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November 10th, 2015

**By Electronic Submission**

Elizabeth M. Murphy, Secretary,
Securities and Exchange Commission,
100 F Street NE.,
Washington, DC 20549–0609

RE: SR–FINRA–2015–036, Proposed Rule to Amend FINRA Rule 4210 Margin Requirements for To Be Announced Transactions

To whom it may concern,

Walker & Dunlop, LLC (W&D) welcomes the opportunity to provide comment on FINRA's proposal to amend FINRA Rule 4210: Margin Requirements for To Be Announced Transactions. W&D is one of the leading commercial real estate finance companies in the United States, with a primary focus on multifamily lending and one of the largest issuers of Fannie Mae and Ginnie Mae MBS.

W&D has been working closely with the Mortgage Bankers Association regarding the implications of the proposed rule on multifamily lending and borrowers of multifamily loans. **While we understand the need to protect FINRA members in the event of large-scale and sudden failures by one or more counterparties, we do not believe that the size of the multifamily market presents systemic risks to FINRA members, and we believe appropriate safeguards already exist to protect the broker/dealer community from such risk. Furthermore, the disruption to the market and costs passed along to owners of multifamily housing over the short and long run are much more tangible and certain to be a reality. Accordingly, we believe that multifamily Agency[1] MBS should be exempt from the proposed rule.**

We believe there are adequate safeguards built into the existing process to prevent a significant loss to a broker/dealer as a result of a large-scale default of multifamily Agency MBS counterparties. Agency lenders generally do not participate in the Fedwire Security Service. An Agency lender typically sells a security to an MBS purchaser 2-45 days prior to the anticipated closing date of the loan. Shortly after the closing of the loan, the Agency will issue the book-entry MBS and deliver it to the account of the Agency lender's warehouse lender. The warehouse

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[1] Agency MBS are typically guaranteed by Fannie Mae and the Federal Housing Administration / Government National Mortgage Association (Ginnie Mae).

lender will then set up the deliver-vs-payment settlement with the MBS purchaser. On the settlement date, the purchase price for the security is paid to the warehouse lender (which then settles up with the lender) and the MBS is delivered to the purchaser. For Example, a typical transaction would flow as follows:

- Oct. 15th 2015: Borrower signs application for a 10-year loan with a lender
- On, or prior to, Nov. 25th: Borrower sends a good faith deposit (2% for a Fannie Mae loan, .5% for a Ginnie Mae loan) to the lender
- Nov. 25th 2015: Upon substantial completion of loan underwriting, lender sells a commitment to deliver an MBS backed by the borrower's loan to an MBS purchaser (the trade). Borrower's interest rate (and investor's coupon) is locked in.
- Nov. 30th 2015: Lender funds loan to the borrower using funds advanced from the warehouse lender.
- Dec. 1st 2015: Issue date of the MBS.
- Dec. 29th 2015: GSE delivers the MBS to the warehouse lender.
- Dec. 30th 2015: Warehouse lender delivers MBS to the MBS purchaser and the MBS purchaser simultaneously sends funds to the warehouse lender. The warehouse lender uses funds from the MBS Purchaser to pay down the advance the lender used to fund the loan.

Immediately following the trade on November 25th, the lender enters details of the trade into the respective Agency's online systems to start the MBS issuance process (for Ginnie Mae MBS, the trade information is not entered until after the loan closing). If the borrower were to walk away from the loan prior to closing, or if the lender were to fail before the loan closed, there would be no loan to back the MBS. However, once the loan closes, risks of non-delivery are minimal. In the event of a sudden lender failure, the loans that have closed and not yet settled will be processed. The Agencies are incentivized to see the MBS delivered to ensure the integrity of their respective multifamily lending programs. While the trade agreement is between the lender and the MBS purchaser, the warehouse lender's only means to receive back the funds advanced are to deliver the security, so they are also incentivized to see the transaction through. Due to the corporate entity structure required of the Agency lenders, market risk exposure is minimal and any failure would likely be the result of a gradual decrease in loan production, or a significant increase in defaults on loans subject to loss sharing. Generally speaking, each multifamily Agency loan is a

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unique pool[2]. While the Pool and CUSIP numbers are not known at the time of the trade, the collateral is specifically identified and cannot deviate from the terms of the trade. Multifamily Agency lenders do not aggregate or substitute collateral to consummate a trade. In either of the failure scenarios above, lenders will likely have more than enough time to ensure the settlement of outstanding commitments on the loans in the pipeline. In addition, loans that have closed but not yet delivered to investors would settle in the normal course as the Agencies would step in to ensure the delivery to the open commitments.

Fannie Mae closely monitors all aspects of each multifamily DUS lender's business and requires that all lenders meet ongoing credit and underwriting standards and minimum net worth and liquidity requirements. For example, Fannie Mae has the following requirements in place to ensure ongoing solvency and liquidity among its lenders:

> In addition to showing sufficient on-balance sheet liquidity to satisfy operating expenses and fund expected loan losses, all DUS seller/servicers are required to post collateral to support their loss sharing obligations. In order to insulate the loss sharing entity from additional risk, DUS seller/servicers are permitted to conduct only GSE and FHA business within their corporate DUS structures.[3]

In a situation where a Fannie Mae DUS lender were in financial distress, Fannie Mae can acquire the lender's servicing portfolio for two times the annual servicing fees and will transfer that portfolio to another DUS lender, further limiting the exposure to the broker/dealer. There are only 24 DUS lenders in the country and the licensing by Fannie Mae is tightly controlled.

