

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) Definitions — For purposes of this paragraph (g), the following terms shall have the meanings specified below:

(A) The term "listed option" means any equity-based or equity index-based option traded on a registered national securities exchange or issued and guaranteed by a registered clearing agency and shall include an OCC Cleared OTC Option (as defined in Rule 2360).

(B) The term "portfolio" means any eligible product, as defined in paragraph (g)(6)(B)(i), grouped with its underlying instruments and related instruments.

(C) The term "product group" means two or more portfolios of the same type (see table in paragraph (g)(2)(F) below) for which it has been determined by SEA Rule 15c3-1a that a percentage of offsetting profits may be applied to losses at the same valuation point.

(D) The term "related instrument" within a security class or product group means broad-based index futures and options on broad-based index futures covering the same underlying instrument. The term "related instrument" does not include security futures products.

(E) The term "security class" refers to all listed options, security futures products, unlisted derivatives, and related instruments covering the same underlying instrument and the underlying instrument itself.

(F) The term "theoretical gains and losses" means the gain and loss in the value of individual eligible products and related instruments at ten equidistant intervals (valuation points) ranging from an assumed movement (both up and down) in the current market value of the underlying instrument. The magnitude of the valuation point range shall be as follows:

Portfolio Type	Up / Down Market Move (High & Low Valuation Points)
High Capitalization, Broad-based Market Index ²	+6% / -8%
Non-High Capitalization, Broad-based Market Index ³	+/- 10%
Any other eligible product that is, or is based on, an equity security or a narrow-based index	+/- 15%

(G) The term "underlying instrument" means a security or security index upon which any listed option, unlisted derivative, security future, or broad-based index future is based.

(H) The term "unlisted derivative" means any equity-based or equity index-based option, forward contract, or security-based swap that can be valued by a theoretical pricing model approved by the SEC for valuing that type of option, forward contract, or security-based swap, and that is neither traded on a national securities exchange, nor issued and guaranteed by a registered clearing agency and shall not include an OCC Cleared OTC Option (as defined in Rule 2360).

(3) Approved Theoretical Pricing Models — Theoretical pricing models must be approved by the SEC.

(4) Eligible Participants — The application of the portfolio margin provisions of this paragraph (g) is limited to the following:

(A) any broker or dealer registered pursuant to Section 15 of the Exchange Act;

(B) any member of a national futures exchange to the extent that listed index options, unlisted derivatives, options on ETFs, stock index warrants or underlying instruments hedge the member's index futures; and

(C) any person or entity not included in paragraphs (g)(4)(A) and (g)(4)(B) above approved for uncovered options and, if transactions in security futures are to be included in the account, approval for such transactions is also required. However, an eligible participant under this paragraph (g)(4)(C) may not establish or maintain positions in unlisted derivatives unless minimum equity of at least \$5 million is established and maintained with the member. For purposes of this minimum equity requirement, all securities and futures accounts carried by the member for the same eligible participant may be combined provided ownership across the accounts is identical. A guarantee pursuant to paragraph (f)(4) of this Rule is not permitted for purposes of the minimum equity requirement.

(5) Opening of Accounts

(A) Members must notify and receive approval from FINRA, or the member's DEA if other than FINRA, prior to establishing a portfolio margin methodology for eligible participants.

(B) Only eligible participants that have been approved to engage in uncovered short option contracts pursuant to Rule 2360, or the rules of the member's DEA if other than FINRA, are permitted to utilize a portfolio margin account. If eligible participants engage in security futures products transactions, approval from the member will also be required pursuant to Rule 2370.

(C) On or before the date of the initial transaction in a portfolio margin account, a member shall:

(i) furnish the eligible participant with a special written disclosure statement describing the nature and risks of portfolio margining which includes an acknowledgement for all portfolio margin account owners to sign, attesting that they have read and understood the disclosure statement, and agree to the terms under which a portfolio margin account is provided (see Rule 2360(c)); and

(ii) obtain the signed acknowledgement noted above from the eligible participant and record the date of receipt.

(6) Establishing Account and Eligible Positions

(A) For purposes of applying the portfolio margin requirements prescribed in this paragraph (g), members are to establish and utilize a specific securities margin account, or sub-account of a margin account, clearly identified as a portfolio margin account that is separate from any other securities account carried for an eligible participant.

A margin deficit in the portfolio margin account of an eligible participant may not be considered as satisfied by excess equity in another account. Funds and/or securities must be transferred to the deficient account and a written record created and maintained. However, if a portfolio margin account is carried as a sub-account of a margin account, excess equity in the margin account (determined in accordance with the rules applicable to a margin account other than a portfolio margin account) may be used to satisfy a margin deficit in the portfolio margin sub-account without having to transfer any funds and/or securities.

(B) Eligible Products

(i) For eligible participants as described in paragraphs (g)(4)(A) through (g)(4)(C), a transaction in, or transfer of, an eligible product may be effected in the portfolio margin account. Eligible products under this paragraph (g) consist of:

a. a margin equity security (including a foreign equity security and option on a foreign equity security, provided the foreign equity security is deemed to have a "ready market" under SEA Rule 15c3-1 or a "no-action" position issued thereunder, and a control or restricted security, provided the security has met the requirements in a manner consistent with Securities Act Rule 144 or an SEC "no-action" position issued thereunder, sufficient enough to permit the sale of the security, upon exercise or assignment of any listed option or unlisted derivative written or held against it, without restriction);

b. a listed option on an equity security or index of equity securities;

c. a security futures product;

d. an unlisted derivative on an equity security or index of equity securities;

e. a warrant on an equity security or index of equity securities; and

f. a related instrument as defined in paragraph (g)(2)(D).

(7) Margin Required

The amount of margin required under this paragraph (g) for each portfolio shall be the greater of:

(A) the amount for any of the ten equidistant valuation points representing the largest theoretical loss as calculated pursuant to paragraph (g)(8) below; or

(B) for eligible participants as described in paragraph (g)(4)(A) through (g)(4)(C), \$.375 for each listed option, unlisted derivative, security future product, and related instrument, multiplied by the contract's or instrument's multiplier, not to exceed the market value in the case of long contracts in eligible products.

(C) Account guarantees pursuant to paragraph (f)(4) of this Rule are not permitted for purposes of meeting margin requirements.

