



2018 Amendment to 2012 Master Securities Forward Transaction Agreement

January 30, 2018

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**Form of Amendment to Master Securities Forward Transaction Agreement
to Conform with FINRA 4210**

WHEREAS, [●] and [●] (each a “**Party**” and collectively the “**Parties**”) have entered into a Master Securities Forward Transaction Agreement, as it may have been amended by the parties, dated [●] (the “**Agreement**”);

WHEREAS, the Financial Industry Regulatory Authority (“**FINRA**”) has amended its rules to require FINRA member broker-dealers to collect margin in respect of transactions subject to the Agreement, and

WHEREAS, one or both of the Parties is required to comply with the FINRA rules, and the Parties wish to amend the Agreement to facilitate compliance with the FINRA rules,

ACCORDINGLY, in consideration of the mutual agreements contained in this Amendment, the Parties hereby agree as follows:

1. **Definitions.** Capitalized terms used but not defined in this Amendment have the meaning given to them in the Agreement.
2. **[4210 Status Annex.** The 4210 Status Annex to the MSFTA attached to this Amendment is hereby incorporated into the Agreement.]¹
3. **Scope of the Agreement.**

Notwithstanding anything to the contrary in the Agreement, the term “**Transactions**” shall include, without limitation, all Covered Agency Transactions (as that term is defined in FINRA Rule 4210, “**Covered Agency Transactions**”) [other than Covered Agency Transactions that involve multifamily housing securities or project loan program securities that satisfy the criteria in FINRA Rule 4210(e)(2)(H)(ii)(a)(2)].²

¹ Include if the annex is being used.

² This provision would provide that Covered Agency Transactions are included in scope but would not otherwise change the agreement of the parties as to the scope of the MSFTA. Optional language has been included for the situation where parties decide to exclude multifamily and project loan securities, as is allowed under FINRA Rule 4210(e)(2)(H)(ii)(a)(2).

4. [Minimum Transfer Amount.

Notwithstanding anything to the contrary in the Agreement, the term “**Minimum Transfer Amount**” means the lower of (i) the amount, if any, specified in the Agreement and (ii) \$250,000.]³

5. Threshold Amount.

Notwithstanding anything to the contrary in the Agreement, the term “**Threshold Amount**” with respect to either party, means zero.⁴

6. [Maintenance Margin.⁵

[If Party [A/B] has made a determination that Party [B/A] (i) is not an “exempt account,” as that term is defined in FINRA Rule 4210 or (ii) does not qualify for another exception from mandatory maintenance margin requirements under FINRA Rule 4210,] [T]he term “**Additional Margin Amount**,” with respect to Covered Agency Transactions [other than Covered Agency Transactions that involve multifamily housing securities or project loan program securities that satisfy the criteria in FINRA Rule 4210(e)(2)(H)(ii)(a)(2)] and solely with respect Party [B/A], shall be the greater of

(i) the amount specified in the Agreement or otherwise agreed by the Parties and

(ii) 2% of the net “long” or “short” position, by CUSIP, for such Covered Agency Transactions.]⁶

7. [Margin Turn-Off.⁷

If Party [A/B] has made a determination that the margin collection requirements of FINRA Rule 4210 do not apply with respect to transactions between it and Party [B/A], then the provisions of Paragraph 4 of the Agreement shall not apply.]

³ See FINRA Rule 4210(e)(2)(H)(ii)(f). While the provision takes a lower-of approach, it can also be excluded where inapplicable (e.g., if existing MTA is \$250,000 or less).

⁴ A FINRA member broker-dealer could include a threshold for itself when trading with a non-FINRA member broker-dealer. In such circumstance, this provision could be redrafted to say: “Notwithstanding anything to the contrary in the Agreement, the term “Threshold Amount,” with respect to [non-FINRA member Party], means zero.”

A FINRA member broker-dealer could also delete this provision when transacting with a counterparty that is exempt from the margin collection requirements of the rules (i.e., for certain sovereigns and small/cash accounts).

For parties using a 1996 MSFTA, modify as necessary. See Annex III, § 2(b).

⁵ See FINRA Rule 4210(e)(2)(H)(ii)(e) and 4210(e)(2)(H)(i)(f).

⁶ For parties using a 1996 MSFTA, modify as necessary.

⁷ Optional provision included to be used where the parties agree to use the FINRA Rule 4210 exceptions from maintenance and mark-to-market margining (i.e., for certain sovereigns and small/cash accounts).

8. [Liquidation Period].⁸

The Parties agree that if (a) [Party A/B] fails to transfer [2012 - Eligible Forward Collateral][1996 - Forward Collateral] as it may be required to do under [2012 - Paragraph 4][1996 - Annex III] of the Agreement, and (b) [Party B/A] continues to have a Net Unsecured Forward Exposure that exceeds the Minimum Transfer Amount of [Party A/B] for five (5) consecutive Business Days following the date on which such Net Unsecured Forward Exposure arose, then [Party B/A] shall be entitled to terminate any or all Transactions on giving notice to the other Party and electing to have the provisions of Paragraph 7 of the Agreement apply as if an Event of Default had occurred with respect to such other Party and such Transactions were the sole Transactions under the Agreement.

