

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2008 - 042

Amendment No.

Proposed Rule Change by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☒	Amendment ☐	Withdrawal ☐	Section 19(b)(2) ☐	Section 19(b)(3)(A) ☒	Section 19(b)(3)(B) ☐
			Rule		
Pilot ☐	Extension of Time Period for Commission Action ☐	Date Expires 	☒ 19b-4(f)(1)	☐ 19b-4(f)(4)	
			☐ 19b-4(f)(2)	☐ 19b-4(f)(5)	
			☐ 19b-4(f)(3)	☐ 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change relating to amendments to portfolio margin

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Kathryn Last Name Moore
Title Assistant General Counsel
E-mail kathyn.moore@finra.org
Telephone (202) 974-2974 Fax (202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 07/25/2008

By Patrice Gliniecki
(Name)

Senior Vice President and Deputy General Counsel

(Title)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

Patrice Gliniecki,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to codify FINRA’s interpretation of the portfolio margin program set forth in NASD Rule 2520(g) and Incorporated NYSE Rule 431(g)² regarding (1) monitoring concentrated equity positions and (2) timing of day trading margin calls.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

2500. SPECIAL ACCOUNTS

* * * * *

2520. Margin Requirements

(a) through (f) No Change.

(g) Portfolio Margin

As an alternative to the “strategy-based” margin requirements set forth in paragraphs (a) through (f) of this Rule, members may elect to apply the portfolio margin requirements set forth in this paragraph (g) to all margin equity securities,¹ listed options,

¹ 15 U.S.C. 78s(b)(1).

² 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.

security futures products (as defined in Section 3(a)(56) of the Exchange Act), unlisted derivatives, warrants, index warrants and related instruments, provided that the requirements of paragraph (g)(6)(B)(i) of this Rule are met.

In addition, a member, provided that it is a Futures Commission Merchant (“FCM”) and is either a clearing member of a futures clearing organization or has an affiliate that is a clearing member of a futures clearing organization, is permitted under this paragraph (g) to combine an eligible participant’s related instruments as defined in paragraph (g)(2)(D), with listed index options, unlisted derivatives, options on exchange traded funds (“ETF”), index warrants and underlying instruments and compute a margin requirement for such combined products on a portfolio margin basis.

The portfolio margin provisions of this Rule shall not apply to Individual Retirement Accounts (“IRAs”).

(1) Monitoring. — Members must monitor the risk of portfolio margin accounts and maintain a comprehensive written risk analysis methodology for assessing the potential risk to the member’s capital over a specified range of possible market movements of positions maintained in such accounts. The risk analysis methodology shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained, and the person(s) within the organization responsible for the risk function. This risk analysis methodology must be filed with NASD, or the member’s designated examining authority (“DEA”) if other than NASD, and submitted to the Commission prior to the implementation of portfolio margining. In performing the risk analysis of

portfolio margin accounts required by this Rule, each member shall include in the written risk analysis methodology procedures and guidelines for:

(A) through (F) No Change.

(G) the appropriate response by management when limits on credit extensions related to portfolio margin accounts have been exceeded; [and]

(H) determining the need to collect additional margin from a particular eligible participant, including whether that determination was based upon the creditworthiness of the participant and/or the risk of the eligible product[.]; and

(I) monitoring the credit exposure resulting from concentrated positions within both individual portfolio margin accounts and across all portfolio margin accounts.

Moreover, management must periodically review, in accordance with written procedures, the member's credit extension activities for consistency with these guidelines. Management must periodically determine if the data necessary to apply this paragraph (g) is accessible on a timely basis and information systems are available to adequately capture, monitor, analyze and report relevant data.

(2) through (12) No Change.

(13) Day Trading Requirements. — The day trading restrictions promulgated under paragraph (f)(8)(B) of this Rule shall not apply to portfolio margin accounts that establish and maintain at least five million dollars in equity, provided that a member has the ability to monitor the intra-day risk associated

with day trading. Portfolio margin accounts that do not establish and maintain at least five million dollars in equity will be subject to the day trading restrictions under paragraph (f)(8)(B) of this Rule, provided the member has the ability to apply the applicable day trading requirement under this Rule. However, if the position or positions day traded were part of a hedge strategy, the day trading restrictions will not apply. A “hedge strategy” for purposes of this Rule means a transaction or a series of transactions that reduces or offsets a material portion of the risk in a portfolio. Members are expected to monitor these portfolio margin accounts to detect and prevent circumvention of the day trading requirements. In the event day trades executed in a portfolio margin account exceed the day trading buying power, the day trade margin deficiency that is created must be met by the deposit of cash and/or securities within three business days.

