BREAN CAPITAL, LLC

April 27, 2016

VIA FEDEX AND ELECTRONIC MAIL

Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE, Mailstop 7010
Washington, DC 20549
Attention: Sheila Dombal Swartz, Senior Special Counsel

Ladies and Gentlemen,

Thank you again for meeting with Brean Capital, LLC at your offices on March 21, 2016 to discuss significant concerns regarding proposed changes to FINRA Rule 4210. We very much appreciate the Commission's effort to take into account the serious concerns of market participants as it assesses the potential impacts of these proposed changes.

Based on our considerable experience in the mortgage securities markets, we believe the new margining requirements will unnecessarily drive brokerage business in covered agency transactions away from introducing brokers and toward a very small number of extremely large investment banks and financial institutions, thereby adding to systemic risk, reducing competition and reducing liquidity in the market. Regulatory capital requirements combined with an introducing broker's margin arrangements with its financial clearing firms already impose significant capitalization requirements in respect of covered agency transactions. This is the case notwithstanding the fact that in our experience most introducing brokers operate on a riskless basis (or extremely low-risk basis), matching long exposure with short exposure. As a result, the new margining requirements unnecessarily impose a capital burden and the associated cost of that capital onto introducing brokers.

In the market, we have seen that certain large investment banks and financial institutions are already using margining terms to dramatically tilt the playing field. We have seen one large investment bank attempt to make a margin call the same morning as a trade, claiming a vastly different mark than the trade price made the same morning even though there was minimal to zero volatility in the bond market. Only after intense discussions, the mark was corrected to match the trade price. While we are extremely concerned about other incidents like this one, an incident like this in a more volatile market could have a catastrophic effect. In such a case, the claimed mark to market differential would likely be even greater, while the volatility would make capital more costly. As a result, incorrect marking in a volatile market could well result in costly trade close outs from which a broker, otherwise operating on a riskless or low-risk basis, may be unable to recover.

We have also seen a large investment bank insist on de minimis thresholds for counterparty margin while demanding very significant thresholds for themselves. Another concerning practice in the market is a party's insistence that their pledged margin not be repledged. This creates a capital shortage for brokers involved in a riskless trade where margin posted by one party cannot be re-posted by the broker to satisfy the margin requirements on the mark to market losses on the other side of the riskless trade.

As capital becomes increasingly scarce for an introducing broker, cost of capital will become ever more substantial, and prohibitive, and introducing brokers will cede the mortgage securities business to the small number of large investment banks with meaningfully lower costs of capital. The concomitant reduction in liquidity in the market for mortgage securities (which will further call into question the integrity of marks that large financial institutions assert to their counterparties on covered agency transaction) will drive up yields and thus borrowing costs for millions of American homeowners.

We are concerned that the proposed changes to FINRA Rule 4210 will broaden and make permanent recent bilateral margining practices (and abuses) when guidance to the market should move in the opposite direction.

Nonetheless, in the event the Commission is inclined to adopt some aspects of the proposed changes to FINRA Rule 4210, and as requested by Commission staff at our meeting, we enclose herewith proposed revisions to the currently proposed changes to FINRA Rule 4210 that we believe would address certain specific concerns listed below.

Concern 1: The proposed changes to FINRA Rule 4210 concerning Risk Limit Determinations for Investment Adviser Accounts are not possible to follow.

New language in paragraph (a)(1) of .05 Risk Limit Determination addresses the concern that proposed changes to FINRA Rule 4210 would render a broker unable to comply with the requirement to make risk limit determinations specifically as to any account or group of commonly controlled accounts managed by an investment adviser (rather than at the investment adviser level itself) where the assets of such accounts constitute more than 10 percent of an investment adviser's regulatory assets. In fact, a broker may not know which accounts constitute more than 10 percent of an investment adviser's regulatory assets. This information is frequently maintained confidentially by an investment adviser due to privacy practices and regulations. In such circumstances it is not feasible to make risk limit determinations other than at the investment adviser level.

Accordingly, new language in paragraph (a)(1) of .05 Risk Limit Determination would limit the requirement to make this specific risk limit determination to circumstances where the broker knows, based on information provided by the investment manager, that the account constitutes more than 10 percent of an investment adviser's regulatory assets.

Concern 2: The proposed changes to FINRA Rule 4210 would double margin requirements on introducing brokers.