(D) Positions other than those listed in paragraph (g)(6)(B)(i) above are not eligible for portfolio margin treatment. However, positions not eligible for portfolio margin treatment (except for ineligible related instruments) may be carried in a portfolio margin account, provided the member has the ability to apply the applicable strategy-based margin requirements promulgated under this Rule, with the exception of securities subject to other provisions of paragraph (g). Shares of a money market mutual fund may be carried in a portfolio margin account, also subject to the applicable strategy-based margin requirement under this Rule provided that:

- (i) the customer waives any right to redeem shares without the member's consent;
- (ii) the member (or, if the shares are deposited with a clearing organization, the clearing organization) obtains the right to redeem shares in cash upon request;
- (iii) the fund agrees to satisfy any conditions necessary or appropriate to ensure that the shares may be redeemed in cash, promptly upon request; and
- (iv) the member complies with the requirements of Section 11(d)(1) of the Exchange Act and SEA Rule 11d1-2.

(E) Non-margin eligible equity securities held "long" in a portfolio margin account shall be maintained at 100 percent of the current market value at all times. Non-margin eligible equity securities held "short" in a portfolio margin account shall be maintained at 50 percent of the current market value at all times.

(8) Method of Calculation

(A) Long and short positions in eligible products, including underlying instruments and related instruments, are to be grouped by security class; each security class group being a "portfolio." Each portfolio is categorized as one of the portfolio types specified in paragraph (g)(2)(F) above, as applicable.

(B) For each portfolio, theoretical gains and losses are calculated for each position as specified in paragraph (g)(2)(F) above. For purposes of determining the theoretical gains and losses at each valuation point, members shall obtain and utilize the theoretical values of eligible products as described in this paragraph (g) rendered by an approved theoretical pricing model.

(C) Offsets. Within each portfolio, theoretical gains and losses may be netted fully at each valuation point. Offsets between portfolios within the eligible product groups, as described in paragraph (g)(2)(F), may then be applied as permitted by SEA Rule 15c3-1a.

(D) After applying the offsets above, the sum of the greatest loss from each portfolio is computed to arrive at the total margin required for the account (subject to the per contract minimum).

(E) In addition, if a security that is convertible, exchangeable, or exercisable into a security that is an underlying instrument requires the payment of money or would result in a loss if converted, exchanged, or exercised at the time when the security is deemed an underlying instrument, the full amount of the conversion loss is required.

(9) Portfolio Margin Minimum Equity Deficiency

(A) If, as of the close of business, the equity in the portfolio margin account of an eligible participant as described in paragraph (g)(4)(C), declines below the \$5 million minimum equity required, if applicable, and is not restored to at least \$5 million within three business days by a deposit of funds and/or securities or through favorable market action, members are prohibited from accepting new opening orders beginning on the fourth business day, except that new opening orders entered for the purpose of reducing market risk may be accepted if the result would be to lower margin requirements. This prohibition shall remain in effect until,

- (i) equity of \$5 million is established, or
- (ii) all unlisted derivatives are liquidated or transferred from the portfolio margin account to the appropriate securities account.

(B) Members will not be permitted to deduct any portfolio margin minimum equity deficiency amount from net capital in lieu of collecting the minimum equity required.

(10) Portfolio Margin Deficiency

(A) If, as of the close of business, the equity in the portfolio margin account of an eligible participant, as described in paragraph (g)(4)(A) through (g)(4)(C), is less than the margin required, the eligible participant may deposit additional funds and/or securities or establish a hedge to meet the margin requirement within three business days. After the three business day period, members are prohibited from accepting new opening orders, except that new opening orders entered for the purpose of reducing market risk may be accepted if the result would be to lower margin requirements. In the event an eligible participant fails to hedge existing positions or deposit additional funds and/or securities in an amount sufficient to eliminate any margin deficiency after three business days, the member must liquidate positions in an amount sufficient to, at a minimum, lower the total margin required to an amount less than or equal to the account equity.

(B) If the portfolio margin deficiency is not met by the close of business on the next business day after the business day on which such deficiency arises, members will be required to deduct the amount of the deficiency from net capital until such time the deficiency is satisfied or positions are liquidated pursuant to paragraph (g)(10)(A) above.

(C) Members will not be permitted to deduct any portfolio margin deficiency amount from net capital in lieu of collecting the margin required.

(D) FINRA, or the member's DEA if other than FINRA, may grant additional time for an eligible participant to meet a portfolio margin deficiency upon written request, which is expected to be granted in extraordinary circumstances only.

(E) Notwithstanding the provisions of subparagraph (A) above, members should not permit an eligible participant to make a practice of meeting a portfolio margin deficiency by liquidation. Members must have procedures in place to identify accounts that periodically liquidate positions to eliminate margin deficiencies, and the member is expected to take appropriate action when warranted. Liquidation to eliminate margin deficiencies that are caused solely by adverse price movements may be disregarded.

(11) Determination of Value for Margin Purposes

For the purposes of this paragraph (g), all eligible products shall be valued at current market prices. Account equity for the purposes of paragraphs (g)(9)(A) and (g)(10)(A) shall be calculated separately for each portfolio margin account by adding the current market value of all long positions, subtracting current market value of all short positions, and adding the credit (or subtracting the debit) balance in the account.

(12) Net Capital Treatment of Portfolio Margin Accounts

(A) No member that requires margin in any portfolio account pursuant to paragraph (g) of this Rule shall permit the aggregate portfolio margin requirements to exceed ten times its net capital for any period exceeding three business days. The member shall, beginning on the fourth business day, cease opening new portfolio margin accounts until compliance is achieved.

(B) If, at any time, a member's aggregate portfolio margin requirements exceed ten times its net capital, the member shall immediately transmit telegraphic or facsimile notice of such deficiency to the principal office of the SEC in Washington, D.C., the district or regional office of the SEC for the district or region in which the member maintains its principal place of business; and to FINRA, or the member's DEA if other than FINRA. The notice to FINRA shall be in such form as FINRA may prescribe.

(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 \$5 million 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 \$5 million 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) Requirements to Liquidate

(A) A member is required immediately either to liquidate, or transfer to another broker-dealer eligible to carry portfolio margin accounts, all portfolio margin accounts with positions in related instruments if the member is:

- (i) insolvent as defined in Section 101 of Title 11 of the United States Code, or is unable to meet its obligations as they mature;
- (ii) the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;
- (iii) not in compliance with applicable requirements under the Exchange Act or rules of the SEC or any self-regulatory organization with respect to financial responsibility or hypothecation of eligible participant's securities; or
- (iv) unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules.

(B) Nothing in this paragraph (g)(14) shall be construed as limiting or restricting in any way the exercise of any right of a registered clearing agency to liquidate or cause the liquidation of positions in accordance with its by-laws and rules.

(15) Members must ensure that portfolio accounts are in compliance with Rule 2360.

