November 10, 2015

Brent J. Fields
Secretary
U. S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549–1090

Subject: File Number SR – FINRA – 2015 – 036

Dear Mr. Fields:

The Association of Institutional INVESTORS (the "Association") appreciates this opportunity to submit comments regarding the Financial Industry Regulatory Authority's Notice of a Proposed Rule Change to Amend FINRA Rule 4210 To Establish Margin Requirements for the TBA Market (the "Proposed Amendment"). Our Association is comprised of major asset management firms whose combined assets under management exceed $10 trillion.

The Association is an organization of the oldest, largest, and most trusted federally registered investment advisers in the United States. Collectively, the Association's members manage investments for more than 80,000 ERISA pension plans, 401Ks, and mutual funds on behalf of more than 100 million American workers and retirees who rely on our firms to prudently manage participants' retirement savings and investments in part due to the fiduciary duty we owe these organizations and families. We recognize the significance of this role, and our comments are intended to reflect not just the concerns of the Association, but also the interests of the companies, labor unions, municipalities, families, and individuals we serve.

The Association's Market Practices Council has been engaged in analyzing margin proposals for the forward settling agency MBS market (the "MBS market") since 2012. We have shared our views on this matter extensively for the past four years with numerous regulatory officials, including representatives of both the Treasury Market Practices Group (TMPG) and FINRA. In this regard, we have expressed that our member firms unanimously support reducing risk in the trading of MBS products. Thus, we generally support the development of margining requirements for the MBS market pursuant to the coordinated efforts of TMPG and FINRA. Click here to view the letter to FINRA.

The Association's comments regarding the Proposed Amendment will focus on three main observations:

1. The Association opposes the requirement that dealers collect 2% maintenance margin from certain counterparties;
2. The Association believes that allowing dealers to take a capital charge is a suitable practice to address margin delivery fails and that the forced liquidation requirement should be eliminated; and
3. The Association believes that an implementation period of at least eighteen months is necessary.

We would like to mention at the outset that notwithstanding the Association's opposition to both maintenance margin and forced liquidation requirements in the TBA marketplace, our comments are generally in the vein of constructive criticism. From an industry perspective, our member firms currently find themselves in a situation wherein it is becoming necessary for them as fiduciaries to engage in changing otherwise sound market practices in order to help harmonize these new rules or recommendations that apply principally to broker-dealers or banks. While the asset management firms in our Association certainly accept a responsible role in regulatory reform, they are also obligated to ensure in the interests of their clients that these rulemaking-related changes being sought by FINRA will ultimately turn out to be fundamentally sound and workable and will truly protect investors.

1. Maintenance Margin

The Association opposes the requirement that dealers collect 2% maintenance margin from certain counterparties

The Proposed Amendment requires that maintenance margin of 2% should be delivered by any non-exempt account, subject to an exemption which we will address below. For the reasons stated in our prior comment letter, the Association continues to believe that the requirement of maintenance margin is unnecessary, and adds the following:

First, the TMPG does not require maintenance margin under their best practices for margining MBS market transactions and this creates the clear opportunity for regulatory arbitrage.

Second, MBS market transactions tend to be short dated and not especially volatile. For this reason, variation margin (which should be required on a *bilateral* basis) is sufficient to safeguard the risk of counterparty default. While maintenance margin may be used with other financial products, the risks inherent in those products or in the markets in which they trade make the use of maintenance margin more reasonable. As described below, those same risks are not present in the MBS market:

- ***Futures.*** Futures maintenance margin or "initial margin" is generally required as each derivative clearing organization mandates that its members collect initial margin from its customers. This additional margin is needed because risk of default in the futures markets are *socialized among all exchange members* and it is this initial margin that is expected to cover amounts owed by exchange members in the case of a client default. MBS market transactions are bilateral and, notwithstanding the *potential* for contagion, the risks of counterparty default are borne solely by each party to the trade.

