November 10, 2015

Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Via email to rule-comments@sec.gov

Re: SR-FINRA-2015-036: Comments on the Proposed Amendment to FINRA Rule 4210

Dear Mr. Errett:

Thank you for the opportunity to comment on the proposed amendment to FINRA Rule 4210 as set forth in SR-FINRA-2015-036 (the "Proposal")[1]. Robert W. Baird & Co. Incorporated is a dually registered broker-dealer and investment advisory firm. We are members of FINRA, as well as the Securities Industry and Financial Markets Association ("SIFMA") and the Bond Dealers of America ("BDA"). We are aware of comment letters being submitted by SIFMA and BDA and generally agree with the contents of those letters which point out many issues related to the clarity and operational feasibility of the Proposal. We are submitting this letter to further highlight certain important areas of the Proposal we believe are problematic.

We previously submitted a comment letter to FINRA regarding the proposed amendment to Rule 4210. In that letter we advocated simplifying the proposed amendment; however, we believe FINRA has taken the opposite tack and further complicated the rule. As anyone who has spent the requisite hours to familiarize themselves with Rule 4210 knows, the rule is complex and includes meaningful ambiguities that make interpretation difficult. Therefore, we are offering these further comments to reiterate how we believe the rule can be made much clearer and less complex resulting in easier and more certain compliance while still allowing FINRA to accomplish its purpose of limiting excessive risk.

I. Eliminate Maintenance Margin

Under the proposed amendment non-exempt accounts would be subject to a 2% initial maintenance margin. FINRA has now added two exceptions that would potentially greatly reduce the number of affected non-exempt accounts.

The first exception is the "cash account" exception. This exception would provide an exemption from maintenance margin in transactions where: (i) the scheduled settlement for the transaction is not later than the month following the trade date; (ii) the counterparty regularly settles its Covered Agency Transactions on a DVP basis or for cash; and (iii) the counterparty, in its transactions with the member does not (a) engage in dollar roll transactions, as defined in FINRA

[1] Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 4210 (Margin Requirements) To Establish Margin Requirements for the TBA Market, Exchange Act Release No. 76148 (Oct. 14, 2015), 80 Fed. Reg. 636303 (Oct. 20, 2015.

Rule 6710(z); (b) engage in round robin trades; or (c) use other financing techniques for its Covered Agency Transaction.[2]

Use of the cash account exception would require firms to build a new system to track the manner in which each non-exempt counterparty settles its Covered Agency Transactions. This information would then be used to make a determination regarding whether the pattern of settlements met the threshold of, "regularly settles on a DVP basis or for cash". We believe the meaning of "regularly settles" in this context is ambiguous and in any event would create a highly manual process whereby this determination would need to be made on an ongoing basis counterparty by counterparty. This task would further be complicated by timing and transparency issues related to dollar rolls and round robin trades possibly making the collected information incomplete, despite member firms best efforts.

The second exception is the "small account" exception. This exception would exclude a counterparty from needing to meet both the maintenance and mark to market margin requirements if the counterparty had gross open positions in Covered Agency Transactions amounting to $2.5 million or less in aggregate.

Implementation of this exception would also be difficult. Implementation would require firms to track aggregate exposure to Covered Agency Transactions, presumably, because no relief is provided in the Proposal, to include Covered Agency Transactions cleared through a registered clearing agency. Under other sections of the Proposal, firms could make a clean line of demarcation between trades done through a registered clearing agency and those subject to the margin requirements under the Proposal. If the Proposal is adopted, firms will need to track both, and apply a convoluted determination for what portion of the aggregate amount of outstanding positions is subject to maintenance and mark to market margin based on each counterparty's exempt or non-exempt status.

For these reasons, we believe the use of these two exceptions as written would require a substantial implementation build, as well as introduce additional ambiguity to the process.

More importantly, the introduction of these exceptions seems to be a tacit admission that non-exempt accounts are not primary contributors to excessive risk. This is consistent with the language in the Proposal which states, "As a result, FINRA has revised the proposal as published in the Notice to ameliorate its impact on business activity and to address the concerns of smaller customers that do not pose material risk to the market as a whole, in particular those engaging in non-margined, cash account business."[3]

It seems counterintuitive to address a non-material risk with an overly complex and ambiguous set of rules and exceptions. But rather than just removing the maintenance margin requirement entirely, FINRA has instead created exceptions that will be extremely difficult to implement. We request that FINRA and the SEC reconsider whether the use of maintenance margin serves a legitimate purpose that justifies burdening the industry with this implementation puzzle.

[2] Proposed rule section 4210(e)(2)(H)(ii)(e).

[3] Proposal at 63605.

II. Limit Covered Agency Securities

As we previously commented to FINRA, we believe the scope of the Covered Agency Securities should be changed to eliminate specified pool transactions unless the difference between the trade date and contractual settlement date is greater than three business days.

As an advisory firm we use specified pools in certain long only portfolios that do not currently use any margin. We believe the adoption of a three day settlement period with respect to specified pools would allow us to continue to purchase specified pools not subject to margin for these portfolios. On the other hand, adoption of the one day settlement period is likely to cause us and our advisory clients to discontinue these purchases in order to avoid being subject to a margin transaction. We anticipate this change will be dictated by clients who either do not wish to post margin or who are prevented by contractual or regulatory reasons from entering into margin transactions.

We find the counterarguments included in the Proposal to be unpersuasive in that they primarily amount to simply accepting what the TMPG has recommended to avoid different standards, rather than a thoughtful analysis of an appropriate settlement time frame to address the issue of excessive risk. We and many other FINRA members are not primary dealers and did not comment on the TMPG recommendations. Imposition of TMPG practices by FINRA will have an anti-competitive effect on smaller firms that have not previously had the need to implement the extensive margining capabilities of primary dealers because we do not currently participate in other markets that require such margining capabilities. While FINRA has indicated a desire to have the TMPG recommendations inform the proposed amendments, clearly there are points of divergence where the insertion of FINRA's expertise was deemed more important than consistency between the two. We believe this is one point where a divergence between the two is warranted.

III. Implementation Period

If the proposed rule is adopted, we believe that a two year implementation period is appropriate given the complexity of the rule and the numerous operational issues associated with the Proposal. Implementation for our firm and many other smaller dealers will likely include the adoption of new technology since, unlike the larger dealers, we and smaller dealers do not have robust margining capabilities and systems. Any rollout of new systems generally starts with an in depth evaluation of various providers through a request for proposal process. This is then followed by the implementation which may require heavy use of limited IT resources. We also anticipate there will be a staggering amount of work putting in place the required risk analysis for counterparties on the subaccount level where previously such an analysis may not have been required. We anticipate that additional personnel are likely to be needed and that FINRA will have created a situation where qualified personnel with relevant experience will be difficult to find and command a premium in the job market. Finally, we anticipate needing to spend significant time and resources negotiating and entering into legal agreements required to document the counterparty margining relationship.

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IV. In Conclusion: Simplify the Rule

As we set forth above, the goals of limiting excessive risk can be accomplished with a simplified version of the proposed amendment. The cost of implementation and compliance with the proposed amendment would be substantially reduced by such a simplification.

By reducing the number of potentially affected securities by only including specified pool transactions with a greater than three day settlement and by eliminating the maintenance margin the proposed amendment could be made more workable while still greatly reducing counterparty and systemic risk.

We appreciate the opportunity to comment on the proposed amendment to Rule 4210 and your consideration of our thoughts.

Sincerely,

Charles Weber

Charles M. Weber
Managing Director and Senior Associate General Counsel
Robert W. Baird & Co. Incorporated