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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2021 - * 010
Amendment No. (req. for Amendments *) 1

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☐	☑	☐	☑	☐	☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name *	Adam	Last Name *	Arkel
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Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 08/09/2021

By Philip Shaikun
(Name *)

(Title *)
Vice President and Associate General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Philip Shaikun, Philip.Shaikun@Finra.Org

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On May 7, 2021, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission (the "Commission" or "SEC") proposed rule change SR-FINRA-2021-010 (the "Proposal"),[1] pursuant to which FINRA proposed to amend the requirements for Covered Agency Transactions[2] under FINRA Rule 4210 as approved by the SEC pursuant to SR-FINRA-2015-036. The proposed rule change would amend, under FINRA Rule 4210, paragraphs (e)(2)(H), (e)(2)(I), (f)(6), and Supplementary Material .02 through .05, each as amended or established pursuant to SR-FINRA-2015-036.[3]

The Commission published the Proposal for public comment in the Federal Register on May 25, 2021.[4] The Commission received five comment letters in response to the Proposal.[5] FINRA is filing this Partial Amendment No. 1 to respond to the

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1 See Securities Exchange Act Release No. 91937 (May 19, 2021), 86 FR 28161 (May 25, 2021) (Notice of Filing of Proposed Rule Change to Amend the Requirements for Covered Agency Transactions under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR-FINRA-2015-036; File No. SR-FINRA-2021-010).

2 Covered Agency Transactions are defined under current FINRA Rule 4210(e)(2)(H)(i)c. to include: (1) To Be Announced ("TBA") transactions, inclusive of adjustable rate mortgage ("ARM") transactions; (2) Specified Pool Transactions; and transactions in Collateralized Mortgage Obligations ("CMOs"), issued in conformity with a program of an agency or Government-Sponsored Enterprise ("GSE"), with forward settlement dates, as further defined more fully under paragraph (e)(2)(H)(i)c. The Proposal would redesignate paragraph (e)(2)(H)(i)c. as paragraph (e)(2)(H)(i)b., without any change. TBAs, Specified Pool Transactions and CMOs are defined under FINRA Rules 6710(u), 6710(x) and 6710(dd), respectively. For purposes of this Partial Amendment and the Proposal, all references to provisions under Rule 4210 are to provisions as amended or established pursuant to SR-FINRA-2015-036 (for convenience, also referred to in this Partial Amendment as the "current rule"), except where otherwise indicated.

3 For convenience, for purposes of this Partial Amendment No. 1, SR-FINRA-2015-036 is referred to as the "original rulemaking."

4 See note 1 supra.

5 See Letter from Michael Decker, Senior Vice President, Public Policy, Bond Dealers of America, to Vanessa Countryman, Secretary, SEC, dated June 15, 2021 ("BDA"); letter from Thomas J. Fleming & Adrienne M. Ward, Olshan, on behalf of Brean Capital, LLC, to Vanessa Countryman, Secretary, SEC, dated June 15, 2021 ("Brean Capital"); letter from Christopher B. Killian, Managing Director, Securitization, Corporate Credit, Libor, Securities Industry and Financial Markets Association, to J. Matthew DeLesDernier, Assistant Secretary, SEC, dated June 15, 2021 ("SIFMA"); letter from Christopher B. Killian,

comments the Commission received on the Federal Register publication and, in response to the comments, to clarify certain provisions under the proposed rule language as specified further below.

With this Partial Amendment No. 1, FINRA is including: (1) Exhibit 4 (see below), which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 1, marked to show revisions to the text as proposed in the Proposal; and (2) Exhibit 5 (see below), which reflects the changes to the current rule that are proposed in the Proposal, as amended by this Partial Amendment No. 1.

A. Impact and Scope of the Proposal; Policy Concerns

SIFMA, BDA, Brean Capital and Melton expressed objections to the Proposal on grounds that imposing requirements with regard to Covered Agency Transactions would cause smaller and mid-sized firms to exit the market, thereby causing greater concentration in the hands of fewer market participants, reducing access to the Covered Agency Transaction market or negatively affecting market liquidity. The commenters said that customers would not be inclined to transact with smaller and mid-sized firms and would prefer to transact with banks that are not subject to margin requirements, that many customers would be unwilling to enter into margin agreements, that the costs of engaging in Covered Agency Transactions would increase significantly and excessive margin requirements and capital charges would be involved, or that the proposed requirements, either in whole or in part, are not suitable for Specified Pool Transactions and CMOs. The commenters expressed concern that requirements for Covered Agency Transactions are either not necessary or not feasible as a matter of policy.

FINRA has engaged industry participants extensively on these concerns, and has addressed them on multiple occasions, since the process of soliciting comment on requirements for Covered Agency Transactions began in January 2014 with the publication of Regulatory Notice 14-02 and in 2015 with FINRA's original rulemaking for Covered Agency Transactions.[6] FINRA has pointed out that the rulemaking is

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Managing Director, Securitization, Corporate Credit, Libor, Asset Management Group of Securities Industry and Financial Markets Association, to Secretary, SEC, dated June 15, 2021 ("SIFMA AMG"); and letter from Chris Melton, to SEC, dated August 2, 2021 ("Melton"). Unless noted otherwise, all references to commenters in this Partial Amendment No. 1 are to commenters as listed in this note.

6 See Securities Exchange Act Release No. 76148 (October 14, 2015), 80 FR 63603 (October 20, 2015) (Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market; File No. SR-FINRA-2015-036); see also Regulatory Notice 14-02 (January 2014). Even before the publication of these materials, as discussed in SR-FINRA-2015-036, FINRA had engaged in extensive outreach and consultation with market participants and staff of the Federal Reserve Bank of New York ("FRBNY") and the SEC. See 80 FR 63603, 63604-05. In Partial

necessary because of the risks posed by unsecured credit exposures in the Covered Agency Transactions market.[7] FINRA has addressed, on multiple occasions, the need to include Specified Pool Transactions and CMOs within the scope of the requirements.[8] FINRA notes that, mindful of the potential impact of the requirements, FINRA made key revisions in finalizing the original rulemaking expressly to mitigate any potential impact on smaller firms and on activity in the Covered Agency Transaction market:

- FINRA initially proposed an exception pursuant to which the new margin requirements would not apply to a counterparty if its gross open positions in Covered Agency Transactions with a FINRA member is $2.5 million or less, subject to specified conditions. In response to commenters on the original rulemaking, and to ensure that a greater number of smaller firms and counterparties would benefit from the exception, FINRA increased the allowed amount from $2.5 million to $10 million;[9]

- FINRA modified the two percent maintenance margin requirement, as adopted pursuant to the original rulemaking, to create an exception for cash investors that otherwise, by virtue of not being "exempt accounts" as defined under FINRA's margin rules, would have been subject to the requirement.[10] FINRA also made an

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Amendment No. 3 to SR-FINRA-2015-036, FINRA noted that up to that point there had been four opportunities for public comment on the original rulemaking, beginning with Regulatory Notice 14-02.

7 See, e.g., 80 FR 63603, 63615-16.

8 See Securities Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR-FINRA- 2015-036) (the "Approval Order"), 81 FR 40364, 40371.