In the case of Ginnie Mae, if the lender becomes insolvent or is otherwise unable to issue a Ginnie Mae MBS for any other reason, the warehouse lender will simply assign the loan to another Ginnie Mae lender and that lender will issue the MBS and deliver it to the MBS purchaser. This is the quickest and most efficient way for the warehouse lender to receive full repayment of its advance and for the MBS purchaser to receive the MBS. The financial incentives are in place for all parties (warehouse lender, new Ginnie Mae lender and MBS purchaser) to motivate them to complete the transaction in accordance with the original trade terms.

The final risk mitigant in the current process is the collection of a good faith deposit from the borrower by the lender. This good faith deposit acts as a mitigant to the borrower walking away from a loan commitment in between the rate lock and closing of the loan. In addition to the good faith deposit, the borrower application also requires the borrower to pay any liquidated damages

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[2] Each loan is a separate Pool and is assigned a unique CUSIP number, with the exception of loans that are grouped together and processed, traded, and closed simultaneously.
[3] https://www.fanniemae.com/content/fact_sheet/wprskret.pdf

from breaking the trade prior to loan closing, further insulating the MBS purchaser from losses on a failed delivery. Historically there have been very few broken trades in this business. W&D has only experienced a few in its entire history and in all cases the MBS purchaser did not lose money on the trade.

We do not believe the size of the multifamily market presents systemic risk to FINRA members. We estimate the annual issuance of new MBS in the multifamily space for all of 2015 to be between $50 and $60 billion, based upon the amount of multifamily lending expected to be done with Fannie Mae and Ginnie Mae. As a result, we believe the maximum amount of forward deliveries of Fannie Mae and Ginnie Mae securities that would be outstanding on any given day to be insignificant in terms of systemic exposures. We believe the current processes and structure of the multifamily MBS market adequately protect all participants and the historical track record speaks for itself. Regulation should not be imposed in an area where there is no systemic risk and actual risk to the broker/dealer community is only hypothetical and not supported by historical experience.

Should the Commission and FINRA staff choose to move forward without excluding multifamily, we have a number of recommendations and questions that we believe need to be fully researched and answered prior to any change in margining requirements. Specifically:

- An economic impact study should be done solely around the multifamily market, as research that includes the single family markets do not provide an accurate picture of the multifamily market as they operate very differently from each other and the single family data overwhelms the multifamily data given the sheer magnitude of the single family market;
- Pursuant to the above, does this proposal advantage non-FINRA members to the detriment of FINRA members? For example, Freddie Mac buys its loans directly from the lender and creates its own MBS. Freddie Mac lenders would not have to margin those loan sales as they are not securities but whole loans even though they are substantively no different than the trades supporting Fannie Mae and Ginnie Mae loans. In addition, Fannie Mae is not a FINRA member and would therefore not be subject to the margining requirement, putting FINRA members who buy Fannie Mae MBS at a particular disadvantage;
- What is the mark to market process for a multifamily MBS? These trades are not pools of homogenous loans but individual assets that are specifically traded with the MBS buyer. As a result, there is no common market tool used to price or value these assets and TRACE does not have a significant portion of the market as non-FINRA participants do not enter information into the system. Significant time and resources would need to be incurred to come up with a practical and market acceptable process for valuing these loans –

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otherwise the lending community would be at a significant disadvantage relative to the broker/dealers who would be able to set price arbitrarily;

- How would Ginnie Mae construction loans be treated? Similar to other Agency loans, the trade of a Ginnie Mae construction loan with the MBS purchaser is made prior to loan funding (initial endorsement), which is then followed by a 12-14 month construction period. The period from initial security delivery to the final construction draw security delivery and conversion to a project loan is typically 16-24 months. Only a portion of the loan is funded at initial endorsement and draws are made throughout the construction period. If lenders and borrowers are subjected to margining requirements for these prolonged periods, greatly increasing the exposure to market volatility and outsized margin deposits, the HUD construction loan program would appear to be at a significant competitive disadvantage. The HUD construction loan program is one of the only sources of long term financing for the development and rehabilitation of low-income housing. Many of the borrowers in this program are non-profits and do not have the financial capacity to post margin collateral.

In summary, we respectfully request the Commission and FINRA exclude multifamily Agency MBS from the proposed rule. Additionally, a thorough review of the multifamily housing finance market and the related economic impacts of the proposed rule is warranted before the final rule is determined.

Thank you for the opportunity to comment on the proposed rule change. We would be pleased to speak with the staff further to provide additional information or answer any questions as needed.

Sincerely,

Stephen P. Theobald
Executive Vice President and Chief Financial Officer