



February 11, 2016

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

Re: 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 (File No. SR-FINRA-2015-036)

Dear Mr. Errett:

The Mortgage Bankers Association¹ (MBA) is writing to respond to the Securities and Exchange Commission's request for comment on the order instituting proceedings to determine whether to approve or disapprove a proposed rule change by the Financial Industry Regulatory Authority (FINRA) to amend FINRA Rule 4210 to establish margin requirements for the TBA market, as modified by Partial Amendment No. 1.² Our comments focus on changes to the Proposal made by Partial Amendment No. 1 regarding the impact on the **multifamily real estate finance sector**.³ This letter does not address other aspects of the Proposal, nor the impacts of the Proposal on the single-family mortgage market. MBA incorporates by reference

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

² 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, 81 Fed. Reg. 3532 (Jan. 21, 2016) (Proposal).

³ Multifamily housing generally refers to rental housing properties with five or more dwelling units. This includes rental apartments, affordable rental housing, seniors housing and residential healthcare properties (assisted living, skilled nursing, senior living communities, and other facilities), as well as manufactured housing communities and student housing.

its overall comments in prior letters on the margining Proposal as a whole. For a full discussion of MBA's views, please see our previous comments in response to various margining proposals.⁴

Exception for Multifamily and Project Loan Securities

MBA appreciates the SEC and FINRA's consideration of the multifamily rental housing finance market and the negative impact that margining requirements could have on this important sector. MBA strongly supports the exception for multifamily agency securities from the mandatory margin requirements proposed under FINRA Rule 4210.⁵ While we provide comments below on approaches to clarify and strengthen the Proposal, we are pleased with the establishment of the exception and appreciate FINRA and the SEC's recognition of the unique character, existing safeguards and effective operation of the multifamily rental housing finance market.

FINRA's movement away from a mandatory margining approach takes into account the size and character of the multifamily finance market and the existing risk management mechanisms in multifamily agency finance, such as the posting of a good faith deposit for the benefit of the broker-dealer/investor and the extensive requirements and oversight from an Agency or GSE throughout the entire transaction. Underwriting, due diligence, property-level analyses and oversight are stringent in the multifamily agency finance market, serving to align the interests of the parties to complete the transaction and avoid delivery failures.

In response to the SEC's questions in the Proposal, we do not believe that an exception for multifamily agency securities would pose risks to FINRA members or to other market participants.⁶ As we previously noted, the multifamily finance market has operated efficiently and effectively through different market cycles without margining requirements. Long-standing risk management standards, ongoing monitoring, and property-specific underwriting and due diligence have supported this market. As FINRA's analysis of transactional data surrounding multifamily securities discussed in the Proposal illustrates, multifamily securities also constitute

⁴ See [MBA Letter to the SEC \(Jan. 11, 2016\)](#); [MBA Letter to the SEC \(Nov. 10, 2015\)](#); [MBA Letter to the TMPG \(Sept. 9, 2014\)](#).

⁵ Specifically, Partial Amendment No. 1 adds new paragraph (e)(2)(H)(ii)a.2. to FINRA Rule 4210 to provide that a member may elect not to apply the margin requirements of paragraph (e)(2)(H) of the rule with respect to Covered Agency Transactions with a counterparty in multifamily housing securities or project loan program securities, provided that: (1) such securities are issued in conformity with a program of an Agency, as defined in FINRA Rule 6710(k), or a GSE, as defined in FINRA Rule 6710(n), and are documented as Freddie Mac K Certificates, Fannie Mae Delegated Underwriting and Servicing bonds, or Ginnie Mae Construction Loan or Project Loan Certificates, as commonly known to the trade; and (2) the member makes a written risk limit determination for each such counterparty that the member shall enforce pursuant to paragraph (e)(2)(H)(ii)b. of Rule 4210.

⁶ See 81 Fed. Reg. at 3545.

a small portion of the Covered Agency Transactions market overall, which, as the Proposal states, supports the conclusion that multifamily securities do not pose systemic risk. MBA also supports FINRA's view in the Proposal that the impacts on net margin calculation for FINRA members would be small based on FINRA's review of TBA market transactions. In light of the above and other characteristics of the multifamily agency finance market,⁷ we firmly believe that new issue multifamily agency securitizations should not require the posting of margin.

By providing an exception for multifamily securities, FINRA is allowing for the ongoing strength and efficiency of the multifamily agency securitization market while, at the same time, addressing concerns expressed by MBA and numerous commenters on the original rule filing. As MBA emphasized in previous letters, the Proposal would otherwise have imposed undue burdens on multifamily lenders and caused substantial harm to the broad multifamily housing finance market.⁸

Scope of Excepted Securities

We have several comments, as discussed below, on the scope of the exception and proposed conditions. The proposed exception provides that a FINRA member may elect not to apply the margin requirements of the rule with respect to "Covered Agency Transactions" with a counterparty in multifamily housing securities or project loan program securities, provided that:

[S]uch securities are issued in conformity with a program of an Agency, as defined in Rule 6710(k), or a Government-Sponsored Enterprise, as defined in Rule 6710(n), and are documented as Freddie Mac K Certificates, Fannie Mae Delegated Underwriting and Servicing bonds, or Ginnie Mae Construction Loan or Project Loan Certificates, as commonly known to the trade; (emphasis added)

We strongly support the inclusion of the above language in the proposed exception, which covers the GSEs and Agencies, including Ginnie Mae. We also note that while these are the predominant multifamily agency executions, other transaction types (that may not technically fit within the identified categories) have and could be utilized. Over time, the name of particular securities issued by the Agencies/GSEs could change as well. We believe that the final rule should ensure that other types of multifamily agency securities that may not technically fit within the above language, but are substantially similar, do not inadvertently fall outside of the exception.