9 See Partial Amendment No. 3 to SR-FINRA-2015-036.

10 See 80 FR 63603, 63608. The term "exempt account" is defined under FINRA Rule 4210(a)(13). Broadly, an exempt account means a FINRA member, non-FINRA member registered broker-dealer, account that is a "designated account" under FINRA Rule 4210(a)(4) (specifically, a bank as defined under Exchange Act Section 3(a)(6), a savings association as defined under Section 3(b) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation, an insurance company as defined under Section 2(a)(17) of the Investment Company Act, an investment company registered with the Commission under the Investment Company Act, a state or political subdivision thereof, or a pension plan or profit sharing plan subject to the Employee Retirement Income Security Act or of an agency of the United States or of a state or political subdivision thereof), and any person that has a net worth of

exception from the maintenance margin requirements available to mortgage bankers;

- FINRA excepted multifamily housing securities and project loan program securities from the new margin requirements;[11]
- FINRA established a $250,000 de minimis transfer amount, for a single counterparty, subject to specified conditions, up to which members would not need to collect margin or take a charge to their net capital.[12]

The SEC issued the Approval Order for the original rulemaking on June 15, 2016.[13] FINRA stated that, upon the Commission's approval, FINRA would monitor the impact of the new requirements and, if the requirements prove overly onerous or otherwise are shown to negatively impact the market, would consider revisiting such requirements as may be necessary to mitigate the rule's impact.[14] Industry participants requested that FINRA reconsider the potential impact of the requirements pursuant to SR-FINRA-2015-036 on smaller and mid-sized firms, and that FINRA extend the implementation date of the requirements pending such reconsideration. In response to the concerns of industry participants, FINRA engaged in extensive dialogue, both with industry participants and other regulators, including staff of the SEC and the Federal Reserve System, for the purpose of reconsidering the requirements. Further, pending such period of dialogue and reconsideration, FINRA extended the implementation date of the margin requirements pursuant to SR-FINRA-2015-036 on several occasions, most recently to October 26, 2021.[15]

FINRA developed the Proposal in direct response to the concerns of industry participants. Noting, again, the risks posed by unsecured credit exposures that exist in the Covered Agency Transaction market, FINRA proposed two key revisions designed to afford relief to industry participants.[16] Specifically, FINRA proposed to eliminate,

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at least $45 million and financial assets of at least $40 million for purposes of paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of the rule, as set forth under paragraph (a)(13)(B)(i) of Rule 4210, and meets specified conditions as set forth under paragraph (a)(13)(B)(ii).

11 See Partial Amendment No. 1 to SR-FINRA-2015-036.

12 See Approval Order, note 8 supra, at 81 FR 40364, 40368.

13 See note 8 supra.

14 See Partial Amendment No. 3 to SR-FINRA-2015-036.

15 See Proposal, note 1 supra, at 86 FR 28161, 28162.

16 See Proposal, note 1 supra, at 86 FR 28161, 28162-63.

entirely, the two percent maintenance margin with respect to non-exempt accounts for purposes of their Covered Agency Transactions and, subject to specified conditions and limits as more fully explained in the Proposal, to permit members to take a capital charge in lieu of collecting margin for each counterparty's excess mark to market loss. FINRA believes that, over the course of prolonged engagement with industry participants, and in light of the multiple rounds of response to concerns already expressed, and answered, in connection with the original rulemaking, and as further addressed in the Proposal, it does not serve the public interest to further delay the Proposal. FINRA believes the revisions to the original rulemaking, as set forth more fully in the Proposal, with the additional clarifications, as set forth below, afford industry participants appropriate relief and clarity, and the rulemaking should proceed.

B. FINRA's Authority

Brean Capital and Melton suggested that the margin requirements for Covered Agency Transactions, as set forth pursuant to the original rulemaking and as proposed to be amended by the Proposal, are not consistent with the intent of Section 7 of the Securities Exchange Act. FINRA addressed this contention in the original rulemaking, noting that the requirements are consistent with the provisions of Section 15A(b)(6) of the Securities Exchange Act.[17] FINRA noted that Section 7 of Securities Exchange Act sets forth the parameters of the margin setting authority of the Federal Reserve Board and does not bar action by FINRA.

C. Concerns Regarding Higher Capital and Margin Requirements

BDA and Brean Capital said that a member with a Covered Agency Transaction position that is more or less hedged from a market risk perspective, but is unhedged from a credit risk perspective, would have significantly higher capital charges or margin requirements under the Proposal than they would otherwise have. The commenters described scenarios to illustrate this result.[18]

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17 See Approval Order, note 8 supra, at 81 FR 40364, 40373.

18 Some of the scenarios involve firms that are fully hedged from a market risk perspective, like a firm that purchases a TBA, Specified Pool, or CMO from one party and enters into an offsetting sale transaction with another party, with the same settlement date. BDA and Brean Capital described these transactions as "riskless," but FINRA disagrees with such characterization. The firm is exposed to the credit risk of both the buyer and seller, and the offsetting transactions provide no protection against those risks. Paragraph (e)(2)(H) requires members to protect themselves against that counterparty credit risk by collecting margin for their counterparties' excess net mark to market losses or taking capital charges in lieu of such collection.

In some of these scenarios, BDA and Brean Capital attributed the higher margin or capital requirements to the fact that the transactions (termed "non-netting" by

In response, FINRA disagrees with the commenters' analyses. The current rule, as approved pursuant to the original rulemaking, would, subject to specified exceptions, require members to collect margin whenever their counterparties' mark to market losses (and two percent maintenance margin deficiency, where applicable) exceeds $250,000, and would require them to take a capital charge to the extent such margin is not collected by the close of business on the business day after such mark to market loss (or maintenance margin deficiency) arose. The Proposal preserves all of the exceptions in the current rule, eliminates the two percent maintenance margin requirement, provides an option, subject to specified conditions, to take capital charges in lieu of collecting margin for net mark to market losses in excess of $250,000, and requires a capital charge to the extent margin for excess net mark to mark losses has not been collected by the close of business on the business day after such mark to market losses arose. Because the Proposal eliminates the two percent maintenance margin requirement (and as such eliminates the related capital charges for uncollected maintenance margin), the margin requirements and capital charges under the Proposal are less than the requirements under the current rule.

FINRA acknowledges that the margin requirements and capital charges under both the Proposal and the current rule are higher in certain scenarios (and lower in others)

Brean Capital and "non-nettable" by the BDA) will not net under the Proposal. Under the Proposal, however, there is no category of transactions that cannot be netted in the determination of a counterparty's "net mark to market loss." The only requirement is that the member have a legal right to offset losses on one transaction against gains on the other (or a security interest that would allow it to apply gains on one transaction to the counterparty's losses on the other).

The "non-netting" or "non-nettable" transactions, as referenced by the commenters, appear to be transactions that are not eligible to be cleared by the Mortgage-Backed Securities Division of the Fixed Income Clearing Corporation ("MBSD"). However, FINRA notes that when an eligible transaction is submitted to the MBSD for clearing, that transaction is novated to the MBSD, so that instead of a transaction between the original buyer and seller, there are two mirror transactions: one in which the original buyer is buying from the MBSD; and one in which the original seller is selling to the MBSD. Accordingly, when a firm executes with a single counterparty an MBSD-eligible transaction and a transaction that is not MBSD-eligible, and the eligible transaction is submitted for clearing (but the non-eligible transaction is not), the firm ends up with two transactions with two separate counterparties. These transactions cannot be netted against each other because they are with separate counterparties, rather than because of FINRA's rule, which in fact would allow gains and losses on the transactions to be netted to the extent of a perfected, first priority, security interest in the transaction with the gain.

than they would be under Brean Capital's suggestion that there be no margin requirements applicable to Covered Agency Transactions (up to the second monthly SIFMA settlement date), and that members be required to take capital charges for only ten percent of their counterparties' unmargined mark to market losses.[19] FINRA believes, however, that this suggestion would significantly undercut the objective of the rule.