- ***OTC Swaps.*** Maintenance margin may be requested by dealers in the OTC swaps market. The nature of these swap transactions is substantially different than MBS market transactions in that they can have much longer tenors (up to 30 years in the case of some standard interest rate swaps), tend to be more volatile (as they could be linked to emerging markets, equities or volatility indices) and do not settle on a delivery versus payment basis. These characteristics are not inherent in MBS market transactions, which are generally short dated, less volatile and settle on a delivery versus payment basis.

- ***Foreign Exchange***. Although foreign exchange is generally settled on a delivery versus payment basis, some currencies do not freely trade and economic exposure can only be achieved via a non-deliverable forward ("NDF"). An NDF is treated like a swap by the CFTC for the purpose of its clearing rules. This makes sense as only one party to an NDF will have delivery obligations and the underlying non-deliverable currencies tend to be more volatile. However, it should be noted while maintenance margin may be common for NDF trading, it is generally very *uncommon* for trading in *deliverable* currencies. The risks inherent in deliverable foreign exchange are very similar to MBS market trading as these deliverable FX transactions tend to be short dated, settle on a delivery versus payment basis and are based on G-10 currencies that are not especially volatile. Both the CFTC and banking regulators recently had an opportunity to consider foreign exchange under their respective rules for minimum margin requirements for uncleared swaps. Both the CFTC and banking regulators, while establishing minimum variation margin and initial margin requirements for *NDFs*, chose to exclude deliverable foreign exchange from *any margin requirements*, including *maintenance* margin.

- ***Repos***. In the proposed rule release FINRA notes that the two percent maintenance margin aligns with the standard haircut for reverse repo transactions in FNMA, GNMA and FHLMC securities. We think this comparison is incorrect. In the repo context the haircut attributed to agency mortgage-backed securities is intended to reflect the view of the *quality of the collateral* which may be liquidated to satisfy the repurchase price in the case of a counterparty default. Accordingly, while agency mortgage-backed securities may receive a haircut of 2%, equities posted as margin may receive a haircut between 5-10%. This haircut, which addresses the *quality* of the respective collateral types, seems to be capturing a different risk than is to be addressed under FINRA's proposed rule, where the maintenance margin is intended to address counterparty *default*. It must be noted that under standard collateral agreements (*e.g.,* the MFSTA) haircuts are already attributed to eligible margin in a manner that is similar to repos.

Third, maintenance margin is limited to non-exempt accounts, which generally is an account with less than $45 million in net assets and $40 million in financial assets. Therefore, the FINRA rule would subject many of the accounts managed by our constituent members (including ERISA pensions and state retirement plans) to the maintenance margin requirement. However, these accounts are often too small to create systemic risk with their limited notional amount of trading. Further, these accounts are not leveraged and therefore not the account types that are creating systemic risk. Further, it is broker-dealers, who are allowed to use financial leverage, whose trading activity is more likely to create systemic risk than accounts managed by the Association's constituents. In fact we are often limited by the prudent investor rule and general fiduciary standards when managing our client accounts which require a long term investment view, not accelerated short term growth that would be achieved through the use of leverage.

Finally, we appreciate that FINRA has proposed a limited exemption from the maintenance margin requirements for same or next month settling transactions that settle in cash. While we appreciate this flexibility, we continue to believe that MBS market trades of longer tenor may be typical for non-exempt accounts and would be subject to the maintenance margin requirements. For the reasons stated above, we believe even a trade with a second month or later settlement would not create risk warranting maintenance margin.