(h) Margin Requirement Exception for Certain Members.

Any member designated to another self-regulatory organization for oversight of the member's compliance with applicable securities laws, rules and regulations, and self-regulatory organization rules under SEA Rule 17d-1 is exempt from the provisions of Rule 4210.

••• Supplementary Material: -----

.01 The following tables are given to illustrate the method of computing the number of elapsed days in conformity with paragraph (f)(2)(A)(ii):

On bonds (except bonds issued or guaranteed by the United States Government):
From 1st to 30th of the same month to be figured as 29 days
From 1st to 31st of the same month to be figured as 30 days
From 1st to 1st of the following month to be figured as 30 days.
Where interest is payable on 30th or 31st of the month:
From 30th or 31st to 1st of the following month to be figured as 1 day
From 30th or 31st to 30th of the following month to be figured as 30 days
From 30th or 31st to 31st of the following month to be figured as 30 days
From 30th or 31st to 1st of second following month, figured as 1 month, 1 day
On bonds issued or guaranteed by the United States Government:
From 15th of a 28-day month to the 15th of the following month is 28 days
From 15th of a 30-day month to the 15th of the following month is 30 days
From 15th of a 31-day month to the 15th of the following month is 31 days.

The six month's interest period ending:	
January 15 is 184 days	July 15 is 181* days
February 15 is 184 days	August 15 is 181* days
March 15 is 181* days	September 15 is 184 days
April 15 is 182* days	October 15 is 183 days
May 15 is 181* days	November 15 is 184 days
June 15 is 182* days	December 15 is 183 days

* Leap Year Adds 1 day to this period.

.02 Monitoring Procedures. (To be implemented on Oct. 26, 2022).

.03 Mark to Market Loss/Deficiency. (To be implemented on Oct. 26, 2022).

.04 Determination of Exempt Account. (To be implemented on Oct. 26, 2022).

.05 Risk Limit Determination.

(a) For purposes of any risk limit determination pursuant to paragraphs (e)(2)(F), (e)(2)(G) or (e)(2)(H) of this Rule:

(1) If a member engages in transactions with advisory clients of a registered investment adviser, the member may elect to make the risk limit determination at the investment adviser level;

(2) Members of limited size and resources that do not have a credit risk officer or credit risk committee may designate an appropriately registered principal to make the risk limit determinations;

(3) The member may base the risk limit determination on consideration of all products involved in the member's business with the counterparty, provided the member makes a daily record of the counterparty's risk limit usage; and

(4) A member shall consider whether the margin required pursuant to this Rule is adequate with respect to a particular counterparty account or all its counterparty accounts and, where appropriate, increase such requirements.

.06 Good Faith Account. A Regulation T good faith account, other than a non-securities account, is a margin account for purposes of Rule 4210.

¹ For purposes of this paragraph (g) of this Rule, the term "margin equity security" utilizes the definition at Section 220.2 of Regulation T.

² In accordance with paragraph (b)(1)(i)(B) of SEA Rule 15c3-1a (Appendix A to SEA Rule 15c3-1), 17 CFR 240.15c3-1a(b)(1)(i)(B).

³ See footnote 2.

Amended by SR-FINRA-2021-008 eff. April 6, 2022.
Amended by SR-FINRA-2015-036 eff. Dec. 15, 2016.
Amended by SR-FINRA-2013-027 eff. Nov. 7, 2013.
Amended by SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-FINRA-2012-024 eff. Jan. 23, 2013.
Amended by SR-FINRA-2012-024 eff. Oct. 26, 2012.
Amended by SR-FINRA-2010-024 eff. Dec. 2, 2010.
Amended by SR-FINRA-2008-042 eff. Aug. 1, 2008.
Amended by SR-FINRA-2008-041 eff. Aug. 1, 2008.
Amended by SR-NASD-2007-045 eff. Aug. 1, 2007.
Amended by SR-NASD-2007-024 eff. April 2, 2007.
Amended by SR-NASD-2007-013 eff. April 2, 2007.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.
Amended by SR-NASD-2006-045 eff. April 3, 2006.
Amended by SR-NASD-2000-08 eff. Dec. 1, 2003.
Amended by SR-NASD-2003-45 eff. March 20, 2003.
Amended by SR-NASD-2002-166 eff. Jan. 24, 2003.
Amended by SR-NASD-2000-03 eff. Sept. 28, 2001.
Amended by SR-NASD-2000-15 eff. Feb. 26, 2001.
Amended by SR-NASD-99-05 eff. Aug. 21, 2000.
Amended by SR-NASD-97-28 eff. Aug. 7, 1997.
Amended by SR-NASD-97-14 eff. June 10, 1997.
Amended by SR-NASD-95-37 eff. Sept. 28, 1995.
Amended by SR-NASD-93-48 eff. Mar. 8, 1994.
Amended by SR-NASD-92-35 eff. April 19, 1993.
Amended eff. Feb. 15, 1974;

Selected Notices: 74-08, 76-08, 76-31, 77-19, [88-26](#), [93-15](#), [93-23](#), [94-24](#), [94-70](#), [95-82](#), [00-51](#), [01-11](#), [01-26](#), [03-66](#), [06-26](#), [07-11](#), [08-41](#), [10-45](#), [12-44](#), [13-39](#), [16-31](#), [22-03](#).

[Interpretations of FINRA's Margin Rule](#)

◀ 4200. MARGIN

UP

4220. DAILY RECORD OF REQUIRED MARGIN ▶

VERSIONS

Apr 06, 2022 - Oct 25, 2022



4220. Daily Record of Required Margin

The Rule

Notices

Each member carrying securities margin accounts for customers (as such term is defined in [Rule 4210\(a\)\(3\)](#)) or subject to [Rule 4240](#) shall make a record each day of every case in which, pursuant to FINRA rules or Regulation T of the Board of Governors of the Federal Reserve System, initial or additional margin must be obtained in a customer's account in such format as FINRA may require. The record shall show, for each account, the amount of margin so required and the date when and manner in which cash or securities are deposited or the margin requirements were otherwise complied with. Individual entries will be deemed a "record," and such entries need not be combined and kept as a separate record.

Amended by SR-FINRA-2021-008 eff. April 6, 2022.

Adopted by SR-FINRA-2010-024 eff. Dec. 2, 2010.

Selected Notice: [10-45](#), [22-03](#).