D. Concerns Regarding Liquidation

Commenters expressed concern about requirements to liquidate Covered Agency Transactions. They said that market participants often engage in long "chains" of Specified Pool or CMO transactions, where the initial seller contracts to sell a Specified Pool or CMO to the initial buyer, the initial buyer contracts to sell the Specified Pool or CMO to a second buyer, who contracts to sell it to a third buyer, who contracts to sell it to a fourth buyer, etc. If any party in the chain (except for the last buyer) terminates its purchase or sale transaction, the buyer in the terminated transaction is unlikely to be able to buy the Specified Pool or CMO elsewhere, and therefore will be unable to perform on its sale transaction – and so will every subsequent buyer and seller in the chain. The commenters said that FINRA should eliminate or suspend the liquidation requirement to avoid the prospect of a "daisy chain" of fails.

In response, FINRA notes that, under the current rule, if a counterparty's unmargined mark to market loss (and two percent maintenance margin deficiency, where applicable) exceeds $250,000 and is not margined or eliminated within five business days from the date it arises, the member is required to liquidate the counterparty's positions to satisfy the mark to market loss (and two percent maintenance margin deficiency where applicable), unless FINRA specifically grants additional time. FINRA notes that the Proposal has eliminated this liquidation requirement.

Under the Proposal, a member can opt to take a capital charge in lieu of collecting margin to cover a counterparty's excess net mark to market loss. The two percent maintenance margin requirement is eliminated under the Proposal. If these capital

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[19] Under the current rule and the Proposal, members are not required to collect margin, or capital charges in lieu of collecting margin, to cover the net mark to market losses of small cash counterparties, registered clearing agencies, Federal banking agencies (as defined in 12 U.S.C. 1813(z)), central banks, multinational central banks, foreign sovereigns, multilateral development banks, or the Bank for International Settlements. These exceptions mean that some members engaging in Covered Agency Transactions with these counterparties may have lower margin and capital requirements under the current rule and the Proposal than they would under Brean Capital's suggestion.

charges[20] exceed the lesser of 25 percent of the member's tentative net capital or $30 million (for convenience, referred to in this Partial Amendment as the "25% TNC / $30MM Threshold") for five consecutive business days, then the member:

- may not enter into new Covered Agency Transactions with non-margin counterparties other than risk reducing transactions;
- must, to the extent of its rights, promptly collect margin for each counterparty's excess net mark to market loss; and
- must, to the extent of its rights, promptly liquidate the Covered Agency Transactions of any counterparty whose excess net mark to market loss is not margined or eliminated within five business days from the date it arises, unless FINRA has specifically granted the member additional time.

If the member does not have the right to liquidate a counterparty's Covered Agency Transactions, the Proposal does not require the member to liquidate those transactions, even after the member has exceeded the 25% TNC / $30MM Threshold for five business days.[21] However, if the member has exceeded the 25% TNC / $30MM Threshold for five business days *and* the member does have a right to liquidate a counterparty's Covered Agency Transactions *and* the counterparty's excess mark to market loss has not been margined or eliminated within five business days, only then would a member be required to enforce its liquidation right or obtain an extension from FINRA.

FINRA believes that this limited liquidation obligation should not lead to a daisy-chain of fails, except possibly in circumstances where a counterparty's unwillingness or

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[20] As discussed in more detail in note 31 infra and the accompanying text, FINRA is modifying the Proposal so that capital charges for a counterparty's unmargined excess net mark to market loss do not count toward this threshold to the extent that the member, in good faith, expects such excess net mark to market loss to be margined by the close of business on the fifth business day after it arose.

[21] A member is not required to have a right to liquidate a counterparty's Covered Agency Transactions. However, if the member does not have that right, the counterparty would be a "non-margin counterparty," and paragraph (e)(2)(H)(ii)d.1. under the Proposal would require the member to establish and enforce risk management procedures reasonably designed to ensure that the member would not exceed either of the limits specified in paragraph (e)(2)(I)(i) of the rule as amended by the Proposal and that the member's capital charges in lieu of margin on Covered Agency Transactions for all accounts combined will not exceed $25 million. These procedures would likely involve limitations on the extent of the member's business with such non-margin counterparties. FINRA notes that when the firm's risk management procedures function as they are required to be designed, the member will rarely cross the 25% TNC / $30MM Threshold, much less exceed it for five consecutive business days.

inability to perform its undisputed obligations makes it equally likely that a daisy chain or fails will occur whether or not the member liquidates a transaction with the counterparty. There are four categories of reasons why a counterparty would fail to margin its excess net mark to market loss by the fifth business day after it arises, and FINRA believes only one of them has any prospect of leading to a liquidation requirement under the Proposal:

First Category

- The counterparty may not have an obligation, under an agreement or otherwise, to margin its excess net mark to market losses within five business days after they arise. In this case, the member would not have a right to liquidate the counterparty's Covered Agency Transactions when excess net mark to market losses are not margined or eliminated within five business days after they arise, and so would have no obligation under the Proposal to liquidate the counterparty's Covered Agency Transactions.

Second Category

- An operational issue may cause the counterparty to fail to satisfy its obligation to margin its excess net mark to market losses. FINRA believes that five business days should be more than enough time to resolve any operational issue. However, in the event an extended operational issue, or series of operational issues, prevents a counterparty from providing margin for its excess net mark to market loss within five business days after it arises, a 14-day extension can be obtained from FINRA if the member has exceeded the 25% TNC / $30MM Threshold for five consecutive business days and would otherwise be under an obligation to enforce a right to liquidate the counterparty's Covered Agency Transactions. FINRA expects that an operational issue should not continue long enough to prevent a counterparty from satisfying its margin obligation past the expiration of a 14-day extension.

Third Category

- There may be a disagreement over the amount of the counterparty's excess mark to market loss, leading the counterparty to believe that it has satisfied its obligation to provide margin but the firm to believe that it has not. Commenters suggested that relatively unique assets, like Specified Pools and CMOs, are more likely to be the subject of valuation disputes. FINRA believes that five business days should be more than enough time to resolve any valuation dispute. Firms whose business involves a significant volume of transactions that are prone to operational disputes should analyze whether their risk management procedures should require their contracts for such transactions to include or incorporate a procedure for the prompt resolution of valuation disputes.[22] If an extended

[22] By way of example, the current Credit Support Annex to the ISDA Master Agreement contains a provision under which the parties generally agree to resolve

valuation dispute leads a counterparty to fail to provide margin for its excess net mark to market loss within five business days after it arises, a 14-day extension can be obtained from FINRA if the member has exceeded the 25% TNC / $30MM Threshold for five consecutive business days and would otherwise be under an obligation to enforce a right to liquidate the counterparty's Covered Agency Transactions. FINRA believes that a margin valuation dispute should not continue past the expiration of a 14-day extension.

