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November 10, 2015

Via Electronic Submission

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

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

Dear Mr. Errett:

On behalf of Sandler O'Neill & Partners, L.P. ("Sandler O'Neill" or the "Firm"), I am pleased to submit this letter in response to the Securities and Exchange Commission's (the "Commission") solicitation for comments in connection with the SR-FINRA-2015-036 (the "Notice") that contains proposed amendments to Financial Industry Regulatory Authority ("FINRA") Rule 4210 for transactions in the TBA Market (the "Proposed Amendments"). By way of background, Sandler O'Neill is a fully disclosed, independent full-service broker-dealer, also operating as a non-primary, middle market dealer in Covered Agency Securities, as defined in the Proposed Amendments. The Firm promptly transmits all customer funds and securities to its clearing firm and otherwise qualifies for the exemption from the requirement to maintain physical possession and control of securities carried for the account of customers, as described in Rule 15c3-3(k)(2)(ii) under the Securities Exchange Act of 1934 (the "Exchange Act"). Sandler O'Neill is also a signatory to SIFMA's comment letter on the Proposed Amendments, and agrees with and support the comments made therein by other market participants in response to the Proposed Amendments.

We write separately, however, to seek clarity on certain aspects of the Proposed Amendments. Sandler O'Neill requests that the Commission and FINRA issue additional guidance or provide clarification on certain aspects of the Proposed Amendments, as described below.

A. Responsibilities of Clearing Firms v. Introducing Broker-Dealers

Certain introducing broker-dealers have arrangements with their clearing firms that allow the clearing firms to hold the broker-dealer's customer accounts on the clearing firm's books and records. As noted above, Sandler O'Neill qualifies for and operates pursuant to the exemption to Exchange Act Rule 15c3-3 (Customer Protection--Reserves and Custody of Securities). The Rule specifically states that the provisions of 15c3-3 are not applicable to a firm

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> [w]ho, as an introducing broker or dealer, clears all transactions with and for customers on a fully disclosed basis with a clearing broker or dealer, and who promptly transmits all customer funds and securities to the clearing broker or dealer which carries all of the accounts of such customers and maintains and preserves such books and records pertaining thereto pursuant to the requirements of Rule 17a-3 and Rule 17a-4 of this chapter, as are customarily made and kept by a clearing broker or dealer.

Exchange Act Rule 15c3-3(k)(2)(ii).

In the Notice, FINRA states that "Rule 4311 permits firms to allocate responsibilities under carrying agreements so that, for instance, an introducing firm could calculate margin and make margin calls; provided, however, that the carrying firm is responsible for the safeguarding of funds and securities for the purposes of SEC Rule 15c3-3." The Notice does not, however, address whether it is permissible for the clearing firm and introducing firm to assign the responsibility of applying any related capital charges to one party or the other, or if the introducing firm is responsible for any charges irrespective of the party assigned to collect customer margin. Sandler O'Neill submits that if the clearing firm and introducing firm agree to allocate the responsibility of calculating and collecting margin to the clearing firm pursuant to Rule 4311, it is entirely appropriate for the clearing firm to take any applicable capital charges, as the customer accounts in question are on the clearing firm's books and records, and not on the books and records of the introducing broker-dealer. There is, however, not enough guidance in the Proposed Amendments to know which party would be responsible for the relevant charges.

Additionally, assuming the clearing firm agrees to collect margin for the introducing firm, it is not clear whether the clearing firm may rehypothecate the customer's collateral. Additional guidance is needed as a result.

B. Clarification Concerning Sub-Accounts and Mortgage Bankers is Needed

The Proposed Amendments also provide that margin must be collected separately for sub-accounts of investment advisors and similar entities. There are, however, several challenges associated with this proposed requirement that may be difficult to overcome unless FINRA provides additional guidance. At present, broker-dealers do not typically know the identity of the customers in the sub-accounts until post-trade. Allocations are largely provided on a T+1 basis, and only at that time does the broker-dealer know the identity of the customer in the sub-account. In addition, investment advisors may be contractually prohibited from disclosing the identity of and details about their customers. The sub-account customers themselves may not want their identities disclosed to broker-dealers. Allowing broker-dealers to collect aggregated

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margin from the investment advisors in a single account would allow broker-dealers to manage their risk by collecting the necessary margin, without disrupting the relationship between the investment advisor and the investment advisor's customers. As a result, we request that FINRA consider the above-described approach and provide additional guidance regarding sub-accounts of investment advisors.

In addition, the Proposed Amendments allow firms to treat mortgage bankers as exempt accounts so long as the firm "adopts procedures to monitor the mortgage banker's pipeline of mortgage loan commitments to assess whether the Covered Agency Transactions are being used for hedging purposes." Sandler O'Neill does not believe that broker-dealers are in a position to actively monitor a mortgage banker's pipeline, nor would a broker-dealer be able to determine if any one transaction (or series of transactions) by a mortgage banker is being used for hedging purposes. Sandler O'Neill would reiterate, and request clarification on the issues raised in SIFMA's comment letter to FINRA dated March 28, 2014, which states "SIFMA would like to confirm that FINRA members may comply with this requirement by adopting reasonable procedures such as obtaining representations or certifications from mortgage bankers about the nature of their business and the use of Covered Agency Securities transactions for hedging purposes, and that FINRA members have flexibility in designing such procedures." Since FINRA did not directly address this concern in the Notice, Sandler O'Neill believes that additional guidance is needed.

C. Implementation Period

Sandler O'Neill agrees with SIFMA's suggestion that an implementation period of eighteen months after approval would be appropriate given the operational changes that will be required. This assumes that the Commission and FINRA have issued the necessary interpretations and guidance by the time the rule has been approved.

D. Conclusion

In conclusion, Sandler O'Neill believes that additional guidance and clarification should be provided in connection with the Proposed Amendments as detailed above. Please feel free to contact me at ([redacted] if we can provide any additional information for your consideration.

Sincerely,

Paul J. Barrese
Vice President