

May 2, 2016

Submitted Electronically

Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-025

RE: Notice of Filing of Amendment No. 2 and Designation of a Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend FINRA Rule 4210 to Establish Margin Requirements for the TBA Market (SR-FINRA-2015-036)

Dear Mr. Errett:

On behalf of the Bond Dealers of America (“BDA”), I am pleased to submit this letter in response to the filing of Amendment No. 2 by the Financial Industry Regulatory Authority (FINRA) related to the proposed Rule 4210 amendments to establish margin requirements for certain ‘exempt’ securities, including To-Be-Announced (TBA) securities (SR-FINRA-2015-036). BDA is the only DC-based group representing the interests of middle-market securities dealers and banks focused on the U.S. fixed income markets.

For the reasons BDA has outlined in previous comment letters and for the reasons outlined below, BDA urges the Securities and Exchange Commission to disapprove this proposed rule.

FINRA has not acknowledged the issues raised by BDA or the Securities and Exchange Commission regarding the proposed rule’s inconsistency with Section 15A(b)(6) of the Exchange Act.

As the Securities and Exchange Commission (SEC) stated in its order instituting proceedings, Section 15A(b)(6) of the Exchange Act requires FINRA to adopt rules that ‘promote just and equitable principles of trade.’ BDA has consistently stated that this proposed rule would negatively impact small-to-medium sized broker-dealers compared to larger dealers and banks active in the market for ‘covered agency securities’. BDA

believes the burden of applying this rule to broker-dealers whose transactions in the market for ‘covered agency securities’ do not typically create systemic risk outweigh any potential benefits to the marketplace. In fact, BDA members who provide liquidity to this market may exit the market because it will no longer make economic sense to provide liquidity under the added regulatory cost burdens of the proposed requirements. This will further consolidate liquidity amongst the larger dealers.

FINRA has yet to rebut this assertion specifically or explain why consolidating liquidity and hastening broker-dealer industry consolidation is in line with its requirement to adopt rules that have a just and equitable impact on market participants. For the actual ‘to-be-announced’ market, ten dealers execute 80% of the daily trading volume reported to TRACE. So, the notion of adopting the proposed rule for the entirety of the marketplace, including dealers that provide only a limited amount of liquidity, on the basis of systemic risk reduction is simply not credible.

The cost estimates FINRA discussed in its Amendment #2 filing are not applicable to middle-market dealers that do not have existing swap margin departments or the associated margin technology.

BDA’s previous comment letters have discussed real price quotes and estimates provided to BDA member firms by third-party vendors to build the new systems and the costs to hire the new personnel that will be required by this rule. FINRA argued that the cost estimates presented by commenters were on the high end of the expected range. Furthermore, FINRA expects the costs will be manageable and incremental because dealers would simply apply their existing swap margin protocols to ‘covered agency securities’. However, no small-to-medium sized dealers trade swaps and, therefore, they do not have swap margin departments. This is a clear example of the unfair and biased nature of the proposed rule. Therefore, the proper basis for cost estimates is for a full build out of the required systems and hiring of additional personnel and not simply a redesign of existing systems as FINRA discusses in the Amendment No. 2 filing.

For example, FINRA states that it spoke to one firm representative that estimated that it would cost \$5,000 to build systems to track margin obligations consistent with the TMPG best practices. It is not clear if this firm already trades swaps and has a margin regime for un-cleared swaps. For middle-market dealers, the most relevant and valuable estimate for FINRA and the Commission to assess is the cost of a full build and the hiring of new personnel. That is the cost burden small-to-medium sized dealers are contemplating as they continue to assess if they are going to continue to provide liquidity to the market for ‘covered agency securities’.

BDA does not believe Congress intended to grant FINRA with unlimited authority to establish margin regimes applicable to 'exempt' securities under Section 7 of the Exchange Act.

FINRA interprets the congressional intent of Securities Exchange Act Section 7 as a grant of limitless authority to FINRA to adopt margin rules for exempt securities. FINRA argues that when Congress specifically limited the authority of the Federal Reserve to establish a margin regime to non-exempt securities that act did nothing to limit the ability of ability of FINRA to adopt a margin regime applicable to exempt securities.

As BDA stated previously, BDA believes that FINRA has fundamentally misread Section 7 of the Exchange Act, overreached on its own authority, and ignored the intent of Congress to set policy in this exact policy area—establishing margin requirements for exempt securities. If FINRA operates under the legal rationale that it is authorized to adopt rules unless specifically prohibited to do so by statute, that drastically expands the pool of potential future rulemakings beyond the existing understanding of congressional intent.

In conclusion, the BDA urges the Commission to disapprove this proposed rule because our members strongly believe, as proposed, it will damage and create unfair competition, will hurt liquidity in the TBA markets, and prevent small-to-medium sized market participants from having the ability to transact forward purchases and, most importantly, because it ignores the congressional intent of Section 7 of the Exchange Act.

Sincerely,

A handwritten signature in blue ink that reads "Mike Nicholas". The signature is written in a cursive, flowing style.

Mike Nicholas
Chief Executive Officer