Fourth Category

- The counterparty may be unwilling or unable to satisfy an undisputed obligation to margin its excess net mark to market loss. FINRA believes that, when a counterparty is unwilling or unable to satisfy its undisputed margin obligations, there is also reason for significant doubt that the counterparty would be willing and able to satisfy its obligations to pay or deliver on the settlement date of the transaction. When facing such an unreliable counterparty, FINRA believes it is possible the daisy chain of fails may occur even if the member does not liquidate. This could be just as easily triggered by the counterparty's unwillingness or inability to perform its obligations as by the member's liquidation of its transaction.

  With regard to this fourth category, to the extent feasible, members should terminate transactions with such counterparties in order to protect themselves against further exposure. However, if a member believes that it would not be feasible to terminate a transaction with such a counterparty, or that such termination would be unduly disruptive to the member's business or the market, extensions may be available from FINRA if the member has exceeded the 25% TNC / $30MM Threshold for five consecutive business days and would otherwise be under an obligation to enforce a right to liquidate the counterparty's Covered Agency Transactions.[23]

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disputes over the valuation of over-the-counter derivatives for margin purposes by seeking four actual quotations at mid-market from third parties and taking the average of those obtained. The OTC derivatives documented under ISDA Master Agreements can be much more difficult to value than any Specified Pool or CMO transaction.

[23] Although an initial 14-day extension will be granted upon application citing the applicable circumstances, any application for a lengthy extension, or series of extensions, must describe the reason for the request and the member's plans for protecting itself (now and in the future) against the risk posed by a counterparty that has demonstrated itself to be unwilling or unable to perform its undisputed obligations.

As described above, in the first category, members have no liquidation obligation under the rule. In the second and third categories, the reason why the counterparty has not margined its excess net mark to market loss should be eliminated before the five business day period has ended, and generally before the expiration of a 14-day extension from FINRA. Only in the fourth category, where the counterparty is demonstrably unwilling or unable to perform its obligations to the member, should liquidation of counterparty's Covered Agency Transactions be required under the Proposal, provided of course that the member has exceeded the 25% TNC / $30MM Threshold for five consecutive business days – and, even in that case, extensions may be available if liquidation is infeasible or would unduly disrupt the member's business or the market.

E. Clarifications; Technical Revisions to the Proposal

The commenters sought clarification on several topics:

- *Definition of "excess net mark to market loss"*: SIFMA and SIFMA AMG requested confirmation that, under the Proposal, members would only be required to collect margin (or take capital charges for uncollected margin) to cover the amount by which a counterparty's net mark to market loss exceeds the $250,000 threshold.

  In response, FINRA notes that this is correct. Under the Proposal, paragraph (e)(2)(H)(ii)c. states that members are not required by the rule "to collect margin, or take capital charges, for counterparties' mark to market losses on Covered Agency Transactions other than excess net mark to market losses" and a counterparty's "excess net mark to market losses" are defined in paragraph (e)(2)(H)(i)c. as "such counterparty's net mark to market loss to the extent it exceeds $250,000." For example, if a member's counterparty has a net mark to market loss of $300,000, its excess net mark to market loss is $50,000, which would be the amount of margin the Proposal would require the member to collect, or take a capital charge in lieu of collecting (unless there is an applicable exemption in paragraph (e)(2)(H)(ii)a.1.).[24]

[24] The counterparty's excess net mark to market loss is the minimum amount of margin that (subject to the exceptions set forth in the Proposal) the member must collect (or take a capital charge in lieu of collecting). The rule does not prevent members and their counterparties from agreeing that the counterparty will transfer additional margin. For example, a member and its counterparty could agree that, when the counterparty's net mark to market loss exceeds $250,000, the counterparty will transfer to the member margin that covers the counterparty's entire mark to market loss, rather than only enough to cover its excess net mark to market loss. Similarly, a member may exclude a counterparty's in the money amounts on long standby positions from its computation of net mark to market

- *Definition of "net mark to market loss"*:

  - *Relationship to the MSFTA*: SIFMA requested confirmation that "net mark to market loss" would capture the calculations used under the form of Master Securities Forward Transaction Agreement ("MSFTA") published by SIFMA. In response, FINRA does not require or endorse any particular form of agreement for margining Covered Agency Transactions, and as such declines to provide the requested confirmation, as this relates to what is a commercial matter among the parties.[25]

  - *Requirements for netting*: SIFMA suggested that FINRA should remove the phrase "legally enforceable right of offset or security" from the definition of "net mark to market loss." In response, FINRA believes that this phrase is necessary. If the phrase is removed, then the amount of the counterparty's mark to market losses which are subject to margining would be reduced by the counterparty's mark to market gains on other transactions, without regard to whether the member has any legally enforceable right to apply those gains to cover the counterparty's losses. For example, if a counterparty defaults when it has a mark to market loss of $10 million on one transaction and a mark to market gain of $10 million on another transaction, having a legally enforceable right of offset would allow the member to apply the counterparty's gains to cover its losses. In the absence of a legally enforceable right of offset or security, however, the member could face the prospect of having an obligation to pay the counterparty $10 million for its gains, without any guaranty of collecting the full amount of the counterparty's $10 million loss. If the counterparty enters insolvency proceedings, the lack of a legally enforceable right of offset or security could result in the member being obliged to pay the full $10 million of the defaulted counterparty's gains and being only able to collect cents on the dollar for the counterparty's losses.[26]

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loss and excess net mark to market loss, and collect margin or take a capital charge on the larger amount resulting from such computation.

25 Similarly, FINRA also declines SIFMA AMG's request to confirm that an MSFTA with a cure period (or similar provision after the expiration of which liquidating action may be taken) of less than or equal to five business days would provide the rights described in the definition of "non-margin counterparty" under paragraph (e)(2)(H)(i)e. under the Proposal.

26 In response to SIFMA, FINRA notes that the phrase "first-priority perfected security interest" in paragraph (e)(2)(H)(i)d.2. under the Proposal only applies to

- *Definition of "non-margin counterparty"*:
  - *Five business day period*: Paragraph (e)(2)(H)(i)e.1. under the Proposal provides in part that a counterparty is a non-margin counterparty if the member "does not have a right under a written agreement or otherwise to collect margin for such counterparty's excess net mark to market loss and to liquidate such counterparty's Covered Agency Transactions if any such excess net mark to market loss is not margined or eliminated within five business days from the date it arises."[27] SIFMA said that this effectively requires imposing a margin collection timing which is required under other rules or "the standard under Rule 4210(f)(6)." In response, FINRA disagrees for several reasons:
    - The current rule requires members to liquidate positions whenever a mark to market loss (or maintenance deficiency) on Covered Agency Transactions is not margined or otherwise eliminated within five business days (and no extension has been obtained). The Proposal makes use of a five business day period but, as discussed above, applies it more flexibly than the current rule:
      - If the member lacks a right to liquidate a counterparty's Covered Agency Transactions if the counterparty's excess net mark to market loss is not margined or eliminated within five business days, that counterparty is a "non-margin counterparty." As a consequence:
        - The member would become subject to the risk management requirements under paragraph (e)(2)(H)(ii)d.2. of the rule as modified by the Proposal (if not already subject to that requirement); and

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pledges of a counterparty's rights under Covered Agency Transactions with third parties.

27 In response to SIFMA AMG, FINRA notes that if a member has a right under a written agreement to collect margin for a counterparty's entire net mark to market loss whenever the amount of that loss exceeds $250,000, FINRA, for purposes of the Proposal, would view this as a right under a written agreement to collect margin for such counterparty's excess net mark to market loss, since the counterparty's excess net mark to market loss is $250,000 less than the counterparty's entire net mark to market loss (or zero if the net mark to market loss does not exceed $250,000).