New paragraphs (e)(2)(H)(ii)d.1. and (e)(2)(H)(ii)e.1. address the concern that proposed changes to FINRA Rule 4210 would impose a double margin requirement in respect of covered agency transactions upon introducing brokers that are already required to post margin as to such transactions pursuant to the introducing broker's agreements with their financial clearing firm.

These new paragraphs would exempt such introducing brokers from new FINRA Rule 4210 margin requirements as to such transactions with "exempt accounts" and non-"exempt accounts", respectively.

Concern 3: The proposed changes to FINRA Rule 4210 would create broker capital shortfalls in riskless trades with registered investment companies.

New paragraphs (e)(2)(H)(ii)d.2. and (e)(2)(H)(ii)e.2. address the concern that the proposed changes to FINRA Rule 4210 would create capital shortfalls for brokers entering riskless covered agency trades involving registered investment companies on one side. In these situations, margin posted by a registered investment company in respect of mark to market gains, unlike margin posted by others, could not, as a result of unique requirements as to registered investment companies, be re-posted by the broker to satisfy the proposed new margin requirements on the mark to market losses on the other side of the riskless trade. As a result, the broker, even though in a net neutral trading position, would need to acquire additional capital to satisfy the proposed rule changes.

New paragraphs (e)(2)(H)(ii)d.2. and (e)(2)(H)(ii)e.2. would correct this situation in transactions with "exempt accounts" and non-"exempt accounts", respectively, by exempting from margin covered agency transactions that are offset by bilateral transactions with registered investment companies.

Concern 4: The proposed changes to FINRA Rule 4210 will damage in-the-money brokers acting on a riskless basis by demanding position liquidation with a short exposure counterparty that fails to post margin.

New language in (e)(2)(H)(ii)d. and (e)(2)(H)(ii)e. addresses the concern that the proposed changes to FINRA Rule 4210 would damage in-the-money brokers acting on a riskless basis by demanding position liquidation when a counterparty with a short position fails to post margin. In such a case, the short position counterparty would not deliver the security to the in-the-money broker, even though that broker, if operating on a riskless basis, owes delivery of that security to a third party. In the case of difficult to source non-TBA securities, this can cause significant damage to the riskless basis broker.

New language in (e)(2)(H)(ii)d. and (e)(2)(H)(ii)e. would correct this situation by limiting the position liquidation requirement to TBA transactions.

Concern 5: The proposed changes to FINRA Rule 4210 demand margin from counterparties with only a modest aggregate dollar value of open positions.

New language in paragraph (e)(2)(H)(ii)c.2. addresses the concern that the proposed changes to FINRA Rule 4210 sets too low a threshold, $2.5 million, for aggregate open positions requiring a counterparty to potentially post margin. The low threshold will likely serve as a barrier to entry for a large number of participants that might otherwise enter the market and add to the market's liquidity, system stability and competition. At the same time, we recognize the interest in ensuring adequate capitalization and risk levels. A $10 million threshold would strike the right balance.

New language in paragraph (e)(2)(H)(ii)c.2. would provide an exemption from margin requirements for counterparties with gross open positions in Covered Agency Transactions at $10 million or less in the aggregate.

Concern 6: The proposed changes to FINRA Rule 4210 do not take into account offsetting trades in determining a party's exposure.

New paragraph (e)(2)(H)(ii)c.3. address the concern that the proposed changes to FINRA Rule 4210 does not adequately assess a party's exposure to a Covered Agency Transaction where it maintains a non-cleared bilateral trade that is offset by a trade that has cleared through a registered clearing agency. In these situations, under the proposed changes, a party could be required to post margin even though the trade as a whole is not a loss trade.

New paragraph (e)(2)(H)(ii)c.3. would correct this situation by excluding from margin requirements Covered Agency Transactions where the mark to market loss, if any, is offset by the gain on a cleared trade.

Concern 7: The proposed changes to FINRA Rule 4210 do not specify which counterparties' position marking needs to be followed.

The new language to paragraphs (e)(2)(H)(i)f. and (e)(2)(H)(i)g. address the concern that the proposed changes to FINRA Rule 4210 leave open which party determines position marking for purposes of setting margin requirements. As noted above, parties in the marketplace may seek to assert marks strategically, tilting the playing field against parties with a higher cost of capital. Accordingly, it is important to have a neutral mechanism for marking.

