

February 11, 2016

Submitted via Email to rule-comments@sec.gov

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

- Re: 1) Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market; Release No. 34-76148; File No. SR-FINRA-2015-036**
- 2) 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; Release No. 34-76908; File No. SR-FINRA-2015-36**

Dear Mr. Errett:

The Asset Management Group (“AMG”)¹ of the Securities Industry and Financial Markets Association (“SIFMA”) submits this letter to supplement its November 10, 2015 letter to the Securities and Exchange Commission (the “Commission”) regarding comments on FINRA’s proposed amendments of FINRA Rule 4210 to establish margin requirements for Covered Agency Transactions (the “Proposal”).² Further, AMG submits this letter to provide a response on the extent to which FINRA’s Partial Amendment No. 1 addresses comments made by AMG in its November letter.

¹ AMG’s members represent U.S. asset management firms whose combined assets under management exceed \$34 trillion. The clients of AMG member firms include, among others, registered investment companies, endowments, state and local government pension funds, private sector Employee Retirement Income Security Act of 1974 pension funds, undertakings for collective investments in transferable securities (“UCITS”) and private funds such as hedge funds and private equity funds.

² Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 4210 (Margin Requirements) To Establish Margin Requirements for the TBA Market, Exchange Act Release No. 76148 (Oct. 14, 2015), 80 Fed. Reg. 63603 (Oct. 20, 2015) (“Release 76148”).

“Covered Agency Transactions” include (1) To Be Announced (“TBA”) transactions, inclusive of adjustable rate mortgage (“ARM”) transactions, (2) Specified Pool Transactions, and (3) transactions in Collateralized Mortgage Obligations. *See* Release 76148 at 63603.

I. Supplement to November 10th Comment Letter

AMG's November 10th comment letter explained why mandatory liquidation should not be required under FINRA Rule 4210, citing the terms of the Master Securities Forward Transaction Agreement ("MSFTA"), among other things. To provide further detail on the rights of a non-defaulting party under an MSFTA, please see the following website for a copy of the standard form of the agreement: [http://www.sifma.org/Services/Standard-Forms-and-Documents/MRA,-GMRA,-MSLA-and-MSFTAs/MSFTA_Master-Securities-Forward-Transaction-Agreement-\(MSFTA\)/](http://www.sifma.org/Services/Standard-Forms-and-Documents/MRA,-GMRA,-MSLA-and-MSFTAs/MSFTA_Master-Securities-Forward-Transaction-Agreement-(MSFTA)/). We refer the Commission to Sections 2(j), 7, 8 and 9 of the MSFTA, which provide the scope of a default and rights of the non-defaulting party.

II. 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

FINRA's Partial Amendment No. 1 and Responses to Comments addresses AMG's concerns regarding the time period provided for implementation. FINRA's Partial Amendment No. 1 provides that, except for specified risk limit determination requirements, the proposed rule changes will become effective 18 months from the date the proposed rule change is approved by the Commission.³ While the steps required to comply with new requirements will be difficult to complete even within this timeframe and AMG's members would prefer to have the time period set to 24 months, AMG's members can aim to implement changes within the time period provided.

In addition, AMG defers to FINRA member participants on whether FINRA's Responses to Comments provides sufficient information on interpretation of the terms "regularly settles," "other financing techniques" and other interpretation issues AMG raised in Section V of its November 10th comment letter. FINRA's Responses to Comments provides some guidance on how FINRA views these terms.⁴ Whether the guidance is sufficient for FINRA member participants to use the small account and cash account exceptions will need to be assessed by the FINRA members.

AMG, however, does not believe that FINRA's Partial Amendment No. 1 and Responses to Comments adequately address the remaining sections of AMG's November 10th comment letter, namely the following Sections:

- I. Imposition of Maintenance Margin on Non-Members Will Unfairly Affect a Very Narrow Segment of Market Participants and Have Only a Limited Impact on Systemic Risk.
- II. Bilateral Exchange of Variation Margin Should be Required to More Effectively Mitigate Systemic Risk and to Maintain a Consistent Market Practice.

³ See 81 Fed. Reg. 3532, 3538 (Section II.D.2.).

⁴ See *id.* at 3540.

- III. Mandatory Liquidation for Uncured Deficiencies Should Not be Required or, Alternatively, a Longer Period Should be Allowed to Avoid Disadvantaging Non-Members in Resolving Disputes and to Allow Legitimate Disputes to Be Addressed.
- IV. Same Day Margining Should be Replaced with a Three-Day Transfer Period to Avoid Operational Problems and Provide a Workable Time Frame for Market Participants.
- VI. The Proposal Should Provide for an Exception From Margin Requirements For Sovereign Wealth Funds, Recognize Foreign Equivalent Entities to “Exempt Accounts” as Exempt, and Clarify the Treatment of Collective Investment Trusts.
- VII. Members Should be Allowed to Negotiate Commercial Terms Such as Thresholds and Minimum Transfer Amounts with Certain Large and Creditworthy Corporate Counterparties.

AMG requests that the Commission consider AMG’s previously-made comments and not approve FINRA’s requested amendments to the extent they do not address the issues raised by AMG.

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For the reasons stated in AMG’s November 10, 2015 comment letter and above, the AMG requests that: (i) the requirement of maintenance margin be eliminated; (ii) variation margin be made mandatorily bilateral; (iii) mandatory liquidations for uncured margin deficiencies not be required or a longer liquidation period be imposed; (iv) same-day margining requirements be replaced with a three-day transfer period; (v) certain terms in the small account and cash account exceptions, as described above, be clarified and made more specific; (vi) the Proposal provides an exception from margin requirements for sovereign wealth funds, recognizes foreign equivalent entities to “exempt accounts” as exempt, and clarifies the treatment of collective investment trusts; (vii) Members be allowed to negotiate thresholds and minimum transfer amounts with creditworthy corporate counterparties; and (viii) the Commission consider international regulatory harmonization efforts.

The AMG thanks the Commission for the opportunity to comment on the Proposal to Amend FINRA Rule 4210. Should you have any question, please do not hesitate to contact Tim Cameron at 202-962-7447 or tcameron@sifma.org or Laura Martin at 212-313-1176 or lmartin@sifma.org.

Respectfully submitted,



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