< [4210. MARGIN REQUIREMENTS](#)

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[4230. REQUIRED SUBMISSIONS FOR REQUESTS FOR EXTENSIONS OF TIME UNDER REGULATION T AND SEA RULE 15C3-3](#) >

VERSIONS

Apr 06, 2022 onwards



4230. Required Submissions for Requests for Extensions of Time Under Regulation T and SEA Rule 15c3-3

The Rule

Notices

(a) When FINRA is the designated examining authority pursuant to SEA Rule 17d-1 for a member that is a clearing firm, such member must submit requests for extensions of time as contemplated by Sections 220.4(c) and 220.8(d) of Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T") and SEA Rule 15c3-3(n) to FINRA for approval, in such format as FINRA may require.

(b) Each member that is a clearing firm for which FINRA is the designated examining authority is required to file a monthly report with FINRA in such format as FINRA may require, indicating all broker-dealers for which it clears that have overall ratios of requests for extensions of time as contemplated by Sections 220.4(c) and 220.8(d) of Regulation T and SEA Rule 15c3-3(n) to total transactions for the month that exceed a percentage specified by FINRA. The report is due to FINRA within five business days following the end of each reporting month. For months when no broker-dealer for which it clears exceeds the criteria, the clearing firm must submit a report indicating such.

Amended by SR-FINRA-2010-024 eff. Dec. 2, 2010.
Adopted by SR-NASD-2006-064 eff. March 1, 2007.

Selected Notices: 06-62, 10-45.

4240. Security-Based Swap Margin Requirements

The Rule

Notices

Every member that is a party to a security-based swap with a customer, broker or dealer, or other Counterparty, or who has guaranteed or otherwise become responsible for any other person's SBS obligations, shall comply with the following requirements, except that a member that is registered as a security-based swap dealer under Exchange Act section 15F shall instead comply with SEA Rule 18a-3.

(a) Cleared SBS Margin Requirements

Except as provided in paragraph (b)(5) of this Rule, the margin to be maintained on any Cleared SBS is the margin on such Cleared SBS required by the Clearing Agency through which such SBS is Cleared.

(b) Uncleared SBS Margin Requirements

(1) Current Exposure Computation

As of the close of business on each business day, the member shall calculate with respect to each Uncleared SBS Account an amount equal to:

(A) The net Value (which may be negative) of all Uncleared SBS in the Uncleared SBS Account; plus

(B) The Value of all Variation Margin collected from the Counterparty that has not been returned or applied to an obligation of the Counterparty; minus

(C) The Value of all Variation Margin delivered to the Counterparty that has not been returned or applied to an obligation of the member.

If this amount is positive, it is the Counterparty's "**Current Exposure**" to the member; if it is negative, then its absolute value is the member's "**Current Exposure**" to the Counterparty.

(2) Initial Margin Computation

As of the close of business on each business day, the member shall compute an amount (the "**Initial Margin Requirement**") for each Uncleared SBS Account equal to the sum of the following Initial Margin Requirements on the Uncleared SBS and securities positions in that Uncleared SBS Account.

(A) Initial Margin Requirements

For purposes of the computation of an Initial Margin Requirement for an Uncleared SBS Account and subject to paragraph (b)(2)(B) of this Rule:

(i) The “**Initial Margin Requirement**” on an Uncleared Basic CDS is an amount equal to the “haircut” on that position under SEA Rule 15c3-1(c)(2)(vi)(P)(1); provided, however, that if the member has a netting or collateral agreement that is legally enforceable against the Counterparty and covers any combination of Uncleared Basic CDS or securities specified in clause (iii), (iv) or (v) of SEA Rule 15c3-1(c)(2)(vi)(P)(1), the member may compute an Initial Margin Requirement on such combination of positions equal to the “haircut” on that combination under SEA Rule 15c3-1(c)(2)(vi)(P)(1);

(ii) The “**Initial Margin Requirement**” on an Uncleared Basic SBS is the margin that Rule 4210 would require to be maintained on the Equivalent Margin Account; provided, however, that if the member has a netting or collateral agreement that is legally enforceable against the Counterparty and covers any combination of Uncleared Basic SBS, securities or options positions, the member may compute an Initial Margin Requirement on the combination of such positions equal to the margin that Rule 4210 would require to be maintained on the combination of Equivalent Margin Accounts for such Uncleared Basic SBS and securities or options positions;

(iii) Subject to the foregoing, the “**Initial Margin Requirement**” on long or short securities positions in an Uncleared SBS Account is the margin that Rule 4210 would require to be maintained on those positions in the Counterparty’s margin account; provided, however, that there shall be no Initial Margin Requirement on securities that the member has chosen to haircut pursuant to paragraph (d)(2)(B)(ii) of this Rule;

(iv) The “**Initial Margin Requirement**” on any Uncleared SBS other than a Basic CDS or Basic SBS shall be determined in a manner approved by FINRA pursuant to paragraph (b)(2)(C) of this Rule; provided, however, that the Initial Margin Requirement for any Legacy SBS, other than a Basic CDS, Basic SBS, or other SBS for which FINRA has approved the use of specific margin requirements by the member pursuant to paragraph (b)(2)(C) of this Rule, shall be computed using the applicable method specified in SEA Rule 15c3-1(c)(2)(vi)(P).

(B) Combining Positions in the Computation of Initial Margin Requirements

To be included in a combination referred to in paragraph (b)(2)(A)(i) or (A)(ii) of this Rule, securities positions must be in the Counterparty’s Uncleared SBS Account or margin account at the member. Securities may not be included in a combination referred to in paragraph (b)(2)(A)(i) or (A)(ii) if the member has chosen to haircut them pursuant to paragraph (d)(2)(B)(ii) of this Rule. To be included in a combination referred to in paragraph (b)(2)(A)(ii), option positions must be in the Counterparty’s margin account at the member. No SBS, security or option position may be included in more than one combination referred to in paragraph (b)(2)(A)(i) or (A)(ii), nor may such combinations include any securities or options positions for which reduced margin requirements are computed under paragraphs (e)(1) or (f)(2)(F)(ii) through (f)(2)(I) of Rule 4210. When an Initial Margin Requirement is computed on a combination referred to in paragraph (b)(2)(A)(i) or (A)(ii) that includes securities or options positions in the Counterparty’s margin account, the Initial Margin Requirement on the Uncleared SBS included in that combination shall be equal to such Initial Margin Requirement computed on the combination, reduced (but not below zero) by the aggregate Rule 4210 maintenance margin requirements applicable to such margin account positions.

