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Mr. Robert W. Errett
Deputy Secretary
U. S. Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

RE: Comments on SR-FINRA-2015-036, Proposed Rule to Amend FINRA Rule 4210 Margin Requirements

Dear Mr. Errett:

On behalf of CBRE, I am pleased to have this opportunity to comment on the proposed amendments to Rule 4210 set forth in Regulatory Notice 14-02. CBRE is a global leader in commercial real estate services, and one of the nation's largest mortgage banking firms in the business of multifamily loans originated and sold under both the Fannie Mae Delegated Underwriting and Servicing ("DUS") and Ginnie Mae Construction Loan / Project Loan Certificates. I am a Managing Director at CBRE and, in my career, have spent almost 30 years in the multifamily loan production business, including both Fannie Mae and Ginnie Mae multifamily loans.

In the past two months, I have participated in Mortgage Bankers Association ("MBA") -sponsored meetings at both FINRA and SEC offices. These meetings have been informative for me and have allowed both industry representatives and SEC / FINRA staff to have an open, two-way dialogue on the proposed changes. As we have discussed in the meetings, it is my view that: 1) the proposed rule, for the multifamily finance business, attempts to solve a problem that does not exist; 2) the processes and unique characteristics involved in multifamily loan production and securitization adequately protect both FINRA members and mortgage bankers; 3) the proposed rule changes, if adopted, will reduce availability and liquidity of the affected securities, particularly for the affordable housing sector; and 4) the proposed rule changes will result in asymmetric financial results which would not seem to be consistent with FINRA's objectives.

1. **The proposed rule, for the multifamily finance business, attempts to solve a problem that does not exist**

As I reviewed the industry comments to the proposed rule changes in FINRA's recent release, I noticed that none of the comment letters sent in March 2014 were from participants in the multifamily finance business segment. There is good reason for this; the proposal discusses terms like "TBA transactions", Specified Pool Transactions, and "CMOs", referred to in aggregate as the "TBA market". These are not terms that are used in the multifamily finance market, at least by mortgage bankers in our sector and, as such, we as an industry did not initially recognize that the proposal "covered" our Fannie Mae DUS and multifamily Ginnie Mae CLC / PLC business lines.

While I am not particularly knowledgeable about the single-family mortgage securitization business, I do believe that the multifamily loan production and securitization business is different from the single-family business, and thus presents less (or no) systemic risk when compared to the single-family business line.

First, the market size is a fairly small fraction of the single-family securitization market. In 2014, Fannie Mae and Freddie Mac together issued $636 billion of single-family MBS; I would assume that when Ginnie Mae issuance is included, the total single-family MBS issuance approached $1 trillion. In 2014, the comparable volume of Fannie Mae DUS MBS issuance was $32 billion, and the Ginnie Mae CLC / PLC volume was approximately $14 billion, for a combined total of $46 billion of multifamily MBS that were issued in 2014. Thus, the total issuance volume of multifamily MBS was approximately 5% of the volume of single-family MBS issuance. While the Fannie Mae DUS MBS volume may well be higher in 2015, it is clear that the total multifamily MBS covered by this rule change will be less than 1/10th of the single-family MBS volume. Assuming $60 billion of combined Fannie Mae and Ginnie Mae multifamily MBS volume annually, and a 45-day period between rate lock and delivery to the FINRA broker-dealer, the average outstanding balance of multifamily MBS subject to this rule change would be $7.5 billion; Again, I assume, a fraction of outstanding single-family MBS.

Second, multifamily MBS do not "trade" in a manner similar to single-family MBS. Each multifamily MBS issued is collateralized by a mortgage loan backed by a specific multifamily property, which is owned by a specific borrowing entity, has specific operating performance attributes and is located in a specific market / submarket location. The rate lock which occurs between the mortgage banker and FINRA member is for a specific loan amount for that specific property. The rate lock generally occurs only after the mortgage banker has received a commitment from Fannie Mae or Ginnie Mae (as applicable) to credit enhance that specific mortgage on that specific property. Thus, multifamily agency MBS transactions are "static" transactions, which by their nature are not able to be traded more than once. There is generally no secondary trading of the rate-lock commitment, nor are there things like "dollar rolls" or other trading / hedging techniques, which I understand are available in the "fluid" transaction, single-family marketplace. . Each multifamily MBS is produced by a mortgage banker, enhanced by Fannie Mae or Ginnie Mae, rate-locked with the FINRA broker-dealer, and either placed with a specific end investor, or aggregated with other multifamily MBS by the broker-dealer and sold in a REMIC format to end investors. Each multifamily MBS also has a specific coupon, loan term, amortization term, prepayment structure, and loans with specific loan-to-value and debt service coverages. No two loans (or very few anyway) would have similar enough characteristics to trade interchangeably. Thus, the $9 billion of average outstanding multifamily MBS rate locks is in fact the "total" outstanding trading balance; there are no additional "trades" of multifamily MBS prior to (or generally after) delivery to the broker-dealer.