The new language to paragraphs (e)(2)(H)(i)f. and (e)(2)(H)(i)g. provide that marking shall be by reference to an agreed recognized source or, if not available, by agreement of the parties acting in a commercially reasonable manner.

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Should you have any questions or require any additional information as to the concerns we have expressed generally on proposed changes to FINRA Rule 4210, the concerns specifically noted in this letter or the enclosures, please do not hesitate to call.

Very truly yours,

Robert Fine
Chief Executive Officer

Enclosure

Proposed Revisions to Proposed Changes to FINRA Rule 4210

Submitted by Brean Capital, LLC

4000. FINANCIAL AND OPERATIONAL RULES

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4210. Margin Requirements

(a) Definitions

For purposes of this Rule, the following terms shall have the meanings specified below:

(1) through (12) No Change.

(13) The term "exempt account" means:

(A) No Change.

(B) any person that:

(i) has a net worth of at least $45 million and financial assets of at least $40 million for purposes of paragraphs (e)(2)(F), [and] (e)(2)(G)[,] and (e)(2)(H), and

(ii) No Change.

(14) through (16) No Change.

(b) through (d) No Change.

(e) Exceptions to Rule

The foregoing requirements of this Rule are subject to the following exceptions:

(1) No Change.

(2) Exempted Securities, Non-equity Securities and Baskets

(A) through (E) No Change.

(F) Trans`actions with Exempt Accounts Involving Certain "Good Faith" Securities

Other than for Covered Agency Transactions as defined in paragraph (e)(2)(H) of this Rule, [O]on any "long" or "short" position resulting from a transaction involving exempted securities, mortgage related securities, or major foreign sovereign debt securities made for or with an "exempt account," no margin need be required and any marked to the market loss on such position need not be collected. However, the amount of any uncollected marked to the market loss shall be deducted in computing the member's net capital as provided in SEA Rule 15c3-1 and, if applicable, Rule 4110(a), subject to the limits provided in paragraph (e)(2)([H]I) [below] of this Rule.

Members shall maintain a written risk analysis methodology for assessing the amount of credit extended to exempt accounts pursuant to paragraph (e)(2)(F) of this Rule which shall be made available to FINRA upon request. The risk limit determination shall be made by a designated credit risk officer or credit risk committee in accordance with the member's written risk policies and procedures.

(G) Transactions With Exempt Accounts Involving Highly Rated Foreign Sovereign Debt Securities and Investment Grade Debt Securities

On any "long" or "short" position resulting from a transaction made for or with an "exempt account" (other than a position subject to paragraph (e)(2)(F) or (e)(2)(H) of this Rule), the margin to be maintained on highly rated foreign sovereign debt and investment grade debt securities shall be, in lieu of any greater requirements imposed under this Rule, (i) 0.5 percent of current market value in the case of highly rated foreign sovereign debt securities, and (ii) 3 percent of current market value in the case of all other investment grade debt securities. The member need not collect any such margin, provided the amount equal to the margin required shall be deducted in computing the member's net capital as provided in SEA Rule 15c3-1 and, if applicable, Rule 4110(a), subject to the limits provided in paragraph (e)(2)([H]I) [below] of this Rule.

Members shall maintain a written risk analysis methodology for assessing the amount of credit extended to exempt accounts pursuant to paragraph (e)(2)(G) of this Rule which shall be made available to FINRA upon request. The risk limit determination shall be made by a designated credit risk officer or credit risk committee in accordance with the member's written risk policies and procedures.

(H) Covered Agency Transactions

(i) Definitions

For purposes of paragraph (e)(2)(H) of this Rule:

a. The term "bilateral transaction" means a Covered Agency Transaction that is not cleared through a registered clearing agency as defined in paragraph (f)(2)(A)(xxviii) of this Rule.

b. The term "counterparty" means any person that enters into a Covered Agency Transaction with a member and includes a "customer" as defined in paragraph (a)(3) of this Rule.

c. The term "Covered Agency Transaction" means:

1. To Be Announced ("TBA") transactions, as defined in Rule 6710(u), inclusive of adjustable rate mortgage ("ARM") transactions, for which the difference between the trade date and contractual settlement date is greater than one business day;

2. Specified Pool Transactions, as defined in Rule 6710(x), for which the difference between the trade date and contractual settlement date is greater than one business day; and

3. Transactions in Collateralized Mortgage Obligations ("CMOs"), as defined in Rule 6710(dd), 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), for which the difference between the trade date and contractual settlement date is greater than three business days.