(14) through (15) No Change.

¹ For purposes of this paragraph (g) of the Rule, the term “margin equity security” utilizes the definition at Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System.

* * * * *

Rule 431. Margin Requirements

(a) through (f) No Change.

(g) Portfolio Margin

As an alternative to the “strategy-based” margin requirements set forth in sections (a) through (f) of this Rule, members organizations may elect to apply the portfolio

margin requirements set forth in this section (g) to all margin equity securities,¹ listed options, unlisted derivatives, and security futures products (as defined in Section 3(a)(56) of the Securities Exchange Act of 1934 (the “Exchange Act”)), provided that the requirements of section (g)(6)(B)(1) of this Rule are met.

In addition, a member organization, provided that it is a Futures Commission Merchant (“FCM”) and is either a clearing member of a futures clearing organization or has an affiliate that is a clearing member of a futures clearing organization, is permitted under this section (g) to combine an eligible participant’s related instruments as defined in section (g)(2)(E), with listed index options, options on exchange traded funds (“ETF”), index warrants and underlying instruments and compute a margin requirement for such combined products on a portfolio margin basis.

The portfolio margin provisions of this Rule shall not apply to Individual Retirement Accounts (“IRAs”).

(1) Member organizations must monitor the risk of portfolio margin accounts and maintain a comprehensive written risk analysis methodology for assessing the potential risk to the member organization’s capital over a specified range of possible market movements of positions maintained in such accounts. The risk analysis methodology shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained, and the person(s) within the organization responsible for the risk function. This risk analysis methodology must be filed with the New York Stock Exchange (the “Exchange”), or the member organization’s designated examining authority (“DEA”) if other than the Exchange, and submitted to the Securities and

Exchange Commission (“SEC”) prior to the implementation of portfolio margining. In performing the risk analysis of portfolio margin accounts required by this Rule, each member organization shall include in the written risk analysis methodology procedures and guidelines for:

(A) through (F) No Change.

(G) the appropriate response by management when limits on credit extensions related to portfolio margin accounts have been exceeded, [and]

(H) determining the need to collect additional margin from a particular eligible participant, including whether that determination was based upon the creditworthiness of the participant and/or the risk of the eligible product[.], and

(I) monitoring the credit exposure resulting from concentrated positions within both individual portfolio margin accounts and across all portfolio margin accounts.

Moreover, management must periodically review, in accordance with written procedures, the member organization’s credit extension activities for consistency with these guidelines. Management must periodically determine if the data necessary to apply this section (g) is accessible on a timely basis and information systems are available to adequately capture, monitor, analyze and report relevant data.

(2) through (12) No Change.

(13) Day Trading Requirements. — The day trading restrictions promulgated under section (f)(8)(B) of this Rule shall not apply to portfolio

margin accounts that establish and maintain at least five million dollars in equity, provided a member organization has the ability to monitor the intra-day risk associated with day trading. Portfolio margin accounts that do not establish and maintain at least five million dollars in equity will be subject to the day trading restrictions under section (f)(8)(B), provided the member organization has the ability to apply the applicable day trading requirement under this Rule. However, if the position or positions day traded were part of a hedge strategy, the day trading restrictions will not apply. A “hedge strategy” for purposes of this Rule means a transaction or a series of transactions that reduces or offsets a material portion of the risk in a portfolio. Member organizations are expected to monitor these portfolio margin accounts to detect and prevent circumvention of the day trading requirements. In the event day trades executed in a portfolio margin account exceed the day trading buying power, the day trade margin deficiency that is created must be met by the deposit of cash and/or securities within three business days.

(14) through (15) No Change.

¹ For purposes of this section (g) of the Rule, the term “margin equity security” utilizes the definition at Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System, excluding a nonequity security.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on July 17, 2008, the Board of Governors of FINRA authorized the filing of the rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

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

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

(a) 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.³ The portfolio margin pilot program is substantially similar to margin rule amendments by the NYSE and the Chicago Board Options Exchange ("CBOE"), which were approved by the Commission.⁴ Consistent with the amended

³ See Securities Exchange Act Release No. 55471 (March 14, 2007), 72 FR 13149 (March 20, 2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-013).

⁴ See Securities 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); Securities 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); Securities 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 Securities 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); Securities 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).

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.⁵ 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.⁶

FINRA proposes to codify FINRA's interpretation of NASD Rule 2520(g) and Incorporated NYSE Rule 431(g) regarding (1) monitoring concentrated equity positions 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.⁷ FINRA proposes to codify this requirement in

⁵ See Securities 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 Securities 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 Securities 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).

⁶ See SR-FINRA-2008-041 and SR-CBOE-2008-73.