The right to liquidate Transactions provided by this section is in addition to, and without prejudice to, the rights of the Parties under the Agreement, including, but not limited to, the rights of a Party to exercise default remedies pursuant to Paragraph 7 of the Agreement.]

9. Eligible Forward Collateral.

The Margin Percentage with respect to an item of Eligible Forward Collateral shall be the higher of (i) the amount specified in the Agreement and (ii) the lowest margin percentage that [Party that is a FINRA member] is allowed to extend to [the other Party] with respect to that item of Eligible Forward Collateral pursuant to FINRA Rule 4210 (“**4210 Margin Percentage**”).⁹

10. Implementation Date.¹⁰

The amendments made to the Agreement via this Amendment shall (1) become effective on a date agreed upon by the Parties, but no later than June 25, 2018 or such other date as FINRA shall designate for compliance with the margin collection provisions in FINRA Rule 4210(e)(2)(H); and (2) apply to all Transactions then outstanding under the Agreement and all Transactions entered into on or after such date.

11. [Effect of Notification.

The Parties agree that the notice provided by [●] to [●] dated [●] regarding amendments made to FINRA Rule 4210 to establish margin requirements for “Covered Agency

⁸ See FINRA Rule 4210(e)(2)(H)(ii)(d) and (e). This provision could be made bilateral in the case of two FINRA members transacting with each other.

⁹ See [80 Fed. Reg. 63603](#), 63619 (Oct. 20, 2015).

For parties using a 1996 MSFTA, modify as necessary (*e.g.*, by replacing “Market Value” in paragraphs 2(a) and (d) with “Margin Value” and adding a definition of “Margin Value” similar to that used in Paragraph 2(p) of the 2012 MSFTA).

¹⁰ See FINRA Regulatory Notice [17-29](#).

Transactions” is of no force and effect insofar as it purports to make amendments to the Agreement.]¹¹

[Signature Blocks]

¹¹ Provision can be included if parties desire to stipulate that this Amendment is to serve as the operative amendment to the Agreement rather than any notice regarding 4210 implementation (such as the form notice drafted by SIFMA, “New FINRA Rules Regarding Margining of Agency MBS Transactions”).

4210 STATUS ANNEX TO THE MSFTA¹²

This Annex forms a part of the Master Securities Forward Transaction Agreement dated as of [●] (the “**Agreement**”) between [●] (“**Party A**”) and [●] (“**Party B**”). Capitalized terms used but not defined in this Annex shall have the meaning ascribed to them in the Agreement.¹³

1. Party A Representations. Party A makes the representations and warranties associated with the boxes checked below¹⁴ (or as indicated in the Multiple Principal Addendum) to Party B, which representations and warranties shall be deemed repeated on the Trade Date for any Transaction.

(a) Exempt Account Representation. *[select no more than one]*

- i. ☐ It is a broker-dealer registered with the U.S. Securities and Exchange Commission.¹⁵ (“**Broker-Dealer**”)
- ii. ☐ It is a “Designated Account,” as that term is defined in FINRA Rule 4210.¹⁶ (“**Designated Account**”)
- iii. ☐ It is an entity with net worth of at least \$45 million and financial assets of at least \$40 million and it either (x) satisfies the conditions set forth in FINRA Rule 4210(a)(13)(B)(ii)(a), (b), (c) or (d) or (y) agrees to make available to Party B, on the reasonable request of Party B, current information regarding its ownership, business, operations and financial condition (including its current audited statement of financial condition, statement of income and statement of changes in stockholder’s equity or comparable financial reports).¹⁷ (“**Large Entity**”)
- iv. ☐ It is a “Mortgage Banker,” as that term is defined in FINRA Rule 4210, and any Covered Agency Transactions (as that term is defined in FINRA Rule 4210) that it enters into under this Agreement will be used to hedge its pipeline of mortgage commitments.¹⁸ (“**Mortgage Banker**”)

¹² It is understood that representations, standing alone, may not suffice for a broker-dealer’s diligence requirements under FINRA Rule 4210. Each individual broker-dealer will need to make its own determinations as to how the representations provided in this Annex are used for purposes of complying with the requirements of FINRA Rule 4210.

¹³ Agents and others completing this document on behalf of more than one principal may indicate the representation applicable to such principal in the Multiple Principal Addendum to the 4210 Status Annex.

¹⁴ Persons completing this document electronically may double-check any box to change the value to “Checked.”

¹⁵ FINRA Rule 4210(a)(13)(A).

¹⁶ FINRA Rule 4210(a)(13)(A) (referencing the term “designated account,” defined in Rule 4210(a)(4)).

¹⁷ FINRA Rule 4210(a)(13)(B).

¹⁸ FINRA Rule 4210(e)(2)(H)(ii)(d).