(C) Initial Margin Requirements for SBS Other Than Basic CDS and Basic SBS

Any member may apply to FINRA for the approval of an Initial Margin Requirement for a type of SBS other than Basic CDS and Basic SBS. Any such application must:

- (i) define the specific type of SBS covered by the application;
- (ii) describe the purpose(s) that the member and its Counterparties would have for entering that type of SBS;
- (iii) identify all variables that influence the value of that type of SBS;
- (iv) explain all risks of that type of SBS;
- (v) propose a specific Initial Margin Requirement (not a margin model) for that type of SBS;
- (vi) explain how the proposed specific Initial Margin Requirement would adequately protect a member and its capital against each of those risks;
- (vii) attach copies of the member’s SBS risk management procedures and describe the application of those procedures to that type of SBS; and
- (viii) provide the results of backtesting of the proposed specific Initial Margin Requirement over periods of significant volatility in the variables influencing the value of that type of SBS.

If FINRA approves any such application, such approval: (a) may be unconditional or conditional, including in the form of a time-limited pilot program; (b) may approve the use of the specific Initial Margin Requirement only by the applicant; or (c) may take the form of a regulatory notice or other communication approving the use of the specific margin requirements by members generally. No member shall become a party to an SBS other than a Basic CDS or Basic SBS unless FINRA has approved an Initial Margin Requirement for such member's use with respect to that type of SBS.

(3) Collection or Delivery of Variation and Initial Margin

Subject to paragraph (b)(5) of this Rule:

(A) Variation Margin

Each member shall deliver or return to each Counterparty cash or margin securities with a Value equal to the Counterparty's Current Exposure (if any) to the member; or collect or retrieve from the Counterparty cash or margin securities with a Value equal to the member's Current Exposure (if any) to the Counterparty;

(B) Initial Margin

Each member shall collect from each Counterparty cash or margin securities with a Value at least equal to any Initial Margin Deficit; and

(C) SBS Guarantees

Each member that guarantees, or otherwise becomes responsible for, the obligations under one or more Uncleared SBS that one party (the "**Primary Obligor**") has to the other party (the "**Beneficiary**"), shall be required to collect Variation Margin and Initial Margin from the Primary Obligor to the extent such collection would be required if those Uncleared SBS were between the Primary Obligor and the member (rather than the Beneficiary), unless the member can establish that such margin has been delivered by or on behalf of the Primary Obligor to the Beneficiary (and not returned or applied).

(4) Manner and Time of Collection or Delivery of Variation and Initial Margin; Prohibited Returns and Withdrawals

(A) Variation Margin or Initial Margin is deemed collected from a Counterparty, or returned to the member, when it is received by the member for the Counterparty's Uncleared SBS Account, or when it is transferred to the Counterparty's Uncleared SBS Account from another account at the member.

(B) Variation Margin is deemed delivered to a Counterparty, and Variation Margin or Initial Margin is deemed returned to the Counterparty, when it is transferred from the Counterparty's Uncleared SBS Account in a manner consistent with the Counterparty's instructions or agreement with the member, including when it is transferred to another account of the Counterparty carried by the member if that is consistent with the Counterparty's instructions or agreement with the member.

(C) Margin required to be collected or delivered by paragraph (b)(3) of this Rule shall be collected or delivered as promptly as possible and no later than the close of business on the business day after the date as of which the relevant Current Exposure or Initial Margin Requirement was required to be computed. Unless FINRA has specifically granted the member additional time, any member that has not collected any Initial Margin or Variation Margin required to be collected under paragraph (b)(3) by the close of business on the third business day after the date as of which the relevant Current Exposure or Initial Margin Requirement was required to be computed, shall take prompt steps to liquidate positions in such Counterparty's Uncleared SBS Account to the extent necessary to eliminate the margin deficiency.

(D) If member is required by paragraph (b)(3)(A) of this Rule to deliver or return Variation Margin to the Counterparty and is also required by paragraph (b)(3)(B) of this Rule to collect Initial Margin from the Counterparty, the member shall net the delivery or return of Variation Margin against the collection of Initial Margin. If a member is required by paragraph (b)(3)(A) to collect or retrieve Variation Margin from the Counterparty and, giving effect to such collection or retrieval, would be permitted to return Initial Margin to the Counterparty, the member may net the return of Initial Margin against the collection or retrieval of Variation Margin.

(E) A member may not return Initial Margin to a Counterparty, nor permit a Counterparty to make a withdrawal from the Counterparty's margin account at the member, if such return or withdrawal, together with all other transactions, transfers, deposits and withdrawals on the same day, would create or increase an Initial Margin Deficit.

(5) Exceptions

(A) Clearing Agencies

A member is not required to deliver Variation Margin to, or collect Initial Margin or Variation Margin from, any Clearing Agency, and is not required to deduct otherwise required Variation Margin or Initial Margin in the computation of its net capital under SEA Rule 15c3-1 or, if applicable, FINRA Rule 4110(a).

A member may omit all (but not less than all) Legacy SBS with a Counterparty from the Counterparty's Uncleared SBS Account when computing Current Exposure under paragraph (b)(1) of this Rule and the Initial Margin Requirement under paragraph (b)(2) of this Rule, provided that (i) it collects and delivers margin on Legacy SBS to the extent of its contractual rights or obligations to do so and (ii) in the computation of its net capital under SEA Rule 15c3-1 or, if applicable, FINRA Rule 4110(a), it deducts the amount of any additional Variation Margin and Initial Margin it would have been required to collect under paragraph (b)(3) of this Rule if the Legacy SBS had been included in the Counterparty's Uncleared SBS Account.

(C) Multilateral Organizations

A member is not required to deliver Variation Margin to, or collect Initial Margin or Variation Margin from, any Multilateral Organization, provided that, in the computation of its net capital under SEA Rule 15c3-1 or, if applicable, FINRA Rule 4110(a), it deducts the amount of any Variation Margin and Initial Margin it would otherwise be required to collect under paragraph (b)(3) of this Rule.

(D) Financial Market Intermediaries

A member must deliver Variation Margin to, and collect Variation Margin from, a Counterparty that is a Financial Market Intermediary as required by paragraph (b)(3)(A) of this Rule. However, it is not required to collect Initial Margin from such a Counterparty provided that, in the computation of its net capital under SEA Rule 15c3-1 or, if applicable, FINRA Rule 4110(a), it deducts the amount of any Initial Margin it would otherwise be required to collect under paragraph (b)(3)(B) of this Rule.