⁷ See [MBA Letter to the SEC \(Jan. 11, 2016\)](#) (describing extensive prescreening, underwriting and issuance processes for typical multifamily loans under agency executions; see overview of underwriting and securities issuance processes).

⁸ In addition to our comments on the exception in the Proposal, we affirm the importance of maintaining, at the very least, the exception for maintenance margin requirements broadly for mortgage bankers engaged in the hedging their pipeline of commitments.

Specifically, we recommend that FINRA (1) retain the language above, and (2) add the following text immediately after "Ginnie Mae Construction Loan or Project Loan Certificates": **“or other securities with substantially similar characteristics issued in conformity with a program of an Agency or GSE securities”** This condition would ensure that similar securities issued in accordance with Agency/GSE requirements would be covered by the exception and avoid “foot fault” situations.⁹

Requirements for Exception

The proposed exception from mandatory margining requires that a FINRA member make a written risk limit determination for each counterparty regarding multifamily securities. Under the Proposal, the risk limit determination must be made by a designated credit risk officer or credit risk committee in accordance with the FINRA member’s written risk policies and procedures.

While MBA understands FINRA’s view that establishing risk limit determinations can be an important part of addressing concerns regarding overall investor protection and market integrity in the TBA market, we believe that it is critical for FINRA members to have sufficient flexibility in making a risk limit determination to guard against disruptions to the manner in which FINRA members and counterparties currently conduct business. As MBA does not believe that margining is necessary in new issue multifamily agency securitizations, we urge FINRA to exercise care in the manner in which any new requirements are implemented. In particular, risk limit determinations contemplated by the Proposal should be consistent with existing practices and arrangements between broker-dealers and mortgage bankers who understand the character of the collateral (multifamily real estate), the underwriting and lending standards, and the unique securitization process that supports the financing of multifamily rental housing.

The Proposal provides some flexibility for FINRA members in making risk limit determinations. For example, members of limited size and resources that do not have a credit risk officer or credit risk committee may designate an appropriately registered principal to make the risk limit determinations, and a member may base the risk limit determination on consideration of all products involved in the member’s business with the counterparty, provided the member makes a daily record of the counterparty’s risk limit usage. MBA also appreciates the clarity provided that a FINRA member need not write a separate risk limit determination for the types of products addressed by each counterparty; rather, “one written

⁹ Alternatively, the SEC and FINRA could narrow and refine the definition of “Covered Agency Transactions” (in Proposed FINRA Rule 4210(e)(2)(H)(i)c.) to cover securities other than those intended to be excepted. This would be in lieu of the approach in the current Proposal that broadly defines this term and then proceeds to carve out exceptions. Various conforming changes would be necessary under this approach.

risk limit for each counterparty should suffice, provided it addresses the products."¹⁰ MBA believes these provisions are positive steps. We encourage FINRA to work with market participants as it continues to consider the Proposal to ensure that flexibility is provided to FINRA members who work closely with mortgage banking firms and to avoid the unnecessary posting of margin in new issue multifamily agency securitizations.

Importantly, for the reasons discussed above, MBA believes that the language describing the nature of the exception could be clarified as well. Specifically, we recommend that the language in proposed FINRA Rule 4210(e)(2)(H)(ii) (a)(2) be changed from "a member may elect not to apply the margin requirements . . ." to "a member **is not required** to apply the margin requirements . . ." Fundamentally, we believe that this is what the *exception* means. This language modification would clarify the intent of the rule, reduce confusion among market participants, and avoid unintended consequences. At the same time, this change would neither modify the substance of the rule nor affect the separate risk limit determination provision in section 4210(e)(2)(H)(ii)(b) that is intended to facilitate a broker-dealer's exercise of sound business judgment and risk management.

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¹⁰ 81 Fed. Reg. 3542 (Jan. 21, 2016).

MBA Letter to the SEC

February 11, 2016

Page 6

MBA is pleased that FINRA has determined that multifamily agency securitizations should be provided an exception from the mandatory margining requirements. We offer our additional comments and assistance to the SEC and FINRA as consideration of the Proposal continues. If you have any questions regarding the comments above, please contact me or Thomas Kim, MBA Senior Vice President, at [REDACTED] [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read "D.H. Stevens". The signature is fluid and cursive, with a large initial "D" and "H" followed by a smaller "S" and "tevens".

David H. Stevens, CMB
President and CEO
Mortgage Bankers Association

cc: The Honorable Mary Jo White, Chair
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

Stephen Luparello, Director, Division of Trading and Markets
Gary Goldsholle, Deputy Director, Division of Trading and Markets
Gary Barnett, Deputy Director, Division of Trading and Markets
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