Third, the frequency of "failed" rate locks / trades is, essentially, zero. Industry participants, including myself, would estimate that the number of failed deliveries in multifamily MBS for Fannie Mae and Ginnie Mae have been between zero and three trades annually. This includes the periods of 1998 – 1999, and 2008 – 2010, when markets were volatile. Given that the number of multifamily MBS issued annually is likely 3,000 to 6,000, that to me is essentially zero. Additionally, in virtually all of these (very few) fails, I believe the broker-dealer has been "made whole" from the good faith deposit collected and / or the Borrower. More on these below.

In summary – the size of the market does not present a systemic risk; there are no "additional" trades which would multiply the risk; and there is no history of failures that would warrant the rule changes proposed.

2. **the processes and unique characteristics involved in multifamily loan production and securitization adequately protect both FINRA members and mortgage bankers**

As discussed above, multifamily MBS are backed by collateral with very specific attributes. In addition, the loan production process is very intensive, and provides material incentives for all parties (Borrower, Mortgage Banker, Credit Enhancer), both financial and otherwise, to close every rate-locked loan and deliver the MBS to the broker-dealer. Finally, the multifamily MBS sector has traditional mechanisms which have effectively protected broker dealers in the rare event of trade fails.

First, the loan production (underwriting) process for multifamily MBS is both time-consuming and expensive. For both Fannie Mae DUS and Ginnie Mae CLC / PLC loans, the mortgage banker does extensive due diligence and analysis. Third-party appraisal, environmental and engineering reports from industry qualified professionals are required. Property and borrower financial data is provided and analyzed for multiple years. Organizational, legal and insurance structures are evaluated, as are any historical legal matters at the Borrower or property level. The result of this due diligence analysis is a detailed risk analysis provided by the mortgage banker and evaluated by the credit enhancer. This process takes from 30 – 60 days for Fannie Mae DUS loans, and from 4 – 8 months for Ginnie Mae CLC / PLC loans. The cost to the Borrower is generally between $20,000 to $50,000 or more. Additionally, the Borrower is responsible for the cost of mortgage banker's legal loan closing firm, which can add an additional $10,000 to $20,000 in costs.

Second, as discussed above, both the time involved as well as the costs involved effectively prevent a Borrower from "switching" mortgage bankers, Lenders and / or credit enhancers once a loan is rate-locked. Should a Borrower choose to switch any one of the above, they would have to both start the process over in terms of timing (and the increased interest rate risk), and forfeit the costs of third-party, legal and other costs already incurred. Also, because most multifamily MBS loans are produced either for the purpose of acquiring a property, or for refinancing a maturing balloon loan, failed deliveries will result in either forfeiture of Borrower down payments (in case of an acquisition) or a Borrower default (in the case of a maturing loan). Again, these are material penalties which help prevent failed deliveries.

Third, at CBRE, 75% of our multifamily agency debt business is done with "repeat" clients; with whom we, as well as Fannie Mae and FHA / Ginnie Mae, have good and longstanding relationships with. These Borrowers rely on the agencies for consistent financings; they realize that delivery failures would very negatively affect their relationships both with the Lender, and the agencies, and are thus motivated to close on their commitments and successfully deliver the loans / MBS.

Fourth, the industry has two mechanisms to provide financial protection for broker-dealers. The first is the Good Faith Deposit ("GFD"). Prior to rate lock, Borrowers are required to post a GFD between .50% of the loan amount (for Ginnie Mae CLC / PLC loans) up to 2% (for Fannie Mae DUS loans). In the rare event of a failed delivery, the GFD may be retained by the broker-dealer as liquidated damages. In addition, mortgage bankers require Borrowers to acknowledge that the Borrower is responsible for any losses suffered by the broker-dealer should the rate-locked loan not be delivered. These mechanisms have contributed to the extremely low level of delivery failures in the multifamily MBS sector.

In summary – the loan production process and protections afforded to loans backing multifamily MBS have and will effectively mitigate the possibility of failed deliveries.

3. **the proposed rule changes, if adopted, will reduce availability and liquidity of the affected securities, particularly for the affordable housing sector**

The requirement for daily margining will likely impact every mortgage banker and broker-dealer counterparty in the multifamily MBS sector. Given the average loan size ($10 million to $12 million) of Fannie Mae DUS and Ginnie Mae CLC / PLC loans, and the typical duration of the MBS (generally 7 – 8 years), the “de-minimus” carveouts ($250,000 per mortgage banker / FINRA member) will be exceeded with relatively minor rate movements.