⁷ See <http://www.finra.org/RulesRegulation/PublicationsGuidance/p038849>.

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.⁸ Customers that day trade in excess of their day trading buying power are required to deposit additional funds and/or securities to 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.⁹ In a portfolio margin account, margin deficiencies are due within three business days.¹⁰ 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

⁸ “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.

⁹ See NASD Rule 2520(f)(8)(C) and Incorporated NYSE Rule 431(f)(8)(C).

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

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.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing to implement the proposed rule change on August 1, 2008.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ 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.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

¹¹ 15 U.S.C. 78o-3(b)(6).

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act¹² and paragraph (f)(1) of Rule 19b-4 thereunder,¹³ in that the proposed rule change constitutes a stated interpretation with respect to the meaning, administration, or enforcement of an existing rule.

FINRA proposes to make the proposed rule change operative on August 1, 2008.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is substantially similar to amendments to CBOE Rule 12.4 (Portfolio Margin) and 15.8A (Risk Analysis of Portfolio Margin Accounts).¹⁴

9. **Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

¹² 15 U.S.C. 78s(b)(3).

¹³ 17 CFR 240.19b-4(f)(1).

¹⁴ See SR-CBOE-2008-74.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2008-042)

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 , 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 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.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2500. SPECIAL ACCOUNTS

* * * * *

2520. Margin Requirements

(a) through (f) No Change.

(g) Portfolio Margin

As an alternative to the "strategy-based" margin requirements set forth in paragraphs (a) through (f) of this Rule, members may elect to apply the portfolio margin requirements set forth in this paragraph (g) to all margin equity securities,¹ listed options, security futures products (as defined in Section 3(a)(56) of the Exchange Act), unlisted derivatives, warrants, index warrants and related instruments, provided that the requirements of paragraph (g)(6)(B)(i) of this Rule are met.

In addition, a member, provided that it is a Futures Commission Merchant ("FCM") and is either a clearing member of a futures clearing organization or has an

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.

affiliate that is a clearing member of a futures clearing organization, is permitted under this paragraph (g) to combine an eligible participant's related instruments as defined in paragraph (g)(2)(D), with listed index options, unlisted derivatives, options on exchange traded funds ("ETF"), index warrants and underlying instruments and compute a margin requirement for such combined products on a portfolio margin basis.

The portfolio margin provisions of this Rule shall not apply to Individual Retirement Accounts ("IRAs").

(1) Monitoring. — Members must monitor the risk of portfolio margin accounts and maintain a comprehensive written risk analysis methodology for assessing the potential risk to the member's capital over a specified range of possible market movements of positions maintained in such accounts. The risk analysis methodology shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained, and the person(s) within the organization responsible for the risk function. This risk analysis methodology must be filed with NASD, or the member's designated examining authority ("DEA") if other than NASD, and submitted to the Commission prior to the implementation of portfolio margining. In performing the risk analysis of portfolio margin accounts required by this Rule, each member shall include in the written risk analysis methodology procedures and guidelines for:

(A) through (F) No Change.

(G) the appropriate response by management when limits on credit extensions related to portfolio margin accounts have been exceeded; [and]

(H) determining the need to collect additional margin from a particular eligible participant, including whether that determination was based upon the creditworthiness of the participant and/or the risk of the eligible product[.]; and

(I) monitoring the credit exposure resulting from concentrated positions within both individual portfolio margin accounts and across all portfolio margin accounts.

Moreover, management must periodically review, in accordance with written procedures, the member's credit extension activities for consistency with these guidelines. Management must periodically determine if the data necessary to apply this paragraph (g) is accessible on a timely basis and information systems are available to adequately capture, monitor, analyze and report relevant data.

(2) through (12) No Change.

(13) Day Trading Requirements. — The day trading restrictions promulgated under paragraph (f)(8)(B) of this Rule shall not apply to portfolio margin accounts that establish and maintain at least five million dollars in equity, provided that a member has the ability to monitor the intra-day risk associated with day trading. Portfolio margin accounts that do not establish and maintain at least five million dollars in equity will be subject to the day trading restrictions under paragraph (f)(8)(B) of this Rule, provided the member has the ability to apply the applicable day trading requirement under this Rule. However, if the position or positions day traded were part of a hedge strategy, the day trading restrictions will not apply. A “hedge strategy” for purposes of this Rule means a

transaction or a series of transactions that reduces or offsets a material portion of the risk in a portfolio. Members are expected to monitor these portfolio margin accounts to detect and prevent circumvention of the day trading requirements. In the event day trades executed in a portfolio margin account exceed the day trading buying power, the day trade margin deficiency that is created must be met by the deposit of cash and/or securities within three business days.