d. The term "deficiency" means the amount of any required but uncollected maintenance margin and any required but uncollected mark to market loss.

e. The term "gross open position" means, with respect to Covered Agency Transactions, the amount of the absolute dollar value of all contracts entered into by a counterparty, in all CUSIPs; provided, however, that such amount shall be computed net of any settled position of the counterparty held at the member and deliverable under one or more of the counterparty's contracts with the member and which the counterparty intends to deliver.

f. The term "maintenance margin" means margin equal to 2 percent of the contract value of the net "long" or net "short" position, by CUSIP, with the counterparty as determined (1) by reference to the price quotation for a replacement transaction obtained from a generally recognized source agreed to by the parties to the applicable position and (2), if such price quotation is unavailable, by agreement of the parties to the applicable position, acting in a commercially reasonable manner.

g. The term "mark to market loss" means the counterparty's loss resulting from marking a Covered Agency Transaction to the market with such mark to be determined (1) by reference to the price quotation for a replacement transaction obtained from a generally recognized source agreed to by the parties to the Covered Agency Transaction and (2), if such price quotation is unavailable, by agreement of the parties to the applicable Covered Agency Transaction, acting in a commercially reasonable manner.

h. The term "mortgage banker" means an entity, however organized, that engages in the business of providing real estate financing collateralized by liens on such real estate.

i. The term “round robin” trade means any transaction or transactions resulting in equal and offsetting positions by one customer with two separate dealers for the purpose of eliminating a turnaround delivery obligation by the customer.

j. The term “standby” means contracts that are put options that trade OTC, as defined in paragraph (f)(2)(A)(xxvii) of this Rule, with initial and final confirmation procedures similar to those on forward transactions.

(ii) Margin Requirements for Covered Agency Transactions

a. All Covered Agency Transactions with any counterparty, regardless of the type of account to which booked, shall be subject to the provisions of paragraph (e)(2)(H) of this Rule, except:

1. with respect to Covered Agency Transactions with any counterparty that is a Federal banking agency, as defined in 12 U.S.C. 1813(z), central bank, multinational central bank, foreign sovereign, multilateral development bank, or the Bank for International Settlements, a member may elect not to apply the margin requirements specified in paragraph (e)(2)(H) of this Rule provided 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; and

2. a member may elect not to apply the margin requirements specified in paragraph (e)(2)(H) of this Rule with respect to Covered Agency Transactions with a counterparty in multifamily housing securities or project loan program securities, provided:

A. such 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; and

B. 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.

b. A member that engages in Covered Agency Transactions with any counterparty shall make a determination in writing of a risk limit for each such counterparty that the member shall enforce. The risk limit determination shall be made by a designated credit risk officer or credit risk committee in accordance with the member's written risk policies and procedures.

c. The margin requirements specified in paragraph (e)(2)(H) of this Rule shall not apply to:

1. Covered Agency Transactions that are cleared through a registered clearing agency, as defined in paragraph (f)(2)(A)(xxviii) of this Rule, and are subject to the margin requirements of that clearing agency; ~~and~~

2. any counterparty that has gross open positions in Covered Agency Transactions with the member amounting to $~~2.5~~10 million or less in aggregate, if the original contractual settlement for all such transactions is in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions and the counterparty regularly settles its Covered Agency Transactions on a Delivery Versus Payment ("DVP") basis or for "cash"; provided, however, that such exception from the margin requirements shall not apply to a counterparty that, in its transactions with the member, engages in dollar rolls, as defined in Rule 6710(z), or "round robin" trades, or that uses other financing techniques for its Covered Agency Transactions; and

3. any Covered Agency Transactions where the mark to market loss, if any, is borne by a party that has a reasonably commensurate mark to market gain resulting from one or more transactions that are cleared through a registered clearing agency, as defined in paragraph (f)(2)(A)(xxviii) of this Rule.