  - If the member's specified net capital deductions[28] exceed the 25% TNC / $30MM Threshold for five consecutive business days, the member would not be able to enter into transactions with the non-margin counterparty, other than risk reducing transactions, while those net capital deductions continue to exceed the 25% TNC / $30MM Threshold.

- If the member has a right to liquidate a counterparty's Covered Agency Transactions if the counterparty's excess net mark to market loss is not margined or eliminated within five business days, the member is not required to enforce that right (that is, not required to liquidate the counterparty's Covered Agency Transactions if the counterparty's excess net mark to market loss has not been margined or eliminated within five business days) unless and until the member's specified net capital deductions exceed the 25% TNC / $30MM Threshold for five consecutive business days (and the member has not obtained an extension from FINRA).[29]

▪ Even if members were required to have a contractual right to liquidate when margin is not collected within five business days, that would not, in SIFMA's terms, "impos[e] a margin collection

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[28] See note 31 infra.

[29] In response to SIFMA, FINRA notes that classification of a counterparty as a non-margin counterparty depends on (a) whether the member has the right to collect margin for the counterparty's excess net mark to market loss, (b) whether the member regularly collects margin for the counterparty's excess net mark to market loss, and (c) whether the member has the right to liquidate such counterparty's Covered Agency Transactions if the counterparty's excess net mark to market loss is not margined or eliminated within five business days from the date it arises. Classification of a counterparty as a margin counterparty (that is, as not a non-margin counterparty) does not require the member to exercise the right to liquidate whenever that counterparty's excess net mark to market loss is not margined or eliminate within five business days. However, the counterparty would need to be reclassified as a non-margin counterparty if the member does not regularly collect margin for the counterparty's excess net mark to market loss. The exercise of the right to liquidate is only required by the rule if the member's capital charges have exceeded the 25% TNC / $30MM Threshold for five consecutive business days (and the member has not obtained an extension from FINRA).

timing that is stricter than that which is required under the rules (or other aspects of Rule 4210 generally)." Rule 4210(f)(6) requires margin to be collected "as promptly as possible," and the rule as approved pursuant to the original rulemaking (as noted above) requires liquidation when a mark to market or maintenance deficiency has not been margined or eliminated within five business days (unless an extension has been obtained).

  - *Exempted counterparties*: SIFMA suggested that FINRA should clearly exclude small cash counterparties and other counterparties covered by paragraph (e)(2)(H)(ii)a.1. under the Proposal from the definition of "non-margin counterparty." This request is consistent with the purpose of paragraph (e)(2)(H)(ii)a.1. and FINRA has modified the definition of "non-margin counterparty" to implement the requested exclusion.[30]

- *Exemption for Certain Counterparties.* SIFMA suggested that the exceptions in paragraph (e)(2)(H)(ii)a.1. be expanded to encompass the U.S. Federal Home Loan Banks. FINRA does not propose to make the suggested modification because it would undermine the rule's purpose of reducing risk.

- *The 25% TNC / $30MM Threshold:*

  - *Small cash counterparties:* SIFMA requested confirmation that margin not collected from small cash counterparties does not count toward the 25% TNC / $30MM Threshold.

    In response, FINRA notes that margin not collected from small cash counterparties does not count toward the 25% TNC / $30MM Threshold. Paragraph (e)(2)(H)(ii)d.3. only counts capital charges under paragraph (e)(2)(H)(ii)d.1. toward the 25% TNC / $30MM Threshold. And, pursuant to paragraph (e)(2)(H)(ii)a.1., members are not required under the Proposal "to collect margin, or to take capital charges in lieu of collecting such margin, for a counterparty's excess net mark to market loss if such counterparty is a small cash counterparty, registered clearing agency, Federal banking agency, as defined in 12 U.S.C. 1813(z), central bank, multinational central bank, foreign sovereign, multilateral development bank, or the Bank for International Settlements." Since the Proposal does not require members to take capital charges for these counterparties' unmargined excess net mark to market losses, they do not count toward the 25% TNC / $30MM Threshold.

  - *Counterparties yet to post margin*: SIFMA suggested that the Proposal be modified so that any capital charge under paragraph (e)(2)(H)(ii)d.1. not

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[30] See Exhibit 4 of this Partial Amendment No. 1.

count toward the 25% TNC / $30MM Threshold until the fifth business day after the relevant excess net mark to market loss arose. The capital charge is required whenever a counterparty's excess net mark to market loss is not margined or eliminated by the close of business on the business day after the business day on which it arises. SIFMA said that many counterparties that are regularly margined are unable to post margin on a consistent T+1 basis due, for example, to those counterparties being in an overseas jurisdiction or to operational or custodial issues. Moreover, good faith disputes over the amount of margin to be posted may mean that a counterparty does not post margin by T+1 even when the counterparty is ready, willing, and able to post margin promptly after the proper amount is determined. SIFMA said that, without the grace period they are requesting, members may be continuously over the 25% TNC / $30MM Threshold solely based on ordinary course levels of margin not yet collected from counterparties who are expected to post required margin.

In response, FINRA agrees that the purpose of the rule does not require counting toward the 25% TNC / $30MM Threshold capital charges taken for excess net mark to market losses that the member in good faith expects to be margined by the fifth business day after they arise. Accordingly, FINRA has revised paragraph (e)(2)(H)(ii)d.3. so that capital charges under paragraph (e)(2)(H)(ii)d.1. with respect to a counterparty's unmargined excess net mark to market loss do not count towards the thresholds in paragraph (e)(2)(H)(ii)d.3. to the extent that the member, in good faith, expects such unmargined excess net mark to market losses to be margined within five business days.[31] Members would still be required to protect themselves by taking net capital deductions while the excess net mark to market losses are unmargined, but, under the Proposal as amended, will have more flexibility to address operational issues and valuation disputes before they impact the 25% TNC / $30MM Threshold.

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31 More specifically, FINRA has revised paragraph (e)(2)(H)(ii)d.3. to refer to a member's "specified net capital deductions" (rather than to all net capital deductions under paragraph (e)(2)(H)(ii)d.1.) and inserted the following definition into paragraph (e)(2)(H)(i):

> i. A member's "specified net capital deductions" are the net capital deductions required by paragraph (e)(2)(H)(ii)d.1. of this Rule with respect to all unmargined excess net mark to market losses of its counterparties, except to the extent that the member, in good faith, expects such excess net mark to market losses to be margined by the close of business on the fifth business day after they arose.

- *Requirement to Enforce Rights to Collect Margin and Liquidate Covered Agency Transactions*: SIFMA requested clarification with respect to the scope of the requirement under paragraph (e)(2)(H)(ii)d.3. of the Proposal, which provides that a member whose specified net capital deductions[32] exceed the 25% TNC / $30MM Threshold for five consecutive business days "shall also, to the extent of its rights, promptly collect margin for each counterparty's excess net mark to market loss and promptly liquidate the Covered Agency Transactions of any counterparty whose excess net mark to market loss is not margined or eliminated within five business days from the date it arises, unless FINRA has specifically granted the member additional time." These requirements begin to apply once the member's specified net capital deductions exceed the 25% TNC / $30MM Threshold for five consecutive business days and cease to apply as soon as those capital charges fall below that threshold. Accordingly, once the member's specified net capital deductions fall below that threshold (for example, because of market movements, or because the member collects enough margin from some, but not all, of its counterparties), the member is under no further obligation to enforce its contractual rights to collect margin or liquidate Covered Agency Transactions (and could, if it chooses, rescind outstanding margin calls and halt any liquidations of its counterparties' Covered Agency Transactions).[33]

- *Reporting by members with non-margin counterparties*: Pursuant to paragraph (e)(2)(H)(ii)d.4. under the Proposal, members with non-margin counterparties would be required to "submit to FINRA such information regarding its unmargined net mark to market losses, non-margin counterparties and related capital charges, in such form and manner, as FINRA shall prescribe by Regulatory Notice or similar communication." SIFMA noted that "the building of systems and information tracking is a significant build for many firms" and asked FINRA to clarify in advance what information may be required. FINRA is considering what information will be required to be submitted and expects to engage members and industry participants in developing appropriately tailored reporting pursuant to this provision.

