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November 13, 2018

Via E-Mail
Via Federal Express

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Eduardo A. Aleman, Assistant Secretary

Re: Suggested Revisions of Amended FINRA Rule 4210

Dear Mr. Aleman:

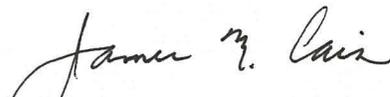
On October 18, 2018, we wrote to the Financial Industry Regulatory Authority, Inc. (FINRA) on behalf of our clients, the Farm Credit Banks (the FCBanks) and the Federal Home Loan Banks (the FHLBanks), each of which is a government sponsored enterprise, to express support of FINRA's reconsideration of aspects of amended FINRA Rule 4210 (amended Rule 4210) and to offer suggestions for revising amended Rule 4210 (the amended Rule 4210 Letter). In the amended Rule 4210 Letter, the FCBanks and the FHLBanks respectfully requested that FINRA consider suggested revisions of amended Rule 4210, which are discussed in the amended Rule 4210 Letter and are intended to balance FINRA's interest in reducing exposure with respect to Covered Agency Transactions with FINRA members' and their counterparties' interest in limiting the regulatory burdens amended Rule 4210 will impose.

Please find enclosed a copy of the amended Rule 4210 Letter.

* * *

If you have any questions about the amended Rule 4210 Letter, please do not hesitate to contact Jamie Cain at [REDACTED] or [REDACTED] or Ray Ramirez at [REDACTED] or [REDACTED].

Sincerely,


James M. Cain
Eversheds Sutherland (US) LLP


Raymond A. Ramirez
Eversheds Sutherland (US) LLP

JMC/rr

Enclosure

cc: Reginald O'Shields, Federal Home Loan Bank of Atlanta
James Shanahan, CoBank, ACB



October 18, 2018

Via E-Mail
Via Federal Express

Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006
Attn: Kris Dailey, Vice President, Risk Oversight & Operational Regulation (ROOR), Robert Mendelson, Senior Advisor, ROOR, Peter Tennyson, Director, ROOR, and Adam Arkel, Associate General Counsel, Office of General Counsel

Re: Suggested Revisions of Amended FINRA Rule 4210

Dear Sirs and Madam:

In June 2016, the Securities and Exchange Commission approved the Financial Industry Regulatory Authority's (FINRA) amendments to FINRA Rule 4210 (amended Rule 4210). Amended Rule 4210 will require FINRA members to collect margin from their counterparties in respect of "Covered Agency Transactions," which, generally, are to-be-announced (TBA) mortgage-backed securities transactions, specified pool transactions, and collateralized mortgage obligations (CMOs), meeting certain criteria and, in each case, issued in conformity with a program of a federal agency or U.S. government sponsored enterprise.

The margining requirements of amended Rule 4210 were scheduled to take effect in June 2018 but, in May 2018, FINRA extended the compliance date to March 25, 2019. FINRA's stated reason for delaying compliance of amended Rule 4210's margining requirements was to reconsider the potential impact of certain of the amended Rule 4210 requirements on smaller and medium-sized firms.

We are writing, on behalf of our clients, the Farm Credit Banks (the FCBanks) FCBanks and the Federal Home Loan Banks (the FHLBanks), each of which is a government sponsored enterprise, to express support of FINRA's reconsideration of aspects of amended Rule 4210 and to offer suggestions for revising the amended Rule. The FCBanks and the FHLBanks believe that amended Rule 4210 imposes obligations on FINRA members and their counterparties that may be unduly burdensome considering the level of risk inherent in the delivery versus payment settlement process. Accordingly, the FCBanks and the FHLBanks respectfully request that FINRA consider the suggested revisions of amended Rule 4210 below, which revisions are intended to balance FINRA's interest in reducing exposure with respect to Covered Agency Transactions with FINRA members' and their counterparties' interest in limiting the regulatory burdens amended Rule 4210 will impose.

Rule 4210 Should Require Two-Way Margining

Amended Rule 4210 is intended to codify a recommendation issued in 2012 by the Federal Reserve Bank of New York's Treasury Market Practices Group (TMPG) to margin mortgage-backed securities (the Recommendation).¹ The Recommendation called for the margining of forward-

¹ See TMPG Recommends Margining of Agency MBS Transactions to Reduce Counterparty and Systemic Risks (Nov. 24, 2012), available at

settling agency mortgage-backed securities transactions in order to prudently manage counterparty exposures.² However, FINRA has only partially implemented the Recommendation. The Recommendation expressly called for two-way margining and indicated that such margining is intended to mitigate counterparty risk for the benefit of all market participants, not just dealers.

The FCbanks and the FHLbanks generally support the concept of reducing counterparty exposure for all participants. The FCbanks and the FHLbanks also recognize that, notwithstanding amended Rule 4210's call for one-way margining, practically, most market participants are agreeing, on a contractual basis, to two-way margining for larger investors such as the FCbanks and the FHLbanks.³ The area of our concern is that smaller institutions do not always have the ability to achieve this outcome when putting agreements in place and one-way margining is inconsistent with FINRA's mandate to generally protect the public interest and investors. By not adopting two-way margining, FINRA appears to only be focused on the exposure created for its members, to the detriment of buy-side investors. The FCbanks and the FHLbanks strongly believe, and suggest, that amended Rule 4210 should be revised to require two-way margining. This would align with the Recommendation and reflect equitable treatment of all participants in the market.

