



VIA E-MAIL – Rule-Comments@SEC.gov

November 10, 2015

Secretary
Securities and Exchange Commission
100 F Street, NE,
Washington, D.C. 20549-1090

**RE: File Number SR-FINRA-2015-036
Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market**

Dear Sir/Madam:

Over the past several days, I have spoken with a number of affected parties and come across additional information such that I would like to amend my earlier comments and add/reiterate the following:

- 1) Newly issued GNMA and FNMA Mortgage Backed Securities (MBS) for multifamily and healthcare facilities are not of a scale to cause systemic risk. The MBA prepared the attached (Attachment 1) showing in 2014 there was \$32B of FNMA multifamily MBS issuance. In comparison, there was \$376B of single family issuance FNMA MBS. In 2014, GNMA issued \$18B of MBS securities for multifamily and healthcare facilities and \$296B for single family MBS. Newly issued Multifamily and Healthcare MBS totaled \$50B and constitutes just 7.4% of this combined MBS market.

- 2) While both SF and MF/HC GNMA and FNMA MBS are forward deliveries, MF/HC MBS are much different than SF MBS. MF/HC MBS represent one distinct property for which the MBS is issued. The MF/HC MBS has already been extensively underwritten (in terms of the owners/principals as well as the property itself). Due diligence on the property used in underwriting includes commercial appraisals, environmental assessments, engineering assessments, intrusive studies, architectural drawings, etc . . . These materials are costly and can total anywhere between \$50,000 - \$500,000. In addition, a good faith deposit has been collect from the borrower and forwarded to the broker/dealer at the time of rate lock. Owners and lenders have aligned interests with the broker/dealer to close on the transaction. The only way the Owner will be able to be reimbursed for their out of pocket costs for these due diligence costs and to receive the good faith rate lock deposit back from the broker/dealer is to close on the transaction. Likewise, the only way the lender will collect their fee is to close on the transaction. If the Borrower wanted to back out of the transaction once the rate is locked with the broker/dealer, they would have to start the loan application process over again – a process that can take anywhere between 6-12 months or longer to accomplish. They simply would not be willing to do that if rates dropped, even significantly, between rate lock and delivery of the GNMA MBS. Furthermore, the Lender cannot back out of the trade without incurring liquidated damages which are a standard provision in any rate lock agreement and damage to their reputation within the broke/dealer community. Since there are only 50 approved MF GNMA issuers and an equally limited number of broker/dealers that trade these securities, any bad faith on the part of the lender/issuer will prevent them from accessing future funding and effectively put them out of business. In the Single Family MBS market, trades are based upon prospective transactions that have not been completed yet and there is no initial or maintenance margin collected as in the MF/HC

MBS market.

3) There is also extensive oversight of the FHA Lender and GNMA Issuer by both HUD and GNMA. Both agencies require annual audited financial statements and require minimum net worth and liquidity based on servicing volumes. Lenders portfolios are carefully monitored and if they demonstrate poor performance, HUD and GNMA can and will take steps to curtail the lenders activity.

4) I was made aware of daily Treasury and MBS failure data available at Depository Trust Clearing Corporation (DTCC) and was surprised to see the large volume of daily trades that fail to deliver – over \$50B of US Treasuries and as much as \$1.5B of MBS, see Attachment 2. Presumably, this is what the proposed rule is intending to impact. If so, you will find no argument from me. However, I would suggest that a further examination is necessary so as to determine the participants and reasons for these failures. I and many other multifamily lenders suspect that this failure data reflects trades among large financial institutions who are using these securities for hedging purposes and find themselves in a position where they must settle their trades but don't have access to the securities pledged. I am certain that if one looks closely at this data, one will not find any newly issued MF/HC GNMA or FNMA MBS. Indeed, the proposed rule admitted that the TRACE data that was reviewed did not provide sufficient detail to answer these questions. As a regulating body, it is imperative that the regulations do not encompass “innocent bystanders” who are not contributing to this serious issue.

5) Lastly, I would ask the SEC and FINRA staff to carefully examine the proposed rule's impact on small lenders and borrowers. Many of the smaller lenders and borrowers operate in secondary and tertiary markets and will not have access to low cost capital to meet margin requirements as proposed. Even if smaller lenders and borrowers are successful in arranging for a line of credit to meet margin requirements, it will come at a cost and may very well not be available at times of market stress – exactly when the need for margining will be at its highest. While not an academic, I did find the Gibson and Muawski 2007 paper, “The Price of Protection: Derivatives, Default Risk, and Margining” to make a compelling argument along these lines and concluded, “Capturing some of the main characteristics of derivatives markets, we identify situations where margining may increase default risk while reducing welfare. This the case, in particular, when collateral is scarce . . . such as during periods of market stress”.

