



November 10, 2015

By Electronic Submission

Robert W. Errett  
Deputy Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Subject:** Comments on SR-FINRA-2015-036, Proposed Rule to Amend FINRA Rule 4210 Margin Requirements for To Be Announced Transactions

Dear Mr. Errett:

The National Multifamily Housing Council (NMHC) and National Apartment Association (NAA) thank you for the opportunity to provide comments on the “SR-FINRA-2015-036, Proposed Rule to Amend FINRA Rule 4210 Margin Requirements for To Be Announced Transactions.” We are concerned that if this rule is enacted, as proposed, it will have a negative impact on access to the financial markets for our members. **We strongly recommend the exclusion of the multifamily industry from this proposed rule.**

For more than 20 years, NMHC and NAA have partnered in a joint legislative program to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of nearly 170 state and local affiliates, NAA encompasses over 69,000 members representing more than 8.1 million apartment homes throughout the United States and Canada.

### **The Proposed Rule Lacks Details on Impacts to the Multifamily Finance Market**

We urge the Commission and FINRA to remove coverage of multifamily agency forward-settling transactions from the proposed rule SR-FINRA-2015-036. As proposed, the rule lacks any data or analysis on the impacts to the very distinct multifamily finance market, and we therefore question why it should cover multifamily agency securitizations at all. That the only reference to the multifamily market appears in a footnote stating it is to be incorporated in this rule suggests insufficient consideration of our asset class. We are concerned that the proposed rule could have significant and unintended consequences on the financing of multifamily rental apartments, the vast majority of which are affordable to families earning area median income or less.

Multifamily forward settling agency transactions are vastly different from the single family TBA market, which is the stated focus of the proposed rule. There is no TBA market for multifamily

transactions due to the very unique nature of this market. In the multifamily market, one specific apartment rental property is collateral for one mortgage, which is then securitized into one mortgage backed security. Property owners and lenders in the highly specialized multifamily agency market are well-aligned and highly motivated to close a trade given the investment of time and money (typically \$25,000 or more for the borrower's hard costs for one multifamily transaction). Because each multifamily property is unique, involves property-specific underwriting and credit determinations and is issued in a security with a unique interest rate, it is difficult to see how the requirement of this proposal to mark-to-market on a daily basis would work at all.

### **The Multifamily Finance Market is Vital and Does Not Pose Any Systemic Risk**

The multifamily finance market is vitally important but does not pose systemic risk due to its aggregate size. While providing affordable and workforce rental housing to millions of households, the multifamily market, especially the forward-settling part of the market covered by the proposal, is too small to raise the systemic risk concerns that drives the proposed rule. FHA and Fannie Mae annual multifamily lending volumes total in the range of \$40 to \$50 billion — compared to the well over \$1 trillion in annual new originations in the single-family mortgage market. In fact, the average weekly exposure of outstanding forward commitments in the Fannie Mae multifamily program in 2014 was estimated to be only \$3.4 billion.

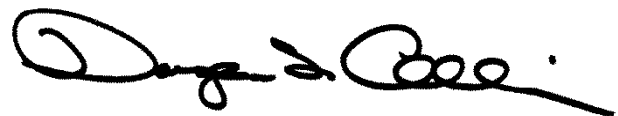
Counterparty risk is mitigated by a network of lenders and processes approved by FHA/Ginnie Mae or Fannie Mae, which subject lenders to strict oversight and capital requirements from the agencies. Importantly, a Good Faith Deposit mandated by Fannie Mae and FHA/Ginnie Mae is posted for the benefit of the broker dealer or the investor in the security. The significant investment by borrowers, lenders and broker dealers prior to security issuance, coupled with the posting of a Good Faith Deposit, have resulted in very few failed trades even through many economic cycles. When an extremely rare breakage occurs, the Good Faith Deposit from the borrower has provided protection to the broker-dealer and investor.

We urge the Commission and FINRA to exclude multifamily agency forward-settling transactions from the proposed rule. Examination of the distinct aspects of the multifamily housing market and the related economic impact is necessary before this rule moves forward.

Sincerely,



Doug Bibby  
President  
National Multifamily Housing Council



Doug Culkin  
President and CEO  
National Apartment Association