- *Introducing and clearing firm issues*: Brean Capital said that the Proposal does not address the role of the clearing broker or reflect that FINRA has considered the actual way in which introducing brokers clear trades. SIFMA suggested that FINRA should continue to facilitate dialogue among introducing and clearing

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32 See note 31 supra.

33 FINRA believes that a member, so long as it acts promptly to bring itself below the 25% TNC / $30MM Threshold, may choose the manner and order in which it enforces its rights to collect margin or liquidate Covered Agency Transactions, and may halt those actions once its specified net capital deductions fall below the 25% TNC / $30MM Threshold.

firms to facilitate the implementation of the Proposal. In response to Brean Capital, FINRA notes that it has conducted extensive dialogue with introducing and clearing firms regarding the requirements of the current rule and the Proposal in the context of introducing and clearing arrangements, and several of the Proposal's clarifying changes to the original rulemaking were informed by such dialogue. In response to SIFMA, FINRA intends to continue to discuss the rule and its implementation with clearing and introducing firms, and to facilitate dialogue among them as the Covered Agency Transaction margin requirements are implemented.

E. Implementation Period

SIFMA, SIFMA AMG and the BDA request a period of at least 18 months after publication of a final rule text before compliance is required, citing numerous steps that would be needed to be accomplished in order for member firms and their counterparties to implement the Proposal. In response, FINRA believes that an extended implementation time frame of 18 months would undermine the objectives of the Covered Agency Transaction requirements. As discussed above, Covered Agency Transactions have been under discussion for a considerable time, both prior to and since the Commission approved the original rulemaking. FINRA believes this subject matter is well understood by members and industry participants. However, in response to commenters' concerns, if the Commission approves the proposed rule change, as modified by this Partial Amendment, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be between nine and ten months following the Commission's approval.

F. Status of Published FAQs

SIFMA requested clarification as to whether the Frequently Asked Questions ("FAQs") regarding Covered Agency Transactions, maintained on FINRA's website,[34] will apply in the event the Proposal is approved. If the Commission approves the Proposal, as modified by this Partial Amendment, FINRA will revisit the FAQs with the SEC staff, members and industry participants as appropriate.

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[34] After the Commission approved the original rulemaking, FINRA made available a set of Frequently Asked Questions & Guidance to clarify certain of the new requirements, available at: <www.finra.org>. Further, staff of the SEC's Division of Trading and Markets made available a set of Frequently Asked Questions regarding SEA Rule 15c3–1 and Rule 15c3–3 in connection with Covered Agency Transactions under FINRA Rule 4210, also available at: <www.finra.org>.

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 1, with the proposed changes in the Proposal shown as if adopted. Proposed new language in this Partial Amendment No. 1 is underlined; proposed deletions in this Partial Amendment No. 1 are in brackets.

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4000. FINANCIAL AND OPERATIONAL RULES

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4210. Margin Requirements

(a) through (d) No Change.

(e) Exceptions to Rule

The foregoing requirements of this Rule are subject to the following exceptions:

(1) No Change.

(2) Exempted Securities, Non-equity Securities and Baskets

(A) through (G) No Change.

(H) Covered Agency Transactions

(i) Definitions

For purposes of paragraphs (e)(2)(H) and (e)(2)(I) of this Rule:

a. The term "counterparty" means any person, including any "customer" as defined in paragraph (a)(3) of this Rule, that is a party to a Covered Agency Transaction with, or guaranteed by, a member.

b. The term "Covered Agency Transaction" means:

1. To Be Announced ("TBA") transactions, as defined in Rule 6710(u), inclusive of adjustable rate mortgage ("ARM") transactions, for which the difference between the trade date and contractual settlement date is greater than one business day;

2. Specified Pool Transactions, as defined in Rule 6710(x), for which the difference between the trade date and contractual settlement date is greater than one business day; and

3. Transactions in Collateralized Mortgage Obligations ("CMOs"), as defined in Rule 6710(dd), issued in conformity with a program of an Agency, as defined in Rule 6710(k), or a Government-Sponsored Enterprise, as defined in Rule 6710(n), for which the difference between the trade date and contractual settlement date is greater than three business days.

c. A counterparty's "excess net mark to market loss" means such counterparty's net mark to market loss to the extent it exceeds $250,000.

d. A counterparty's "net mark to market loss" means:

1. the sum of such counterparty's losses, if any, resulting from marking to market the counterparty's Covered Agency Transactions with the member, or guaranteed to a third party by the member, reduced to the extent of the member's legally enforceable right of offset or security by;

2. the sum of such counterparty's gains, if any, resulting from:

A. marking to market the counterparty's Covered Agency Transactions with the member, guaranteed to the counterparty by the member, cleared by the member through a registered clearing agency, or in which the member has a first-priority perfected security interest; and

B. any "in the money," as defined in paragraph (f)(2)(E)(iii) of this Rule, amounts of the counterparty's long standby transactions written by the member, guaranteed to the counterparty by the member, cleared by the member through a registered clearing agency, or in which the

member has a first-priority perfected security interest.

e. A counterparty is a "non-margin counterparty" if

1. the counterparty is not a small cash counterparty, registered clearing agency, Federal banking agency, as defined in 12 U.S.C. 1813(z), central bank, multinational central bank, foreign sovereign, multilateral development bank, or the Bank for International Settlements; and

2. the member:

[1] A. does not have a right under a written agreement or otherwise to collect margin for such counterparty's excess net mark to market loss and to liquidate such counterparty's Covered Agency Transactions if any such excess net mark to market loss is not margined or eliminated within five business days from the date it arises; or

[2] B. does not regularly collect margin for such counterparty's excess net mark to market loss.

f. The term "registered clearing agency" has the meaning as defined in paragraph (f)(2)(A)(xxviii) of this Rule.

g. The term "round robin" trade means any transaction or transactions resulting in equal and offsetting positions by one customer with two separate dealers for the purpose of eliminating a turnaround delivery obligation by the customer.

h. A counterparty is a "small cash counterparty" if:

1. the absolute dollar value of all of such counterparty's open Covered Agency Transactions with, or guaranteed by, the member is $10 million or less in the aggregate, when computed net of any settled position of the counterparty held at the member that is deliverable under such open Covered Agency Transactions and which the counterparty intends to deliver;

2. the original contractual settlement date for all such open Covered Agency Transactions is in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions;

3. the counterparty regularly settles its Covered Agency Transactions on a Delivery Versus Payment ("DVP") basis or for "cash"; and

4. the counterparty does not, in connection with its Covered Agency Transactions with, or guaranteed by, the member, engage in dollar rolls, as defined in Rule 6710(z), or round robin trades, or use other financing techniques.

i. A member's "specified net capital deductions" are the net capital deductions required by paragraph (e)(2)(H)(ii)d.1. of this Rule with respect to all unmargined excess net mark to market losses of its counterparties, except to the extent that the member, in good faith, expects such excess net mark to market losses to be margined by the close of business on the fifth business day after they arose.