Again, we certainly understand the need to take steps that reduce the likelihood of another financial crisis and avoiding the economic damage this can wreak on the economy. We believe the robust measures we have in place along with the size of the newly issued MF/HC MBS market do not pose a systemic risk to the financial markets. We are eager to engage in thoughtful dialogue with FINRA staff to ensure that the proposed rule is well crafted to address this underlying concern without inadvertently disrupting the multifamily and healthcare facilities market. Thank you again for your consideration of these comments.

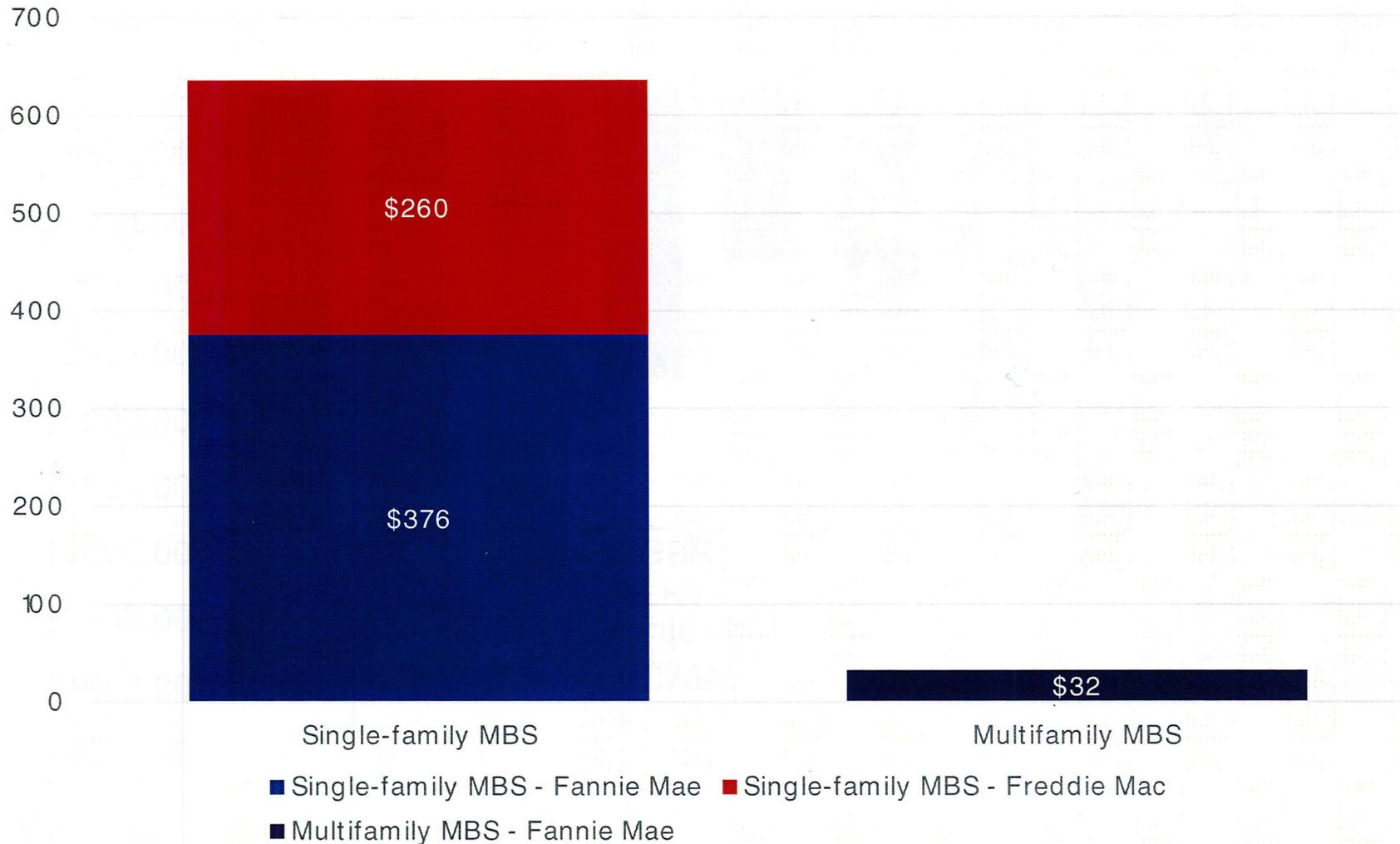
Sincerely,

FOREST CITY CAPITAL CORPORATION



Tony Love
Vice President

2014 Fannie Mae And Freddie Mac Issuance of Single-family MBS and Fannie Mae Issuance of Multifamily MBS (\$billions)



Source: Fannie Mae and Freddie Mac Annual Reports. "Fannie Mae: Single-family Fannie Mae MBS issuances." "Freddie Mac: Issuance — Single-family credit guarantees" (Includes conversions of previously issued other guarantee commitments into Freddie Mac mortgage-related securities.) "Multifamily Fannie Mae MBS issuances" (Reflects unpaid principal balance of multifamily Fannie Mae MBS issued during the period.)