(b) Small and Cash Account Representations. *[select no more than one]*

- i. ☐ (A) It will not have gross open positions in Covered Agency Transactions with Party B amounting to more than \$10 million and the original contractual settlement date for all such transactions will be in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions, and
- (B) it (x) will “regularly settle,” as that phrase is used in FINRA Rule 4210, its “Covered Agency Transactions” (as that term is defined in FINRA Rule 4210) with Party B on a delivery-versus-payment basis or for “cash”; (y) will not regularly engage in Covered Agency Transactions with Party B that are “Dollar Rolls” or “Round Robin” trades (as such terms are defined in FINRA Rule 4210); and (z) will not regularly use “other financing techniques,” as that phrase is used in FINRA Rule 4210, to close out its Covered Agency Transactions with Party B. (“**Small Account**”)
- ii. ☐ The original contractual settlement date 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 it (x) will “regularly settle,” as that phrase is used in FINRA Rule 4210, its “Covered Agency Transactions” (as that term is defined in FINRA Rule 4210) with Party B on a delivery-versus-payment basis or for “cash”; (y) will not regularly engage in Covered Agency Transactions with Party B that are “Dollar Rolls” or “Round Robin” trades (as such terms are defined in FINRA Rule 4210); and (z) will not regularly use “other financing techniques,” as that phrase is used in FINRA Rule 4210, to close out its Covered Agency Transactions with Party B. (“**Cash Account**”)

(c) Sovereign Account Representations. *[select where applicable]*

- ☐ It is one of the types of entities specified in FINRA Rule 4210(e)(2)(H)(ii)(a)(i).¹⁹ (“**Sovereign**”)

2. Party B Representations. Party B makes the representations and warranties associated with the boxes checked below (or as indicated in the Multiple Principal Addendum) to Party A, which representations and warranties shall be deemed repeated on the Trade Date for any Transaction.

(a) Exempt Account Representation. *[select no more than one]*

- i. ☐ It is a broker-dealer registered with the U.S. Securities and Exchange Commission. (“**Broker-Dealer**”)

¹⁹ As of [Date], Rule 4210(e)(2)(H)(ii)(a)(i) references: “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”.

- ii. ☐ It is a “Designated Account,” as that term is defined in FINRA Rule 4210. (“**Designated Account**”)
 - iii. ☐ It is an entity with net worth of at least \$45 million and financial assets of at least \$40 million and it either (x) satisfies the conditions set forth in FINRA Rule 4210(a)(13)(B)(ii)(a), (b), (c) or (d) or (y) agrees to make available to Party A, on the reasonable request of Party A, current information regarding its ownership, business, operations and financial condition (including its current audited statement of financial condition, statement of income and statement of changes in stockholder’s equity or comparable financial reports). (“**Large Entity**”)
 - iv. ☐ It is a “Mortgage Banker,” as that term is defined in FINRA Rule 4210, and any Covered Agency Transactions (as that term is defined in FINRA Rule 4210) that it enters into under this Agreement will be used to hedge its pipeline of mortgage commitments. (“**Mortgage Banker**”)
- (b) Small and Cash Account Representations. *[select no more than one]*
- i. ☐ (A) It will not have gross open positions in Covered Agency Transactions with Party A amounting to more than \$10 million and the original contractual settlement date for all such transactions will be in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions, and
 (B) it (x) will “regularly settle,” as that phrase is used in FINRA Rule 4210, its “Covered Agency Transactions” (as that term is defined in FINRA Rule 4210) with Party A on a delivery-versus-payment basis or for “cash”; (y) will not regularly engage in Covered Agency Transactions with Party A that are “Dollar Rolls” or “Round Robin” trades (as such terms are defined in FINRA Rule 4210); and (z) will not regularly use “other financing techniques,” as that phrase is used in FINRA Rule 4210, to close out its Covered Agency Transactions with Party B. (“**Small Account**”)
 - ii. ☐ The original contractual settlement date 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 it (x) will “regularly settle,” as that phrase is used in FINRA Rule 4210, its Covered Agency Transactions with Party A on a delivery-versus-payment basis or for “cash”; (y) will not regularly engage in Covered Agency Transactions with Party A that are “Dollar Rolls” or “Round Robin” trades (as such terms are defined in FINRA Rule 4210); and (z) will not regularly use “other financing techniques,” as that phrase is used in FINRA Rule 4210, to close out its Covered Agency Transactions with Party A. (“**Cash Account**”)
- (c) Sovereign Account Representations. *[select where applicable]*
- ☐ It is one of the types of entities specified in FINRA Rule 4210(e)(2)(H)(ii)(a)(i). (“**Sovereign**”)

Multiple Principal Addendum to the 4210 Status Annex

By indicating in the table below, each Party [A/B] indicates that it makes the representation(s) specified in the “Exempt Account Representation,” “Non-Exempt Account Representations” or “Sovereign” column.

<u>Name of Party</u> <u>[A/B]</u>	<u>Exempt Account</u> <u>Representation</u>	<u>Non-Exempt Account</u> <u>Representations</u>	<u>Sovereign</u>
	[Broker-Dealer] [Designated Account] [Large Entity] [Mortgage Banker]	[Small Account] [Cash Account]	[Sovereign]