d. Transactions with Exempt Accounts: On any net "long" or net "short" position, by CUSIP, resulting from bilateral transactions with a counterparty that is an "exempt account" no maintenance margin shall be required. However, such transactions shall be marked to the market daily and the member shall collect any net mark to market loss, unless otherwise provided under paragraph (e)(2)(H)(ii)f. of this Rule, paragraph (e)(2)(H(ii)d.1. of this Rule or paragraph (e)(2)(H(ii)d.2. of this Rule. If the mark to market loss is not satisfied by the close of business on the next business day after the business day on which the mark to market loss arises, the member shall be required to deduct the amount of the mark to market loss from net capital as provided in SEA Rule 15c3-1 until such time the mark to market loss is satisfied. If such mark to market loss is not satisfied within five business days from the date the loss was created, the member shall, in the case the mark to market loss is in respect of a Covered Agency Transaction that is a TBA transaction, promptly liquidate positions to satisfy the mark to market loss, unless FINRA has specifically granted the member additional time. Members may treat mortgage bankers that use Covered Agency Transactions to hedge their pipeline of mortgage commitments as exempt accounts for purposes of paragraph (e)(2)(H) of this Rule.

1. Any aforementioned mark to market losses resulting from a bilateral transaction with a counterparty that is an "exempt account", as set forth in paragraph (e)(2)(H)(ii)d. of this Rule, shall not give rise to any margin requirement which as such need not be collected or charged to net capital, if in respect of such transaction the mark to market loss is borne by a party that is subject to an agreement with a FINRA member pursuant to which such FINRA member (x) has responsibility to clear such transaction and (y) receives a margin in respect of the transaction.

2. Any aforementioned mark to market losses resulting from a bilateral transaction with a counterparty that is an "exempt account", as set forth in paragraph (e)(2)(H)(ii)d. of this Rule, shall not give rise to any margin requirement which as such need not be collected or charged to net capital, if in respect of such transaction the mark to market loss is borne by a party that has a reasonably

commensurate mark to market gain resulting from a bilateral transaction as to reasonably identical securities with a counterparty that is an investment company registered under the Investment Company Act of 1940.

e. Transactions with Non-Exempt Accounts: On any net "long" or net "short" position, by CUSIP, resulting from bilateral transactions with a counterparty that is not an "exempt account," maintenance margin, plus any net mark to market loss on such transactions, shall be required margin, and the member shall collect the deficiency, as defined in paragraph (e)(2)(H)(i)d. of this Rule, unless otherwise provided under paragraph (e)(2)(H)(ii)f~~,~~ of this Rule, paragraph (e)(2)(H(ii)e.1. of this Rule or paragraph (e)(2)(H(ii)e.2. of this Rule. If the deficiency is not satisfied by the close of business on the next business day after the business day on which the deficiency arises, the member shall be required to deduct the amount of the deficiency from net capital as provided in SEA Rule 15c3-1 until such time the deficiency is satisfied. If such deficiency is not satisfied within five business days from the date the deficiency was created, the member shall, in the case the deficiency is in respect of a Covered Agency Transaction that is a TBA transaction, promptly liquidate positions to satisfy the deficiency, unless FINRA has specifically granted the member additional time. No maintenance margin is required if the original contractual settlement for the Covered Agency Transaction is in the month of the trade date for such transaction or in the month succeeding the trade date for such transaction and the customer regularly settles its Covered Agency Transactions on a DVP basis or for "cash"; provided, however, that such exception from the required maintenance margin shall not apply to a nonexempt account that, in its transactions with the member, engages in dollar rolls, as defined in Rule 6710(z), or "round robin" trades, or that uses other financing techniques for its Covered Agency Transactions.

1. A bilateral transaction with a counterparty that is not an "exempt account", as set forth in paragraph (e)(2)(H)(ii)e. of this Rule, shall not give rise to any margin requirement and as such need not be collected or charged to net capital, from a party that is subject to an agreement with a FINRA member pursuant to which such FINRA member (x) has responsibility to clear such transaction and (y) receives a margin in respect of the transaction.

2. A bilateral transaction with a counterparty that is not an "exempt account", as set forth in paragraph (e)(2)(H)(ii)e. of this Rule, shall not give rise to any margin requirement and as such need not be collected or charged to net capital, from a party that has a reasonably

commensurate, opposite bilateral transaction as to reasonably identical securities with a counterparty that is an investment company registered under the Investment Company Act of 1940.

f. Any aforementioned deficiency, as set forth in paragraph (e)(2)(H)(ii)e. of this Rule, or mark to market losses, as set forth in paragraph (e)(2)(H)(ii)d. of this Rule, with a single counterparty shall not give rise to any margin requirement, and as such need not be collected or charged to net capital, if the aggregate of such amounts with such counterparty does not exceed $250,000 ("the de minimis transfer amount"). The full amount of the sum of the required maintenance margin and any mark to market loss must be collected when such sum exceeds the de minimis transfer amount.

g. Unrealized profits in one Covered Agency Transaction position may offset losses from other Covered Agency Transaction positions in the same counterparty's account and the amount of net unrealized profits may be used to reduce margin requirements. With respect to standbys, only profits (in-the-money amounts), if any, on "long" standbys shall be recognized.