(E) Sovereign Counterparties

A member must deliver Variation Margin to, and collect Variation Margin from, a Sovereign Counterparty as required by paragraph (b)(3)(A) of this Rule. However, if the member has determined pursuant to policies and procedures or credit risk models established pursuant to SEA Rule 15c3-1(c)(2)(vi)(I) that the Sovereign Counterparty has only a minimal amount of credit risk, the member is not required to collect Initial Margin from such Sovereign Counterparty provided that, in the computation of its net capital under SEA Rule 15c3-1 or, if applicable, FINRA Rule 4110(a), it deducts the amount of any Initial Margin it would otherwise be required to collect under paragraph (b)(3)(B) of this Rule.

(F) Majority Owners

A member must deliver Variation Margin to, and collect Variation Margin from, a Counterparty that is a direct or indirect owner of a majority of the equity and voting interests in the member as required by paragraph (b)(3)(A). However, it is not required to collect Initial Margin from such a Counterparty provided that, in the computation of its net capital under SEA Rule 15c3-1 or, if applicable, FINRA Rule 4110(a), it deducts the amount of any Initial Margin it would otherwise be required to collect under paragraph (b)(3)(B).

(G) ANC Firms Transacting with Majority Owners or Registered or Foreign SBS Dealers under Common Ownership

A member approved to use the alternative method of computing net capital pursuant to SEA Rule 15c3-1e must deliver Variation Margin to, and collect Variation Margin from, a Counterparty that is either (i) a direct or indirect owner of a majority of the equity and voting interests in the member, or (ii) a Registered or Foreign SBS Dealer a majority of whose equity and voting interests are directly or indirectly owned by such a direct or indirect owner of the member, in each case as required by paragraph (b)(3)(A). However, it is not required to collect Initial Margin from such a Counterparty provided that, in the computation of its net capital under SEA Rule 15c3-1 or, if applicable, FINRA Rule 4110(a), it takes a deduction for credit risk on transactions with such Counterparty computed in accordance with SEA Rule 15c3-1e(c).

(H) Portfolio Margin

This Rule 4240 shall not apply to any unlisted derivative, as defined in Rule 4210(g)(2)(H), carried by a member in a portfolio margin account subject to the requirements of Rule 4210(g) if such unlisted derivative is of a type addressed in the comprehensive written risk analysis methodology filed by the member with FINRA in compliance with Rule 4210(g)(1). This Rule 4240 also shall not apply to any SBS carried in a commodity account or other account under the jurisdiction of the Commodity Futures Trading Commission in accordance with an SEC rule, order, or no-action letter permitting SBS and swaps to be carried and portfolio margined together in such an account.

(c) Risk Monitoring Procedures and Guidelines

Members shall monitor the risk of any Uncleared SBS Accounts and shall 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 over a specified time period. For purposes of this Rule, members must employ the risk monitoring procedures and guidelines set forth in paragraphs (c)(1) to (13). The member must review, in accordance with the member's written procedures, at reasonable periodic intervals, the member's SBS activities for consistency with the risk monitoring procedures and guidelines set forth in this Rule, and must determine whether the data necessary to apply the risk

monitoring procedures and guidelines is accessible on a timely basis and information systems are available to adequately capture, monitor, analyze and report relevant data, including:

- (1) obtaining and reviewing the required documentation and financial information necessary for assessing the amount of credit to be extended to SBS Counterparties;
- (2) determining and documenting the legal enforceability of netting or collateral agreements, including enforceability in the event a Counterparty becomes subject to bankruptcy or other insolvency proceedings;
- (3) assessing the determination, review and approval of credit limits to each Counterparty, and across all Counterparties;
- (4) monitoring credit risk exposure to the member from SBS, including the type, scope and frequency of reporting to senior management;
- (5) the use of stress testing of accounts containing SBS contracts in order to monitor market risk exposure from individual accounts and in the aggregate;
- (6) managing the impact of credit extended related to SBS contracts on the member's overall risk exposure;
- (7) determining the need to collect additional margin from a particular customer or broker or dealer, including whether that determination was based upon the creditworthiness of the customer or broker or dealer and/or the risk of the specific contracts;
- (8) determining the need for higher margin requirements than required by this Rule and formulating the member's own margin requirements, including procedures for identifying unusually volatile positions, concentrated positions (with a particular Counterparty and across all Counterparties and customers), or positions that cannot be liquidated promptly;
- (9) monitoring the credit exposure resulting from concentrated positions with a single Counterparty and across all Counterparties, and during periods of extreme volatility;
- (10) identifying any Uncleared SBS Accounts with intraday risk exposures that are not reflected in their end of day positions (e.g., Uncleared SBS Accounts that frequently establish positions and then trade out of, or hedge, those positions by the end of the day) and collecting appropriate margin to address those intraday risk exposures;
- (11) identifying any Uncleared SBS Account that, in light of current market conditions, could not be promptly liquidated for an amount corresponding to the Current Exposure computed with respect to such account and determining the need for higher margin requirements on such accounts or the positions therein;
- (12) maintaining sufficient Initial Margin in the accounts of each Counterparty to protect against the largest individual potential future exposure of an Uncleared SBS in such Counterparty's Uncleared SBS Account, as measured by computing the largest maximum possible loss that could result from the exposure; and
- (13) increasing the frequency of calculations of Current Exposure and Initial Margin Requirements during periods of extreme volatility and for accounts with concentrated positions.

(d) Definitions

For purposes of this Rule, the following terms shall have the meanings specified below:

(1) The term "**Basic CDS**" means a Basic Single-Name Credit Default Swap or a Basic Narrow-Based Index Credit Default Swap. For this purpose:

(A) The term "**Basic Narrow-Based Index Credit Default Swap**" means an SBS consisting of multiple component Basic Single-Name Credit Default Swaps; and

(B) The term "**Basic Single-Name Credit Default Swap**" means an SBS in which one party pays either a single fixed amount or periodic fixed amounts or floating amounts determined by reference to a specified notional amount, and the other party pays either a fixed amount or an amount determined by reference to the value of one or more loans, debt securities or other financial instruments issued, guaranteed or otherwise entered into by a third party (the "**Reference Entity**") upon the occurrence of one or more specified credit events with respect to the Reference Entity (for example, bankruptcy or payment default). The term "**Basic Single-Name Credit Default Swap**" also includes a swap that, upon the occurrence of one or more specified credit events with respect to the Reference Entity, is physically settled by payment of a specified fixed amount by one party against delivery by the other party of eligible obligations of the Reference Entity.

(2) The term "**Basic SBS**" means an SBS, other than a credit default swap, under which each party is contractually obligated to provide the other the economic equivalent of a margin account containing a portfolio of long or short positions in securities or options (the "**Equivalent Margin Account**").

(3) An SBS is "**Cleared**" if it is cleared through a Clearing Agency by or on behalf of the member.