(14) through (15) No Change.

¹ For purposes of this paragraph (g) of the Rule, the term “margin equity security” utilizes the definition at Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System.

* * * * *

Rule 431. Margin Requirements

(a) through (f) No Change.

(g) Portfolio Margin

As an alternative to the “strategy-based” margin requirements set forth in sections (a) through (f) of this Rule, members organizations may elect to apply the portfolio margin requirements set forth in this section (g) to all margin equity securities,¹ listed options, unlisted derivatives, and security futures products (as defined in Section 3(a)(56) of the Securities Exchange Act of 1934 (the “Exchange Act”)), provided that the requirements of section (g)(6)(B)(1) of this Rule are met.

In addition, a member organization, provided that it is a Futures Commission Merchant (“FCM”) and is either a clearing member of a futures clearing organization or

has an affiliate that is a clearing member of a futures clearing organization, is permitted under this section (g) to combine an eligible participant's related instruments as defined in section (g)(2)(E), with listed index options, options on exchange traded funds ("ETF"), index warrants and underlying instruments and compute a margin requirement for such combined products on a portfolio margin basis.

The portfolio margin provisions of this Rule shall not apply to Individual Retirement Accounts ("IRAs").

(1) Member organizations must monitor the risk of portfolio margin accounts and maintain a comprehensive written risk analysis methodology for assessing the potential risk to the member organization's capital over a specified range of possible market movements of positions maintained in such accounts. The risk analysis methodology shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained, and the person(s) within the organization responsible for the risk function. This risk analysis methodology must be filed with the New York Stock Exchange (the "Exchange"), or the member organization's designated examining authority ("DEA") if other than the Exchange, and submitted to the Securities and Exchange Commission ("SEC") prior to the implementation of portfolio margining. In performing the risk analysis of portfolio margin accounts required by this Rule, each member organization shall include in the written risk analysis methodology procedures and guidelines for:

(A) through (F) No Change.

(G) the appropriate response by management when limits on credit extensions related to portfolio margin accounts have been exceeded, [and]

(H) determining the need to collect additional margin from a particular eligible participant, including whether that determination was based upon the creditworthiness of the participant and/or the risk of the eligible product[.], and

(I) monitoring the credit exposure resulting from concentrated positions within both individual portfolio margin accounts and across all portfolio margin accounts.

Moreover, management must periodically review, in accordance with written procedures, the member organization's credit extension activities for consistency with these guidelines. Management must periodically determine if the data necessary to apply this section (g) is accessible on a timely basis and information systems are available to adequately capture, monitor, analyze and report relevant data.

(2) through (12) No Change.

(13) Day Trading Requirements. — The day trading restrictions promulgated under section (f)(8)(B) of this Rule shall not apply to portfolio margin accounts that establish and maintain at least five million dollars in equity, provided a member organization has the ability to monitor the intra-day risk associated with day trading. Portfolio margin accounts that do not establish and maintain at least five million dollars in equity will be subject to the day trading restrictions under section (f)(8)(B), provided the member organization has the ability to apply the applicable day trading requirement under this Rule. However,

if the position or positions day traded were part of a hedge strategy, the day trading restrictions will not apply. A “hedge strategy” for purposes of this Rule means a transaction or a series of transactions that reduces or offsets a material portion of the risk in a portfolio. Member organizations are expected to monitor these portfolio margin accounts to detect and prevent circumvention of the day trading requirements. In the event day trades executed in a portfolio margin account exceed the day trading buying power, the day trade margin deficiency that is created must be met by the deposit of cash and/or securities within three business days.

(14) through (15) No Change.

¹ For purposes of this section (g) of the Rule, the term “margin equity security” utilizes the definition at Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System, excluding a nonequity security.

* * * * *

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 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

⁶ See Securities Exchange Act Release No. 55471 (March 14, 2007), 72 FR 13149 (March 20, 2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-013).

⁷ See Securities 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); Securities 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); Securities 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 Securities 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); Securities 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 Securities 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 Securities Exchange Act Release No. 56107 (July 19, 2007) 72 FR 41377 (July 27, 2007) (Notice of Filing and Immediate Effectiveness of

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 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.

SR-NYSE-2007-56, relating to extension of the NYSE portfolio margin pilot program to July 31, 2008) and Securities 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.

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

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 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. FINRA is proposing to implement the proposed rule change on August 1, 2008.

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.

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).

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.

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

The foregoing rule change 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

¹⁴ 15 U.S.C. 78o-3(b)(6).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(1).

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:

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 Florence Harmon , Acting 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. 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 Harmon

Acting Secretary

¹⁷ 17 CFR 200.30-3(a)(12).