

January 10, 2022

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: SR-FINRA-2021-010

Dear Chair Gensler:

The U.S. Securities and Exchange Commission's ("SEC") mission is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation.¹ The Financial Industry Regulatory Authority ("FINRA"), a self-regulatory organization ("SRO") that works under the supervision of the SEC, also plays a role in ensuring competitive and robust securities marketplaces by writing and enforcing rules governing U.S. broker-dealer activities, examining firms for compliance with those rules, fostering market transparency, and educating investors.²

Together, the SEC and FINRA play an important role in regulating U.S. securities markets. In order to foster investor protection and competitive markets, securities regulation must not disadvantage a subset of market participants over others, and must be clear, transparent, and provide fair rules to the road.

That is why we are concerned with FINRA's proposed rule change SR-FINRA-2021-010 ("Proposed Rule Change") to amend the margin requirements for covered agency transactions ("CATs") under FINRA Rule 4210.³ As multiple commenters have expressed, margin requirements in the Agency mortgage-backed security ("Agency MBS")⁴ markets have the potential to harm FINRA-registered regional broker-dealers.

We are particularly concerned that, if the SEC approves the Proposed Rule Change, the imposition of margin requirements will cause regional broker-dealers to exit the Agency MBS market. Regional broker-dealers play an essential role in providing liquidity in the housing markets of the rural communities in which they operate, and exiting the market would harm state and local housing authorities that rely on these brokers to access the credit markets.

¹ U.S. SEC. AND EXCH. COMM'N, ABOUT THE SEC (2022), <https://www.sec.gov/about.shtml>.

² FIN. INDUSTRY REG. AUTHORITY, ABOUT FINRA: WHAT WE DO (2022), <https://www.finra.org/about/what-we-do>.

³ U.S. SEC. AND EXCH. COMM'N, RELEASE NO. 34-92713, NOTICE OF FILING OF AMENDMENT NO. 1 AND ORDER INSTITUTING PROCEEDINGS TO DETERMINE WHETHER TO APPROVE OR DISAPPROVE A PROPOSED RULE CHANGE, AS MODIFIED BY AMENDMENT NO. 1, TO AMEND THE REQUIREMENTS FOR COVERED AGENCY TRANSACTIONS UNDER FINRA RULE 4210 (MARGIN REQUIREMENTS) AS APPROVED PURSUANT TO SR-FINRA-2015-036 (2021).

⁴ See FINRA Rule 6710(v) (defining "Agency Pass-Through Mortgage-Backed Security" as a "type of Securitized Product issued in conformity with a program of an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise ("GSE") as defined in paragraph (n), for which the timely payment of principal and interest is guaranteed by the Agency or GSE, representing ownership interest in a pool (or pools) of mortgage loans structured to "pass through" the principal and interest payments to the holders of the security on a pro rata basis").

Furthermore, regional brokers exiting the Agency MBS market would also harm the regional banks and mortgage originators that rely on the brokers to hedge their risks, ultimately increasing the cost of loan origination and home financing.

We also believe that maintaining fair, orderly, and efficient markets requires securities regulators to provide market participants with as much information as possible, particularly in regard to the economic analysis that informs a rulemaking. As then-SEC chair Mary Schapiro previously testified, economic analysis is a “critical element” of the rulemaking process as high-quality analysis “helps ensure the decisions to propose and adopt rules are informed by the best available information about a rule’s likely economic consequences.”⁵ At your confirmation hearing on March 2, 2021, you made a similar comment in response to a question from Senator Shelby on cost-benefit analysis when you stated “I also think it’s the heart of good decision making for any rulemaking.”⁶

Providing an online public depository of all staff analyses conducted for each rulemaking, including the data analyzed, assumptions made, methods used, and quantitative results concluded, would align with the SEC’s stated goal of enhancing its economic analysis efforts. More importantly, such disclosure is required under the Administrative Procedure Act, as the SEC has been previously admonished by the U.S. Court of Appeals for the District of Columbia for relying on materials not in the rulemaking record without affording an opportunity for public comment.⁷ This would also enhance transparency by providing market participants with a clearer understanding of not just regulatory requirements, but also the analysis and reasoning that shaped those requirements.

In that light, we are requesting the following information:

- 1) Describe the SEC’s authority to regulate margin on CATs. Is it the SEC’s view that Section 7 of the Securities Exchange Act of 1934 (“Exchange Act”) provides the SEC with authority to establish a margin regime, and if so, what is the SEC’s analysis for that conclusion?
- 2) Describe FINRA’s authority to regulate credit in CATs. Is it the SEC’s view that Section 15A(b)(6) of the Exchange Act grants FINRA this authority, and if so, what is the SEC’s analysis for that conclusion?
- 3) The SEC would enhance investor protection by publicly disclosing on the agency’s website all economic analysis performed by staff for a given rulemaking, including the analysis performed by the Division of Economic and Risk Analysis (DERA). The public file should include all data analyzed, assumptions made, methods utilized, and results concluded for each rulemaking the SEC promulgates. Will the SEC commit to ensuring such public disclosure?

⁵Mary L. Schapiro, Chairman, U.S. Sec. and Exch. Comm’n, Testimony Concerning Economic Analysis in SEC Rulemaking: Before the Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs Oversight and Government Reform Committee, U.S. House of Representatives (April 17, 2012).

⁶ Transcript, Senate Banking, Hous., and Urban Affairs Comm. Nomination Hearing (March 2, 2021), <https://www.bgov.com/core/news/#!/articles/QPD7CP8JMDCC>.

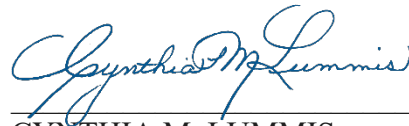
⁷ See *Chamber of Commerce v. SEC*, 443 F.3d 890 (D.C. Cir. 2006).

Given the potential negative impact of FINRA's Proposed Rule Change on regional broker dealers and the markets they serve, and the importance of enhancing investor protection through increased transparency, we are requesting answers to the above questions in writing no later than January 18th, 2022.

Sincerely,



JOHN BOOZMAN
United States Senator



CYNTHIA M. LUMMIS
United States Senator



THOM TILLIS
United States Senator

cc: The Honorable Hester M. Peirce, Commissioner
The Honorable Elad A. Roisman, Commissioner
The Honorable Allison H. Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
Mr. Haoxiang Zhu, Director, Division of Trading and Markets