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February 11, 2016

VIA EMAIL

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

RE: **SR-FINRA-2015-036**: Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend FINRA Rule 4210 (Margin Requirements) To Establish Margin Requirements for the TBA Market, as Modified by Partial Amendment No. 1 (the "**Proposed Rule**")

Dear Deputy Secretary Errett:

I am writing on behalf of the Committee on Healthcare Financing, which is an association of national investment and mortgage bankers and financial advisors who participate in the Department of Housing & Urban Development's Sections 232 and 242 mortgage insurance programs. Our members provide much needed, affordable loans ("**Health Care Loans**") to hospitals, skilled nursing homes, assisted living facilities, and seniors' housing projects, with a strong emphasis on nonprofit health care providers. The majority of those loans are funded with Ginnie Mae mortgage-backed securities ("**GNMA MBS**"). Many of our members are actively engaged in the forward settling of GNMA MBSs that fund multifamily loans and Health Care Loans. Therefore, our members are able to view this issue from the role of both an FHA lender and a member of FINRA.

On November 6, 2015, we wrote to the Commission and FINRA requesting an extension of the 21-day comment period to the Proposed Rule so that the Commission and FINRA could fully analyze the impact of the Proposed Rule on the multifamily market, which includes Health Care Loans, and make appropriate adjustments to the margining rules to account for this industry's distinctive characteristics. We thank you for amending the Proposed Rule to acknowledge the differences between the multifamily finance market and the single family "To-Be-Announced" (TBA) market. However, we are concerned that Amendment #1 does not allow for actual distinctions in margining requirements between those two markets and it will have an adverse impact on the costs of Health Care Loans funded with GNMA MBS, and thus increase health care costs across the nation.

Therefore, we respectfully request that the Commission and FINRA amend the Proposed Rule to fully exempt GNMA MBS trades (which would include GNMA MBS that fund HUD's Section 232 and Section 242 loans) from margining. Further, we request that the Commissioner and FINRA affirm that good faith deposits (as discussed below) provide sufficient margin protection until such time as the Commission can complete its "ongoing analysis" of the multifamily market.

As discussed in our November 6th letter, the Health Care Loan market, like the multifamily market, is vastly different and distinct from the single-family residential market. While the Amendment #1 does acknowledge those differences, we are concerned that the changes in Amendment #1 do not adequately reflect the market differences. First, HUD's Section 232 and 242 market is a fraction of the size of the single-family market. For FY 2015, the HUD Section 232 and 242 programs financed less than $3 billion in transactions and is not expected to exceed $4 billion in the near future. This is compared to the over $1 trillion single-family market and the $40-50 billion multifamily market.

Currently, the financing market for the Health Care Loans works well and efficiently utilizing GNMA MBS. Prior to committing to sell a GNMA MBS with a broker-dealer, the FHA lender would have most likely entered into a loan funding commitment with its borrower detailing the terms of the loan and conditions upon which it will be made. That loan funding commitment is a contract between two sophisticated parties— the FHA lender and the FHA borrower.[1] In order to protect themselves against a failed loan closing, at the time GNMA MBS is sold, the FHA lender typically collects from the borrower a good faith deposit ("**GFD**"), which can range from 50 to 200 basis points. This provides both an economic incentive for the borrower to complete the loan transaction, and protection for the GNMA MBS purchaser (i.e., the broker-dealer) if the Health Care Loan fails to close. Because of these protections, trades for Health Care Loan securities (and multifamily GNMA MBS) rarely fail.

This protection mechanism has worked well for many years and the Commission has not indicated any specific concerns actually experienced in our market. The Proposed Rule merely mentions potential systemic risks, but with regard to the Health Care Loan and multifamily GNMA MBS market, it does not appear that a proper analysis was done to confirm whether or not GFDs provide sufficient protection to broker-dealers or others involved in the trade. Instead, based on a potential (and slight) market risk, the Commission has shifted the balance solely in favor of the broker-dealer by placing upon the broker-dealer the obligation to determine additional margin requirements— for their protection only. The Proposed Rule does nothing to protect any other parties to the loan transaction, i.e., the lender and the borrower.

By shifting this power to the broker-dealer, the Commission may drive the multifamily market towards the inefficiencies currently in the single-family market, which will only drive up costs to borrowers. First, by giving broker-dealers the discretion to determine when margining is needed, FHA lenders of multifamily projects and Health Care Loans will be unable to structure mortgage costs confidently. Thus, lenders may be forced to negotiate trades earlier in the underwriting process, when the credit of the borrower has not been fully vetted. Such trades will certainly cost more because of increased uncertainty. Second, this will adversely impact smaller lenders and smaller borrowers who lack the ability to negotiate on equal footing with broker-dealers. Thus, the number of FHA lenders participating in the Health Care Loan and multifamily programs may decrease, which reduces competition and increases costs.

[1] It is important to note that the borrowers participating in HUD's Health Care Loan programs are not individuals, but rather sophisticated real estate companies, REITS, nursing home owners or operators, or nonprofit hospitals. They are highly knowledgeable about financings and thus are able to understand and navigate an FHA loan transaction.

We understand that the Commission is engaged in an "ongoing analysis" of the market. Therefore, we believe that prior to any rule changes, the Commission and FINRA should fully analyze the impact of the Proposed Rule on Health Care Loans and the multifamily housing market, and make appropriate, specific adjustments to the margining rules to account for this industry's distinctive characteristics. Until such time as that analysis is complete, we suggest that the Commission confirm that collection of a GFD is a sufficient margin for multifamily trades (which include Health Care Loans.)

We appreciate the opportunity to comment on the Proposed Rule as amended by Amendment #1. If you would like to discuss this matter further, please do not hesitate to call me at 202-465-8140. Thank you for your consideration of our comments.

Respectfully submitted,

Roderick D. Owens
Executive Director