Requiring two-way margining is not without precedent. In other contexts, U.S. federal regulators have determined that two-way margining is appropriate. As an example, the U.S. Prudential Regulators have put in place regulations requiring the two-way margining of swaps and security-based swaps. The rationale for this is that two-way margining reduces systemic risk by protecting both parties to a swap or security-based swap from the effects of a counterparty default.⁴

New Issue Agency CMOs Should Not Be Subject to Margining

Amended Rule 4210 will require the margining of agency CMOs for which the difference between the trade date and the contractual settlement date is greater than three business days. The FCbanks and the FHLbanks respectfully request that new-issue agency CMOs be carved-out of amended Rule 4210's margining requirements.

Agency CMOs are customized securities that can take up to a month to "settle" because of the time required to assemble the underlying collateral, deposit it with a trustee, and complete other legal and reporting requirements. Typically, the structuring deadline for a new-issue agency CMO is around the tenth day of the month, with delivery-versus-payment of the security occurring on the last business day of that month. This type of structuring is considered regular settlement for new-issue agency CMOs.

<https://www.newyorkfed.org/medialibrary/microsites/tmpg/files/marginambs.pdf>, and cited in FINRA's first release to amend FINRA Rule 4210, 81 Fed. Reg. 63,603 (Oct. 20, 2015).

² In its amended Rule 4210, FINRA limits the scope of the Recommendation to "Covered Agency Transactions", as defined in amended Rule 4210, as opposed to forward-settling agency MBS transactions generally. The FCbanks and the FHLbanks fully support the limitation of the scope of transactions subject to margining. However, the FCbanks and the FHLbanks respectfully request that FINRA and the TMPG issue a clarifying statement that amended Rule 4210 does not apply to forward-settling agency MBS transactions generally.

³ This is evidenced by the form of Master Securities Forward Transaction Agreement developed by the Securities Industry and Financial Markets Association (SIFMA), which provides for two-way margining and has been widely used by FINRA members and their counterparties to come into compliance with amended Rule 4210.

⁴ Margin and Capital Requirements for Covered Swap Entities Agencies, 80 Fed. Reg. 74,840 (Nov. 30, 2015), available at <https://www.gpo.gov/fdsys/pkg/FR-2015-11-30/pdf/2015-28671.pdf>. The Prudential Regulators are the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency.

The FCBanks and the FHLBanks are of the view that requiring the margining of new-issue agency CMOs is unduly burdensome and affords the seller of a new-issue CMO a disproportionate amount of discretion to determine exposure.

Margining will require FINRA members and market participants to put operational systems in place for valuing transactions and exchanging collateral on a daily basis. Insofar as new-issue agency CMOs are concerned, the burden and cost associated with putting such operational systems in place is disproportionate to the amount of exposure created by the typical new-issue agency CMO over the course of a 20 to 21 day (or shorter) period, in particular considering the delivery-versus-payment settlement. Moreover, the value of new-issue agency CMOs is difficult to quantify because of their customized nature. Until new-issue agency CMOs are settled, there is no third-party source that can be relied upon, e.g., Bloomberg or other market valuation services. The result of this is that, if new-issue agency CMOs are required to be margined, market participants will be overly reliant on the seller to determine value and, thereby, forward exposure. Affording such discretion to the seller places the buyer at a disadvantage, as the buyer may not be able to challenge a seller's valuation by reference to third-party sources and, therefore, may incur increased credit exposure to the seller by virtue of having to post more margin than may be necessary to mitigate the exposure created by the agency CMO itself.

Written Risk Limit Determinations

The FCBanks and the FHLBanks support amended Rule 4210's requirement that FINRA members conduct a risk determination with respect to each of their counterparties. As part of this, the FCBanks and the FHLBanks respectfully request that FINRA members be afforded discretion to determine whether, per their assessment of the risk posed by a counterparty, margin should be required.

The FCBanks and the FHLBanks are highly creditworthy entities and, in most instances, will have a higher credit rating than their FINRA member counterparties. Accordingly, some FINRA members may deem it unnecessary to exchange margin with the FCBanks, the FHLBanks or other highly creditworthy entities. Affording FINRA members the flexibility to make such a determination would reduce the operational burdens that come with having to engage in daily valuation of transactions and the operational exchange of daily margin.

Small Account Exemption

Finally, the FCBanks and the FHLBanks support FINRA's inclusion of a small account exemption in amended Rule 4210. Currently, that exemption provides that margining of Covered Agency Transactions will not be required if a counterparty has \$10 million or less of gross open positions in Covered Agency Transactions with a FINRA member.

The FCBanks and the FHLBanks are of the view that the size of a party's open positions with a FINRA member does not accurately reflect the amount of credit exposure that such party poses to the FINRA member. If the goal of amended Rule 4210 is to carve out market participants that pose a *de minimis* risk to a FINRA member, then the FCBanks and the FHLBanks believe that it would be more appropriate for a small account to be defined by reference to an exposure amount instead of the size of gross open positions and suggest that amended Rule 4210 be revised accordingly.

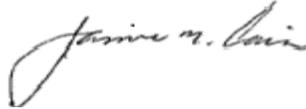
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We appreciate your consideration of our suggested revisions to amended Rule 4210. If you have any questions about the suggested revisions, please do not hesitate to contact Jamie Cain at [REDACTED] or [REDACTED] or Ray Ramirez at [REDACTED] or [REDACTED]. We welcome the opportunity to discuss the suggested revisions with you at your earliest convenience.

Sincerely,



James M. Cain
Eversheds Sutherland (US) LLP



Raymond A. Ramirez
Eversheds Sutherland (US) LLP

JMC/rr

cc: Reginald O'Shields, Federal Home Loan Bank of Atlanta
James Shanahan, CoBank, ACB