Daily Total US Treasury and Agency Fails

What do these charts show?

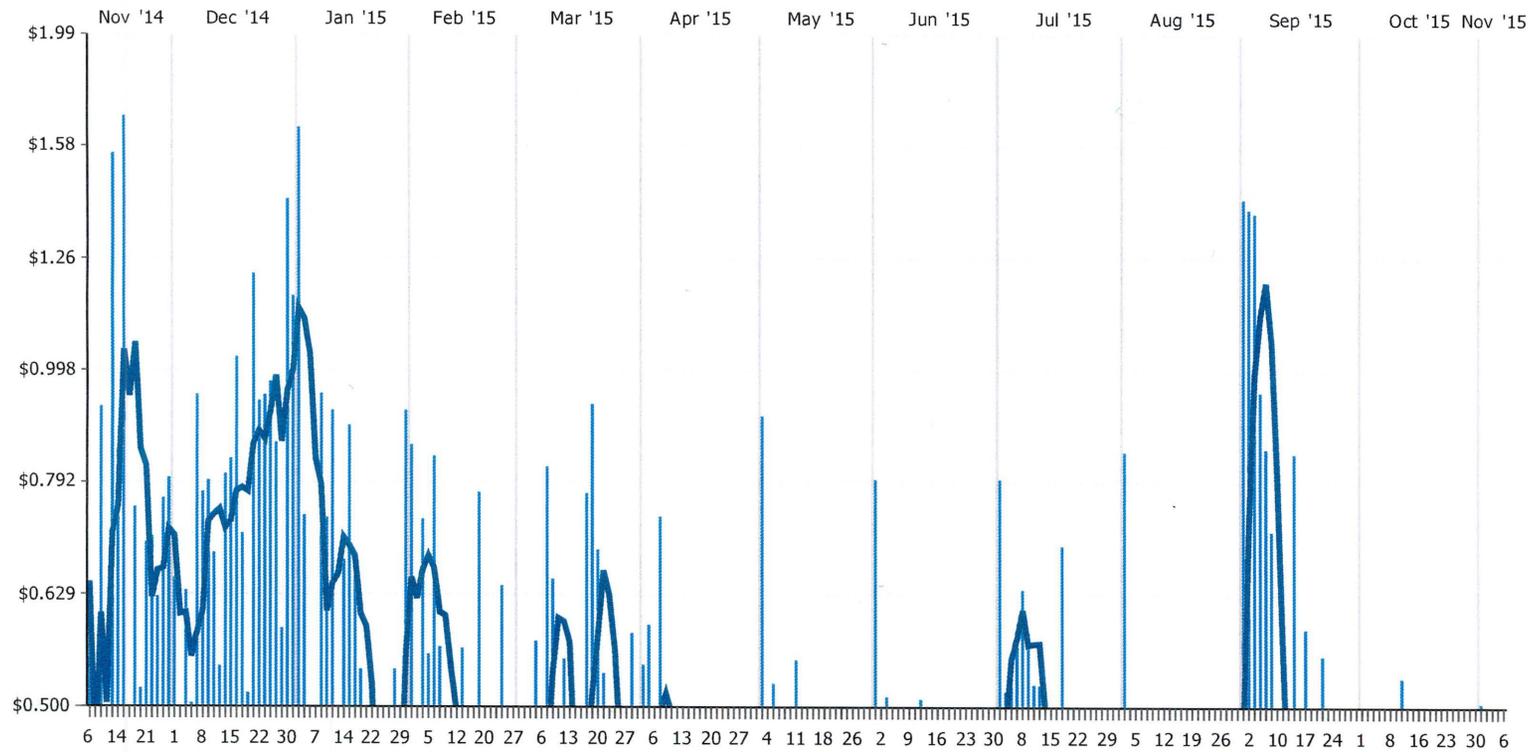
Can I download the data in these charts?

Fails Data: Fri Nov 06 2015

TOTAL	5 DAY		LATEST	1 WEEK	52 WEEK	
	AVG	SECURITY			HIGH	LOW
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	AGENCY	0.219	0.151	1.682	0.036
<input type="checkbox"/>	<input type="checkbox"/>	TREASURY	42.872	47.854	102.059	15.503

<< Year ▾ >>

Total Amount (in billions USD)



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