[i] j. The term "standby" means contracts that are put options that trade OTC, as defined in paragraph (f)(2)(A)(xxvii) of this Rule, with initial and final confirmation procedures similar to those on forward transactions.

(ii) Margin Requirements for Covered Agency Transactions

a. Scope and Exceptions: All Covered Agency Transactions with any counterparty, regardless of the type of account to which booked, shall be subject to the provisions of paragraph (e)(2)(H) of this Rule, except:

1. a member is not required to collect margin, or to take capital charges in lieu of collecting such margin, for a counterparty's excess net mark to market loss if such counterparty is a small cash counterparty, registered clearing agency, Federal banking agency, as defined in 12 U.S.C. 1813(z), central bank, multinational central bank, foreign sovereign, multilateral development bank, or the Bank for International Settlements; and

2. a member is not required to include a counterparty's Covered Agency Transactions in multifamily housing securities or project loan program securities in the computation of such counterparty's net mark to market loss, provided such securities are issued in conformity with a program of an Agency, as defined in Rule 6710(k), or a Government-Sponsored Enterprise, as defined in Rule 6710(n), and are documented as Freddie Mac K Certificates, Fannie Mae Delegated

Underwriting and Servicing bonds, or Ginnie Mae Construction Loan or Project Loan Certificates, as commonly known to the trade, or are such other multifamily housing securities or project loan program securities with substantially similar characteristics, issued in conformity with a program of an Agency or a Government-Sponsored Enterprise, as FINRA may designate by Regulatory Notice or similar communication.

b. Written Risk Limits: A member that engages in Covered Agency Transactions with any counterparty shall make a determination in writing of a risk limit for each such counterparty, including any counterparty specified in paragraph (e)(2)(H)(ii)a.1. of this Rule, that the member shall enforce. The risk limit for a counterparty shall cover all of the counterparty's Covered Agency Transactions with the member or guaranteed to a third party by the member, including Covered Agency Transactions specified in paragraph (e)(2)(H)(ii)a.2. of this Rule. The risk limit determination shall be made by a designated credit risk officer or credit risk committee in accordance with the member's written risk policies and procedures.

c. Mark to Market Margin: Members shall collect margin for each counterparty's excess net mark to market loss, unless otherwise provided under paragraph (e)(2)(H)(ii)d. of this Rule. Members are not required to collect margin, or take capital charges, for counterparties' mark to market losses on Covered Agency Transactions other than excess net mark to market losses.

d. Capital Charge in lieu of Margin: A member need not collect margin for a counterparty's excess net mark to market loss under paragraph (e)(2)(H)(ii)c. of this Rule, provided that:

1. the member shall deduct the amount of the counterparty's unmargined excess net mark to market loss from the member's net capital computed as provided in SEA Rule 15c3-1, if the counterparty is a non-margin counterparty or if the excess net mark to market loss has not been margined or eliminated by the close of business on the next business day after the business day on which such excess net mark to market loss arises;

2. if the member has any non-margin counterparties, the member shall establish and enforce risk management procedures reasonably

designed to ensure that the member would not exceed either of the limits specified in paragraph (e)(2)(I)(i) of this Rule and that the member's net capital deductions under paragraph (e)(2)(H)(ii)d.1. of this Rule for all accounts combined will not exceed $25 million;

3. if the member's specified net capital deductions [under paragraph (e)(2)(H)(ii)d.1. of this Rule for all accounts combined] exceed $25 million for five consecutive business days, the member shall give prompt written notice to FINRA. If the member's specified net capital deductions [under paragraph (e)(2)(H)(ii)d.1. of this Rule for all accounts combined] exceed the lesser of $30 million or 25% of the member's tentative net capital, as such term is defined in SEA Rule 15c3-1, for five consecutive business days, the member shall not enter into any new Covered Agency Transactions with any non-margin counterparty other than risk-reducing transactions, and shall also, to the extent of its rights, promptly collect margin for each counterparty's excess net mark to market loss and promptly liquidate the Covered Agency

Transactions of any counterparty whose excess net mark to market loss is not margined or eliminated within five business days from the date it arises, unless FINRA has specifically granted the member additional time; and

4. the member shall submit to FINRA such information regarding its unmargined net mark to market losses, non-margin counterparties and related capital charges, in such form and manner, as FINRA shall prescribe by Regulatory Notice or similar communication.

(I) Limits on Net Capital Deductions

In the event that:

(i) the net capital deductions taken by a member as a result of marked to the market losses incurred under paragraphs (e)(2)(F), (e)(2)(G) (exclusive of the percentage requirements established thereunder), or (e)(2)(H)(ii)d.1. of this Rule, plus any unmargined net mark to market losses below $250,000 or of small cash counterparties exceed:

a. for any one account or group of commonly controlled accounts, 5 percent of the member's tentative net capital (as such term is defined in SEA Rule 15c3-1), or

b. for all accounts combined, 25 percent of the member's tentative net capital (as such term is defined in SEA Rule 15c3-1); and

(ii) such excess as calculated in paragraph (e)(2)(I)(i) of this Rule continues to exist on the fifth business day after it was incurred;

the member shall give prompt written notice to FINRA and shall not enter into any new transaction(s) subject to the provisions of paragraphs (e)(2)(F), (e)(2)(G) or (e)(2)(H) of this Rule that would result in an increase in the amount of such excess.

(3) through (8) No Change.

(f) Other Provisions

(1) through (5) No Change.

(6) Time Within Which Margin or "Mark to Market" Must Be Obtained

The amount of margin or "mark to market" required by any provision of this Rule shall be obtained as promptly as possible and in any event within 15 business days from the date such deficiency occurred, unless FINRA has specifically granted the member additional time.

(7) through (10) No Change.

(g) through (h) No Change.

• • • Supplementary Material: ---------------

.01 No Change.

.02 Guaranteed. For purposes of paragraph (e)(2)(H) of this Rule, a member is deemed to have "guaranteed" a transaction if such member has become liable for the performance of either party's obligations under such transaction.

.03 Risk Limit Determination.

For purposes of any risk limit determination pursuant to paragraphs (e)(2)(F), (e)(2)(G) or (e)(2)(H) of this Rule:

(a) If a member engages in transactions with advisory clients of a registered investment adviser, the member may elect to make the risk limit determination at the investment adviser level;

(b) Members of limited size and resources that do not have a credit risk officer or credit risk committee may designate an appropriately registered principal to make the risk limit determinations;

(c) The member may base the risk limit determination on consideration of all products involved in the member's business with the counterparty, provided the member makes a daily record of the counterparty's risk limit usage; and

(d) A member shall consider whether the margin required pursuant to this Rule is adequate with respect to a particular counterparty account or all its counterparty accounts and, where appropriate, increase such requirements.

.04 Reserved.

.05 Reserved.

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EXHIBIT 5

Following shows the text of the proposed rule change, as amended by this Partial Amendment No. 1. All proposed changes are to the rule text as approved pursuant to SR-FINRA-2015-036. Proposed new language is underlined; proposed deletions are in brackets.

