

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,¹ 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.]²
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)].³

¹ The SEC initially approved the FINRA amendments, but the approval order was later stayed pending further SEC action. See [SR-FINRA-2021-010](#). Firms may want to confirm the status of the rulemaking prior to using this form.

² Include if the annex is being used.

³ 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):

“... a member is not required to include a counterparty’s Covered Agency Transactions in multifamily housing securities or project loan program securities in the computation of such

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].⁴

5. **Threshold Amount.**

Notwithstanding anything to the contrary in the Agreement, the term “**Threshold Amount**” with respect to either party, means [zero].⁵

6. **[Margin Turn-Off].⁶**

If [FINRA member party] 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.]

7. **[Liquidation Period].⁷**

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

counterparty’s net mark to market loss, provided 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, or are such other multifamily housing securities or project loan program securities with substantially similar characteristics, issued in conformity with a program of an Agency or a Government-Sponsored Enterprise, as FINRA may designate by Regulatory Notice or similar communication.”

⁴ See FINRA Rule 4210(e)(2)(H)(i)(c). 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). See note 5 below.

⁵ A threshold could be agreed upon under Rule 4210 of up to \$250,000, provided that, when combined with the MTA, the total does not exceed \$250,000. See [Amendment No. 1 to SR-FINRA-2021-010](#) at p. 13 (“... members would only be required to collect margin (or take capital charges for uncollected margin) to cover the amount by which a counterparty’s net mark to market loss exceeds the \$250,000 threshold.”). Firms including a threshold here should make conforming changes to Section 5 (e.g., if “zero” is replaced with “\$100,000” in Section 5, then “\$250,000” should be replaced by “\$150,000” (or less) in Section 4).

A FINRA member broker-dealer could also 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 (e.g., for a “small cash counterparty” or a sovereign).

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

⁶ Optional provision included to be used where the parties agree to use the FINRA Rule 4210 exceptions from margining (e.g., for a “small cash counterparty” or a sovereign).

⁷ See FINRA Rule 4210(e)(2)(H)(i)(e)(2)(A) (definition of “non-margin counterparty”) and 4210(e)(2)(H)(ii)(d)(3).

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.]

8. 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**”).⁸

9. Implementation Date.

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 the date that FINRA designates 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.

10. [Effect of Previous Amendment.

The Parties agree that any previously agreed amendment to the Agreement substantially in the form of the “Form of Amendment to Master Securities Forward Transaction Agreement to Conform with FINRA 4210” as published by the Securities Industry and Financial Markets Association as of January 30, 2018, is not applicable and the terms of such amendment are deleted in their entirety.]⁹

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 [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).

⁹ Paragraph 10 may be included in order to make inapplicable a previous amendment to conform the terms of the MSFTA to the Covered Agency Transaction provisions of Rule 4210 as was previously adopted by FINRA.

Transactions” is of no force and effect insofar as it purports to make amendments to the Agreement.]¹⁰

[Signature Blocks]

¹⁰ 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 MSFTA¹¹

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.¹²

1. Party A Representations. Party A makes the representations and warranties associated with the boxes checked below¹³ (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) Small Cash Counterparty.

- ☐ It is a “small cash counterparty” as defined in FINRA Rule 4210. *[select only if all of (i)-(iv) apply]*
 - i. the absolute dollar value of all of Party A’s open Covered Agency Transactions with, or guaranteed by, Party B (“**Relevant CATs**”) is \$10 million or less in the aggregate, when computed net of any settled position of Party A held at Party B that is deliverable under such Relevant CATs and which the counterparty intends to deliver;
 - ii. the original contractual settlement date for all Relevant CATs is in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions;
 - iii. Party A regularly settles its Relevant CATs on a Delivery Versus Payment (“DVP”) basis or for “cash”; and
 - iv. Party A does not, in connection with its Relevant CATs, engage in “dollar rolls” (as defined in FINRA Rule 6710), or “round robin” trades (as defined in FINRA Rule 4210), or use other financing techniques.

(b) Registered Clearing Agency. *[select if applicable]*

- ☐ It is a clearing agency registered with the Securities and Exchange Commission.

(c) Sovereign/Relevant Governmental Account. *[select if applicable]*

- ☐ It is a “Federal banking agency” as defined in 12 U.S.C. § 1813(z).
- ☐ It is a central bank.

¹¹ 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.

¹² 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.

¹³ Persons completing this document in Word may double-check any box to change the value to “Checked.”

- ☐ It is a multinational central bank.
- ☐ It is a foreign sovereign.¹⁴
- ☐ It is a multilateral development bank or the Bank for International Settlements.

2. Party B Representations. Party B makes the representations and warranties associated with the boxes checked below¹⁵ (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.

(d) Small Cash Counterparty.

- ☐ It is a “small cash counterparty” as defined in FINRA Rule 4210. *[select only if all of (i)-(iv) apply]*
 - i. the absolute dollar value of all of Party B’s open Covered Agency Transactions with, or guaranteed by, Party A (“**Relevant CATs**”) is \$10 million or less in the aggregate, when computed net of any settled position of Party B held at Party A that is deliverable under such Relevant CATs and which the counterparty intends to deliver;
 - ii. the original contractual settlement date for all Relevant CATs is in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions;
 - iii. Party B regularly settles its Relevant CATs on a Delivery Versus Payment (“DVP”) basis or for “cash”; and
 - iv. Party B does not, in connection with its Relevant CATs, engage in “dollar rolls” (as defined in FINRA Rule 6710), or “round robin” trades (as defined in FINRA Rule 4210), or use other financing techniques.

(e) Registered Clearing Agency. *[select if applicable]*

- ☐ It is a clearing agency registered with the Securities and Exchange Commission.

(f) Sovereign/Relevant Governmental Account. *[select if applicable]*

- ☐ It is a “Federal banking agency” as defined in 12 U.S.C. § 1813(z).
- ☐ It is a central bank.
- ☐ It is a multinational central bank.

¹⁴ This does not include sovereign wealth funds.

¹⁵ Persons completing this document in Word may double-check any box to change the value to “Checked.”

- ☐ It is a foreign sovereign.¹⁶
- ☐ It is a multilateral development bank or the Bank for International Settlements.

¹⁶ This does not include sovereign wealth funds.

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 second, third or fourth columns.

<u>Name of Party</u> <u>[A/B]</u>	<u>Small Cash</u> <u>Counterparty</u>	<u>Registered Clearing</u> <u>Agency</u>	<u>Sovereign /</u> <u>Relevant</u> <u>Governmental</u> <u>Account</u>
[●]	[Applicable] / [Not Applicable]	[Applicable] / [Not Applicable]	[Banking Agency] [Central Bank] [Multinational Central Bank] [Foreign Sovereign] [Multilateral]