credit balances in all cash accounts and all securities margin accounts. Similarly, in FINRA Rule 4521(d)(3)(A) “margin accounts” would be revised to read “securities margin accounts.” Further, the reference to special memorandum accounts in FINRA Rule 4521(d)(3)(A) would be revised to align with Regulation T of the Board of Governors of the Federal Reserve System. Lastly, in FINRA Rule 4521(d)(3)(B) “other organizations that are FINRA members” would be revised to read “other FINRA members.”

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change on February 8, 2010.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> 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

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Members”). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

<sup>6</sup> See note 4.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the purposes of the Act because it will provide greater clarity to members and the public regarding FINRA's rules.

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 does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that FINRA has satisfied the five-day pre-filing notice requirement.

interest. As noted above, on November 4, 2009, the Commission approved FINRA 4521 (Notifications, Questionnaires and Reports) as part of a new, consolidated set of financial responsibility rules.<sup>11</sup> FINRA has requested that the Commission waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii) under the Act<sup>12</sup> in order for the rule to become operative upon filing. The Commission notes that the proposed rule changes makes technical non-substantive changes to Rule 4521. The Commission further notes that the operative date of FINRA 4150 is February 8, 2009.<sup>13</sup> The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change permits FINRA to implement the rule without further delay and in time for the operative date of the financial responsibility rules.<sup>14</sup>

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:

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<sup>11</sup> See notes 4 and 5.

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> See FINRA Regulatory Notice 09-71 (December 2009).

<sup>14</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2010-004 on the subject line.

Paper Comments:

- Send paper comments in triplicate 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-2010-004. 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 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-2010-004 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.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).