([H]I) Limits on Net Capital Deductions [for Exempt Accounts]

[(i) Members shall maintain a written risk analysis methodology for assessing the amount of credit extended to exempt accounts pursuant to paragraph (e)(2)(F) and (e)(2)(G) which shall be made available to FINRA upon request.]

([ii]i) In the event that the net capital deductions taken by a member as a result of deficiencies or marked to the market losses incurred under paragraphs (e)(2)(F) and (e)(2)(G) of this Rule (exclusive of the percentage requirements established thereunder), plus any mark to market loss as set forth under paragraph (e)(2)(H)(ii)d. of this Rule and any deficiency as set forth under paragraph (e)(2)(H)(ii)e. of this Rule, and inclusive of all amounts excepted from margin requirements as set forth under paragraph (e)(2)(H)(ii)c.2. of this Rule or any de minimis transfer amount as set forth under paragraph (e)(2)(H)(ii)f of this Rule, exceed:

a. [on] for any one account or group of commonly controlled accounts, 5 percent of the member's tentative net capital (as such term is defined in SEA Rule 15c3-1), or

b. [on] for all accounts combined, 25 percent of the member's tentative net capital (as such term is defined in SEA Rule 15c3-1), and,

c. such excess as calculated in paragraphs (e)(2)(I)(i)a. or b. of this Rule continues to exist[s] on the fifth business day after it was incurred,

the member shall give prompt written notice to FINRA and shall not enter into any new transaction(s) subject to the provisions of paragraphs (e)(2)(F), [or] (e)(2)(G) or (e)(2)(H) of this Rule that would result in an increase in the amount of such excess under, as applicable, [subparagraph (ii)] paragraph (e)(2)(I)(i) of this Rule.

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(f) Other Provisions

(1) through (5) No Change.

(6) Time Within Which Margin or "Mark to Market" Must Be Obtained

The amount of margin or "mark to market" required by any provision of this Rule, other than that required under paragraph (e)(2)(H) of this Rule, shall be obtained as promptly as possible and in any event within 15 business days from the date such deficiency occurred, unless FINRA has specifically granted the member additional time.

(7) through (10) No Change.

(g) through (h) No Change.

• • • Supplementary Material:

.01 No Change.

.**02 Monitoring Procedures.** For purposes of paragraph (e)(2)(H)(ii)d. of this Rule, members shall adopt written 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.

.**03 Mark to Market Loss/Deficiency**. For purposes of paragraph (e)(2)(H) of this Rule, to the extent a mark to market loss or deficiency is cured by subsequent market movements prior to the time the margin call must be met, the margin call need not be met and the position need not be liquidated; provided, however, if the mark to market loss or deficiency is not satisfied by the close of business on the next business day after the business day on which the mark to market loss or deficiency arises, the member shall be required to deduct the amount of the mark to market loss or deficiency from net capital as provided in SEA Rule 15c3-1 until such time the mark to market loss or deficiency is satisfied.

.04 Determination of Exempt Account. For purposes of paragraph (e)(2)(H) of this Rule, the determination of whether an account qualifies as an exempt account shall be made based upon the beneficial ownership of the account. Sub-accounts managed by an investment adviser, where the beneficial owner is other than the investment adviser, shall be margined individually.

.05 Risk Limit Determination.

(a) For purposes of any risk limit determination pursuant to paragraphs (e)(2)(F), (e)(2)(G) or (e)(2)(H) of this Rule:

(1) If a member engages in transactions with advisory clients of a registered investment adviser, the member may elect to make the risk limit determination at the investment adviser level, except with respect to any account or group of commonly controlled accounts whose assets managed by that investment adviser are known by the member, based on information provided to such member by the investment manager, to constitute more than 10 percent of the investment adviser's regulatory assets under management as reported on the investment adviser's most recent Form ADV;

(2) 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;

(3) The 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; and

(4) A member shall consider whether the margin required pursuant to this Rule is adequate with respect to a particular counterparty account or all its counterparty accounts and, where appropriate, increase such requirements.

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