(4) The term "**Clearing Agency**" means a clearing agency registered pursuant to Exchange Act section 17A or exempted by the SEC from such registration by a rule or order pursuant to Exchange Act section 17A.

(5) The term "**Counterparty**" means a person with whom a member has entered into an Uncleared SBS.

(6) The term "**Current Exposure**" has the meaning given it in paragraph (b)(1) of this Rule.

(7) The term "**Equivalent Margin Account**" with respect to a Basic SBS has the meaning given such term in the definition of "Basic SBS" in paragraph (d)(2) of this Rule.

(8) The term "**Financial Market Intermediary**" means a security-based swap dealer, swap dealer, broker or dealer, futures commission merchant, bank, foreign bank, or foreign broker or dealer.

(9) The term "**Initial Margin**" means all cash or margin securities, excluding Variation Margin, received by the member for a Counterparty's Uncleared SBS Account or transferred to the Counterparty's Uncleared SBS Account from another account at the member, including margin collected from a Counterparty in accordance with paragraph (b)(3)(B) of this Rule, that in each case have not been returned to the Counterparty or applied to an obligation of the Counterparty.

(10) The term "**Initial Margin Deficit**" means the amount, if any, by which (A) the sum of the Value of the Initial Margin in an Uncleared SBS Account and the Counterparty's Rule 4210 Excess is less than (B) the Initial Margin Requirement for the Uncleared SBS Account.

(11) The term "**Initial Margin Requirement**" has the meaning given it in paragraph (b)(2)(A) of this Rule.

(12) The term "**Legacy SBS**" means an Uncleared SBS entered into before April 6, 2022.

(13) The term "**Multilateral Organization**" means the Bank for International Settlements, the European Stability Mechanism, the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, or any other multilateral development bank that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member.

(14) The term "**Registered or Foreign SBS Dealer**" means (A) any person registered with the Commission as a security-based swap dealer, or (B) any foreign person if the Commission has made a substituted compliance determination under SEA Rule 3a71-6(a)(1) that compliance by a registered security-based swap dealer or class thereof with specified requirements of a foreign regulatory system that are applicable to such foreign person may satisfy the capital requirements of Exchange Act section 15F(e) and SEA Rule 18a-1 that would otherwise apply to such security-based swap dealer or class thereof.

(15) A Counterparty's "**Rule 4210 Excess**" is the amount, if any, by which the equity (as defined in Rule 4210(a)(5)) in the Counterparty's margin account at the member exceeds the amount required by Rule 4210.

(16) The term "**SBS**" or "**security-based swap**" means a "security-based swap" as defined in Exchange Act section 3(a)(68).

(17) The term "**Sovereign Counterparty**" means Counterparty that is a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government.

(18) An SBS is "**Uncleared**" if it is not Cleared.

(19) The term "**Uncleared SBS Account**" means an account with respect to a Counterparty consisting of:

(A) All Uncleared SBS between the member and the Counterparty;

(B) Long positions for all Variation Margin in the form of securities, and a credit balance for all Variation Margin in the form of cash, in each case collected from the Counterparty and not returned to, or applied to an obligation of, the Counterparty;

(C) Short positions for all Variation Margin in the form of securities, and a debit balance for all Variation Margin in the form of cash, in each case delivered to the Counterparty and not returned to, or applied to an obligation of, the member; and

(D) Long positions for all Initial Margin in the form of securities, and a credit balance for all Initial Margin in the form of cash, in each case collected from the Counterparty and not returned to, or applied to an obligation of, the Counterparty.

(20) The term “**value**” means:

(A) With respect to one or more outstanding SBS with a Counterparty, a reasonable estimate of the amount of U.S. dollars that the member would receive (expressed as a positive amount) or pay (expressed as a negative amount) to enter at mid-market prices into one or more replacement SBS collectively providing the equivalent of the material terms of such existing SBS;

(B) With respect to a security position:

(i) the current market value of those margin securities, as defined in Rule 4210(a)(2), determined in accordance with Rule 4210(f)(1); or

(ii) at the member’s option with respect to any margin securities collected as Variation Margin or Initial Margin, means the current market value of those margin securities, as defined in Rule 4210(a)(2) and determined in accordance with Rule 4210(f)(1), reduced (“haircut”) by the margin requirement that would be applicable to such securities under Rule 4210 if they were held in the Counterparty’s margin account;

(C) With respect to cash in U.S. dollars, the amount of such cash; and

(D) With respect to a freely convertible foreign currency, the amount of U.S. dollars into which such currency could be converted, provided the currency is marked-to-market daily.

(21) The term “**Variation Margin**” means cash or margin securities collected from, or delivered to, a Counterparty in accordance with paragraph (b)(3)(A) of this Rule.

••• **Supplementary Material:** -----

.01 Good Faith Account. A Regulation T good faith account, other than a non-securities account, is a margin account for purposes of Rule 4240.

Amended by SR-FINRA-2021-008 eff. April 6, 2022.
Amended by SR-FINRA-2021-021 eff. Sept. 1, 2021.
Amended by SR-FINRA-2020-016 eff. July 20, 2020.
Amended by SR-FINRA-2019-016 eff. July 18, 2019.
Amended by SR-FINRA-2018-025 eff. July 18, 2018.
Amended by SR-FINRA-2017-019 eff. July 18, 2017.
Amended by SR-FINRA-2016-020 eff. July 18, 2016.
Amended by SR-FINRA-2015-013 eff. July 17, 2015.
Amended by SR-FINRA-2014-029 eff. June 23, 2014.
Amended by SR-FINRA-2013-030 eff. July 11, 2013.
Amended by SR-FINRA-2013-017 eff. Mar. 8, 2013.
Amended by SR-FINRA-2012-035 eff. July 13, 2012.
Amended by SR-FINRA-2012-015 eff. Mar. 7, 2012.
Amended by SR-FINRA-2012-014 eff. Jan. 17, 2012.
Amended by SR-FINRA-2011-034 eff. July 16, 2011.
Amended by SR-FINRA-2010-063 eff. Nov. 22, 2010.
Amended by SR-FINRA-2009-063 eff. Sep. 21, 2009.
Adopted by SR-FINRA-2009-012 eff. June 3, 2009.

Selected Notices: [09-30](#), [11-31](#), [22-03](#).

VERSIONS

Apr 06, 2022 onwards

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4320. Short Sale Delivery Requirements

The Rule

Notices

(a) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in a non-reporting threshold security for 13 consecutive settlement days, the participant shall immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity.