For example, a multifamily mortgage banker who produces $500 million of annual production could have $100 million of outstanding rate locks at any one time, given the uneven nature of loan production in this sector. If we assume that the mortgage banker has $25 million outstanding with each of four FINRA broker-dealers, a mortgage rate movement (increase) of 25 basis points (.25%), would cause the mortgage banker to post $500,000 margin with each broker-dealer ($25 million x .25% x 8 years duration), for a total of $2 million. This would be a large burden for many mortgage bankers, and would seem unnecessary given the rare level of delivery failures in this sector.

While broker-dealers may find it relatively inexpensive to implement the systems needed for this process, each mortgage banker will have to develop / buy the systems necessary and add personnel necessary to activate and operate such a system. That in itself will be a material cost of the proposed rule change. In addition, each mortgage banker will have to evaluate the amount of cash to “set-aside” for potential negative market price movements. Given potential volatility of interest rates, along with the uneven nature of potential maximum exposure due to the large loan sizes, this will likely be a large potential financial exposure for mortgage bankers.

The costs, both operational and financial, will be material for mortgage bankers. They will differ based on the relative production volumes of each mortgage banker, but will be material for all. Increased costs to the multifamily MBS production process will likely be matched with increasing costs for Borrowers. Given that the multifamily business generally serves relatively lower-income residents, it would seem that this change would be out of step with other goals enumerated by the Administration.

I believe that the proposed change will be particularly burdensome for smaller mortgage bankers, who are generally not owned by institutional owners, and who tend to focus on affordable housing (defined as loans on properties serving tenants who earn less than 60% of area median income (“AMI”). There are approximately 50 mortgage banking firms who produce material amounts of multifamily MBS loans. 30 years ago, almost all of them were owned by individual owners. Over time, a number of the larger mortgage bankers, who generally focus on market-rate apartment finance, have been acquired by banks and other institutional owners. Of those who remain, many specialize in affordable housing lending. By their nature, affordable housing loans are generally smaller and more complex than market-rate loans, requiring a specialized skill set and often a motivation to “do good” for the mortgage bankers. The costs of compliance with the proposed margining rules will affect the availability and cost of debt for properties most in need of low cost, efficient multifamily MBS loans. Again, this would seem to be out of step with other goals of the Administration.

In summary - I believe that the operational and financial costs of this proposed regulation are not justified by the very low level of risk for FINRA members. Particularly for smaller mortgage bankers, this regulation would limit the availability of capital to our sector, and particularly for affordable housing.

4. **the proposed rule changes will result in asymmetric financial results which would not seem to be consistent with FINRA's objectives**

As I read the proposed rule, multifamily mortgage bankers would be asked to provide margin collateral when the "market value" of their outstanding rate locks is "below par". Thus, using the example above, a mortgage banker who had $100 million of rate locks outstanding would be faced with a $2 million collateral call if the "par" mortgage rate increased by .25% (above the rate locked mortgage rate). But, assuming the FINRA broker-dealer also hedges their rate locks (which I believe they do), their hedge would have increased in value by the same $2 million, assuming an effective hedging strategy. If the multifamily MBS is not delivered, the FINRA broker dealer would: 1) cancel the trade (as I do not believe that multifamily rate locks that default can be "traded" once the mortgage banker has defaulted); 2) retain the $2 million margin collateral; and 3) retain the $2 million hedge profit, for a total "gain" of $4 million. While not a "bad" outcome for the broker-dealer, it would seem an odd economic result for the "system" as a whole.
Conversely, if the "par" mortgage rate dropped by .25%, the mortgage banker would not have to post any collateral, as their rate locked loans would be valued "above par". The FINRA broker dealer would have a -$2 million hedge position. If there was a delivery failure, the trade would be cancelled, there would be no margin collateral, and the FINRA broker dealer would have the same ability to collect the GFD and have recourse to the Borrower as they have today.

In summary, while the economic outcomes under this proposal are interesting, they do not seem to generate the "zero sum" outcome that I believe you are trying to achieve here.

<u>Summary:</u>

- **the size of the market does not present a systemic risk; there are no "additional" trades which would multiply the risk; and there is no history of failures that would warrant the rule changes proposed.**
- **the loan production process and protections afforded to loans backing multifamily MBS have and will effectively mitigate the possibility of failed deliveries.**
- **the operational and financial costs of this proposed regulation are not justified by the very low level of risk for FINRA members. Particularly for smaller mortgage bankers, this regulation would limit the availability of capital to our sector, and particularly for affordable housing.**
- **while the economic outcomes under this proposal are interesting, they do not seem to generate the "zero sum" outcome that I believe you are trying to achieve here.**

For all of the reasons discussed above, I would recommend that FINRA exempt multifamily MBS from the proposed margining requirements.

I appreciate the opportunity to respond to the proposed regulation, and look forward to further dialogue.