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## United States Senate

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February 11, 2016

Chair Mary Jo White  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-025

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

Dear Chair White:

I write to express concern with the recently proposed and filed amendments to Financial Industry Regulatory Authority (FINRA) Rule 4210, which would establish margin requirements for certain 'exempt' securities, including To-Be-Announced (TBA) securities (SR-FINRA-2015-036).

When Congress considered and passed the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA), Congress explicitly exempted certain mortgage securities from margin requirements if a bona fide agreement for delivery of a mortgage related security against full payment was in force. The explicitly stated congressional intent to exempt private-label mortgage-backed securities, as stated in the Senate Banking Committee's report on SMMEA, was that "government-backed securities are exempt from these rules now."

FINRA is using the very broad statutory authority of the Securities Exchange Act Section 15A(b)(6) to attempt to adopt a systemic risk rule that would apply a new margin regime to broker-dealers—irrespective of size or systemic risk potential—in violation of the Congressional intent of Section 7 of the Exchange Act. The authority granted to FINRA under Section 15A(b)(6) cannot be interpreted outside of its congressional intent.

Section 15A(b)(6) of the Exchange Act, requires FINRA to adopt rules that 'promote just and equitable principles of trade.' Yet, this proposed rule could harm the ability of small-to-medium sized dealers, whether in Arkansas or any state, to compete in this marketplace for two reasons. First, it would require dealers that present no systemic risk potential and that engage in only a moderate amount of mortgage business to build expensive compliance and tracking systems, in addition to the cost of additional staff, which can easily total hundreds of thousands of dollars annually. Many firms may choose to exit the marketplace rather than comply with an onerous

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and expensive rule, which will further harm the liquidity in the U.S. fixed income market, with possible adverse effects on the U.S. mortgage market.

Second, the proposal would require small-to-medium sized dealers to execute margin agreements with all their mortgage counterparties. However, those small dealers seem right to suspect that large investment managers are unlikely to agree to execute margin agreements with an unlimited number of counterparties.

I urge the Commission to carefully consider such potential impacts, as well as the clear statutory limitations, in its review of the FINRA's proposal.



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