(1) *Provided, however*, if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency for thirty-five consecutive settlement days in a non-reporting threshold security that was sold pursuant to SEC Rule 144, the participant shall immediately thereafter close out the fail to deliver position in the security by purchasing securities of like kind and quantity. The requirements in paragraph (b) shall apply to all such fails to deliver that are not closed out in conformance with this paragraph (a)(1).

(b) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in a non-reporting threshold security for 13 consecutive settlement days (or 35 consecutive settlement days if entitled to rely on paragraph (a)(1)), the participant and any broker or dealer for which it clears transactions, including any market maker that would otherwise be entitled to rely on the exception provided in paragraph (b)(2)(iii) of Rule 203 of SEC Regulation SHO, may not accept a short sale order in the non-reporting threshold security from another person, or effect a short sale in the non-reporting threshold security for its own account, without borrowing the security or entering into a bona-fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency.

(c) If a participant of a registered clearing agency reasonably allocates a portion of a fail to deliver position to another registered broker or dealer for which it clears trades or for which it is responsible for settlement, based on such broker or dealer's short position, then the provisions of this Rule relating to such fail to deliver position shall apply to the portion of the fail to deliver position allocated to such registered broker or dealer, and not to the participant.

(d) A participant of a registered clearing agency shall not be deemed to have fulfilled the requirements of this Rule where the participant enters into an arrangement with another person to purchase securities as required by this Rule, and the participant knows or has reason to know that the other person will not deliver securities in settlement of the purchase.

(e) For the purposes of this Rule, the following terms shall have the meanings below:

(1) the term "market maker" has the same meaning as in Section 3(a)(38) of the Exchange Act.

(2) the term "non-reporting threshold security" means any equity security of an issuer that is not registered pursuant to Section 12 of the Exchange Act and for which the issuer is not required to file reports pursuant to Section 15(d) of the Exchange Act:

(A) for which there is an aggregate fail to deliver position for five consecutive settlement days at a registered clearing agency of 10,000 shares or more and for which on each settlement day during the five consecutive settlement day period, the reported last sale during normal market hours for the security on that settlement day that would value the aggregate fail to deliver position at \$50,000 or more, provided that if there is no reported last sale on a particular settlement day, then the price used to value the position on such settlement day would be the previously reported last sale; and

(B) is included on a list published by FINRA.

A security shall cease to be a non-reporting threshold security if the aggregate fail to deliver position at a registered clearing agency does not meet or exceed either of the threshold tests specified in paragraph (e)(2)(A) of this Rule for five consecutive settlement days.

(3) the term "participant" means a participant as defined in Section 3(a)(24) of the Exchange Act, that is a FINRA member.

(4) the term "registered clearing agency" means a clearing agency, as defined in Section 3(a)(23)(A) of the Exchange Act, that is registered with the SEC pursuant to Section 17A of the Exchange Act.

(5) the term "settlement day" means any business day on which deliveries of securities and payments of money may be made through the facilities of a registered clearing agency.

(f) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may grant an exemption from the provisions of this Rule, either unconditionally or on specified terms and conditions, to any transaction or class of transactions,

or to any security or class of securities, or to any person or class of persons, if such exemption is consistent with the protection of investors and the public interest.

Amended by SR-FINRA-2010-028 eff. Oct. 15, 2010.
Amended by SR-FINRA-2007-013 eff. Oct. 15, 2007.
Amended by SR-NASD-2006-071 eff. July 3, 2006.
Amended by SR-NASD-2004-044 eff. July 3, 2006.
Amended by SR-NASD-2004-175 eff. Jan. 3, 2005.
Amended by SR-NASD-97-28 eff. Aug. 7, 1997.
Deleted and replaced with former Appendix B by SR-NASD-93-48 eff. Mar. 8, 1994.
Added eff. Sept. 24, 1973.

Selected Notices: 73-05, 73-45, 73-54, 73-67, 06-28, 07-45, 10-35.

4330. Customer Protection — Permissible Use of Customers' Securities

The Rule

Notices

(a) Authorization to Lend Customers' Margin Securities

No member shall lend securities that are held on margin for a customer and that are eligible to be pledged or loaned, unless such member shall first have obtained a written authorization from such customer permitting the lending of such securities.

(b) Requirements for Borrowing of Customers' Fully Paid or Excess Margin Securities

(1) A member that borrows fully paid or excess margin securities carried for the account of any customer shall:

(A) comply with the requirements of SEA Rule 15c3-3;

(B) comply with the requirements of Section 15(e) of the Exchange Act; and

(C) notify FINRA, in such manner and format as FINRA may require, at least 30 days prior to first engaging in such securities borrows.

(2) Prior to first entering into securities borrows with a customer pursuant to paragraph (b)(1) of this Rule, a member shall:

(A) have reasonable grounds for believing that the customer's loan(s) of securities are appropriate for the customer. In making this determination, the member shall exercise reasonable diligence to ascertain the essential facts relative to the customer, including, but not limited to, the customer's financial situation and needs, tax status, investment objectives, investment time horizon, liquidity needs, risk tolerance and any other information the customer may disclose to the member or associated person in connection with entering such securities loans.

(B) provide the customer, in writing (which may be electronic), with the following:

(i) clear and prominent notice stating that the provisions of the Securities Investor Protection Act of 1970 may not protect the customer with respect to the customer's securities loan transaction and that the collateral delivered to the customer may constitute the only source of satisfaction of the member's obligation in the event the member fails to return the securities; and

(ii) disclosures regarding the customer's rights with respect to the loaned securities, and the risks and financial impact associated with the customer's loan(s) of securities, including, but not limited to:

a. loss of voting rights;

b. the customer's right to sell the loaned securities and any limitations on the customer's ability to do so, if applicable;

c. the factors that determine the amount of compensation received by the member and its associated persons in connection with the use of the securities borrowed from the customer;

d. the factors that determine the amount of compensation (e.g., interest rate) to be paid to the customer and whether or not such compensation can be changed by the member under the terms of the borrow agreement;

e. the risks associated with each type of collateral provided to the customer;

f. that the securities may be "hard-to-borrow" because of short-selling or may be used to satisfy delivery requirements resulting from short sales;

g. potential tax implications, including payments deemed cash-in-lieu of dividend paid on securities while on loan; and

h. the member's right to liquidate the transaction because of a condition of the kind specified in Rule 4314(b).

(3) A member that is subject to paragraph (b)(1) of this Rule shall create and maintain records evidencing the member's compliance with the requirements of paragraph (b)(2) of this Rule. Such records shall be maintained in accordance with the requirements of SEA Rule 17a-4(a).

••• **Supplementary Material:** -----