2. Forced Liquidation

The Association believes that allowing dealers to take a capital charge is a suitable practice to address margin delivery fails and that the forced liquidation requirement should be eliminated

The Proposed Amendment allows dealers to take a capital charge against uncollected variation margin for a period up to five business days, at which time the dealer must take prompt action to liquidate positions unless FINRA grants the dealer an exemption. As the Association noted in its prior comment letter, the five day liquidation requirement set forth in the Proposed Amendment is arbitrary and does not provide market participates with sufficient time to resolve legitimate disputes over the value of Covered Agency Securities and posted margin. Should such a dispute occur, the parties require sufficient time to reconcile differences and, if necessary, consult third party pricing sources. The forced liquidation requirement will frustrate the dispute resolution process and unnecessarily require transactions to be terminated. The threat of forced termination will compel asset management firms to decide between two highly unfavorable choices on behalf of their clients. Specifically, the asset management firm can either (i) deliver margin even though it disputes the dealer's valuation, or (ii) withhold margin and face forced liquidation, which may result in additional costs associated with terminating and then reestablishing positions at disadvantageous prices.

As an alternative to the five day forced liquidation requirement, the Association suggests that members should be able to continue to take a capital charge against disputed outstanding margin calls until the dispute is resolved. Dealer capital charges will mitigate any systemic risk that results from uncollected counterparty margin without the disruption caused by forced liquidation. Moreover, removing the threat of unilateral forced liquidation will allow the parties to mutually resolve a valuation dispute without placing the entire burden on the counterparty. For example, the parties may decide to supplement their existing trading agreement with a dispute resolution provision that allows for independent valuation by a third party.

Accordingly, the Association recommends that FINRA permit dealers to take a capital charge on uncollected maintenance margin and eliminate the forced liquidation requirement.

3. Implementation Period

The Association believes that an implementation period of at least eighteen months is necessary

FINRA stated in the Proposed Amendment that it generally supports "the suggestion of an implementation period that permits members adequate time to prepare for the rule change and welcomes further comment on this issue." FINRA further indicated in the Proposed Amendment that it would announce an effective date of the Proposed Amendment within 60 days of its approval and that the effective date would be no later than 180 days following the announcement. This time frame does not provide asset management firms with adequate time to make the changes necessary to implement the Proposed Rule.

As the Association indicated in its prior comment letter, the Proposed Rule raises a considerable amount of operational, trading and legal issues that will need to be addressed by asset management firms and dealers before the effective date of the Proposed Rule. For example, collateral management systems will need to be reprogrammed to adjust for the revised margin rules across a number of different account types. Trade access systems that connect accounts to authorized dealers will also need to be updated based on dealer approval status. Trading agreements (e.g., the MSFTA) will need to be revised to account for a number of changes including maintenance margin requirements, eligible collateral and liquidation requirements. Finally, client outreach will be necessary to educate clients on the impact of the Proposed Rule and obtain additional client consent for any aspects of the Proposed Rule that differ from the TMPG best practice. The aforementioned changes are significant and cannot be accomplished during a condensed period of 180 days when all other asset management firms and dealers are likewise preparing for the Proposed Rule.

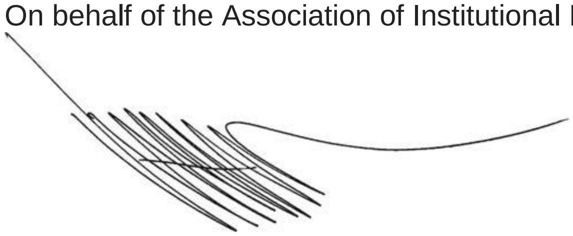
Accordingly, the Association believes that an implementation period of at least 18 months is necessary to implement the Proposed Rule.

****

In conclusion, the Association would like to offer to meet with SEC and FINRA representatives at the appropriate time to further discuss the views of its members regarding both substantive and implementation issues concerning the Proposed Amendment. We believe such discussions would be highly informative to the SEC and FINRA, and beneficial to the members of our Association with respect to their individual responsibilities in serving their clients as investment advisers and fiduciaries. Please feel free to contact Joseph Sack, Staff Adviser to the Association, with any questions regarding this comment letter.

Jsack@association.institutionalINVESTORS.org

On behalf of the Association of Institutional INVESTORS,



John R. Gidman,
President