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4000. FINANCIAL AND OPERATIONAL RULES

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4210. Margin Requirements

(a) through (d) No Change.

(e) Exceptions to Rule

The foregoing requirements of this Rule are subject to the following exceptions:

(1) No Change.

(2) Exempted Securities, Non-equity Securities and Baskets

(A) through (G) No Change.

(H) Covered Agency Transactions

(i) Definitions

For purposes of paragraphs (e)(2)(H) and (e)(2)(I) of this Rule:

[a. The term "bilateral transaction" means a Covered Agency Transaction that is not cleared through a registered clearing agency as defined in paragraph (f)(2)(A)(xxviii) of this Rule.]

[b] a. The term "counterparty" means any person, including any "customer" as defined in paragraph (a)(3) of

this Rule, that is a party to a Covered Agency Transaction with, or guaranteed by, a member [that enters into a Covered Agency Transaction with a member and includes a "customer" as defined in paragraph (a)(3) of this Rule].

[c] b. The term "Covered Agency Transaction" means:

1. To Be Announced ("TBA") transactions, as defined in Rule 6710(u), inclusive of adjustable rate mortgage ("ARM") transactions, for which the difference between the trade date and contractual settlement date is greater than one business day;

2. Specified Pool Transactions, as defined in Rule 6710(x), for which the difference between the trade date and contractual settlement date is greater than one business day; and

3. Transactions in Collateralized Mortgage Obligations ("CMOs"), as defined in Rule 6710(dd), issued in conformity with a program of an Agency, as defined in Rule 6710(k), or a Government-Sponsored Enterprise, as defined in Rule 6710(n), for which the difference between the trade date and contractual settlement date is greater than three business days.

c. A counterparty's "excess net mark to market loss" means such counterparty's net mark to market loss to the extent it exceeds $250,000.

[d. The term "deficiency" means the amount of any required but uncollected maintenance margin and any required but uncollected mark to market loss.]

d. A counterparty's "net mark to market loss" means:

1. the sum of such counterparty's losses, if any, resulting from marking to market the counterparty's Covered Agency Transactions with the member, or guaranteed to a third party by the member, reduced to the extent of the member's legally enforceable right of offset or security by;

2. the sum of such counterparty's gains, if any, resulting from:

A. marking to market the counterparty's Covered Agency Transactions with the member, guaranteed to the counterparty by the member, cleared by the member through a registered clearing agency, or in which the member has a first-priority perfected security interest; and

B. any "in the money," as defined in paragraph (f)(2)(E)(iii) of this Rule, amounts of the counterparty's long standby transactions written by the member, guaranteed to the counterparty by the member, cleared by the member through a registered clearing agency, or in which the member has a first-priority perfected security interest.

[e. The term "gross open position" means, with respect to Covered Agency Transactions, the amount of the absolute dollar value of all contracts entered into by a counterparty, in all CUSIPs; provided, however, that such amount shall be computed net of any settled position of the counterparty held at the member and deliverable under one or more of the counterparty's contracts with the member and which the counterparty intends to deliver.]

e. A counterparty is a "non-margin counterparty" if:

1. the counterparty is not a small cash counterparty, registered clearing agency, Federal banking agency, as defined in 12 U.S.C. 1813(z), central bank, multinational central bank, foreign

sovereign, multilateral development bank, or the Bank for International Settlements; and

2. the member:

A. does not have a right under a written agreement or otherwise to collect margin for such counterparty's excess net mark to market loss and to liquidate such counterparty's Covered Agency Transactions if any such excess net mark to market loss is not margined or eliminated within five business days from the date it arises; or

B. does not regularly collect margin for such counterparty's excess net mark to market loss.

[f. The term "maintenance margin" means margin equal to 2 percent of the contract value of the net "long" or net "short" position, by CUSIP, with the counterparty.]

f. The term "registered clearing agency" has the meaning as defined in paragraph (f)(2)(A)(xxviii) of this Rule.

[g. The term "mark to market loss" means the counterparty's loss resulting from marking a Covered Agency Transaction to the market.]

[i] g. The term "round robin" trade means any transaction or transactions resulting in equal and offsetting positions by one customer with two separate dealers for the purpose of eliminating a turnaround delivery obligation by the customer.

[h. The term "mortgage banker" means an entity, however organized, that engages in the business of providing real estate financing collateralized by liens on such real estate.]

h. A counterparty is a "small cash counterparty" if:

1. the absolute dollar value of all of such counterparty's open Covered Agency Transactions with, or guaranteed by, the member is $10 million or less in the aggregate, when computed net of any settled position of the counterparty held at the member that is deliverable under such open Covered Agency Transactions and which the counterparty intends to deliver;

2. the original contractual settlement date for all such open Covered Agency Transactions is in

the month of the trade date for such transactions or in the month succeeding the trade date for such transactions;

3. the counterparty regularly settles its Covered Agency Transactions on a Delivery Versus Payment ("DVP") basis or for "cash"; and

4. the counterparty does not, in connection with its Covered Agency Transactions with, or guaranteed by, the member, engage in dollar rolls, as defined in Rule 6710(z), or round robin trades, or use other financing techniques.

i. A member's "specified net capital deductions" are the net capital deductions required by paragraph (e)(2)(H)(ii)d.1. of this Rule with respect to all unmargined excess net mark to market losses of its counterparties, except to the extent that the member, in good faith, expects such excess net mark to market losses to be margined by the close of business on the fifth business day after they arose.

[i] j. The term "standby" means contracts that are put options that trade OTC, as defined in paragraph (f)(2)(A)(xxvii) of this Rule, with initial and final

confirmation procedures similar to those on forward transactions.

(ii) Margin Requirements for Covered Agency Transactions

a. Scope and Exceptions: All Covered Agency Transactions with any counterparty, regardless of the type of account to which booked, shall be subject to the provisions of paragraph (e)(2)(H) of this Rule, except:

1. [with respect to Covered Agency Transactions with any counterparty that] a member is not required to collect margin, or to take capital charges in lieu of collecting such margin, for a counterparty's excess net mark to market loss if such counterparty is a small cash counterparty, registered clearing agency, Federal banking agency, as defined in 12 U.S.C. 1813(z), central bank, multinational central bank, foreign sovereign, multilateral development bank, or the Bank for International Settlements; and [, a member may elect not to apply the margin requirements specified in paragraph (e)(2)(H) of this Rule provided the member makes a written risk limit determination for

each such counterparty that the member shall enforce pursuant to paragraph (e)(2)(H)(ii)b.; and]

2. a member is not required to include [apply the margin requirements specified in paragraph (e)(2)(H) of this Rule with respect to] a counterparty's Covered Agency Transactions [with a counterparty] in multifamily housing securities or project loan program securities in the computation of such counterparty's net mark to market loss, provided[:]

[A.] such securities are issued in conformity with a program of an Agency, as defined in Rule 6710(k), or a Government-Sponsored Enterprise, as defined in Rule 6710(n), and are documented as Freddie Mac K Certificates, Fannie Mae Delegated Underwriting and Servicing bonds, or Ginnie Mae Construction Loan or Project Loan Certificates, as commonly known to the trade, or are such other multifamily housing securities or project loan program securities with substantially similar characteristics, issued in conformity with a

program of an Agency or a Government-Sponsored Enterprise, as FINRA may designate by Regulatory Notice or similar communication[; and].

[B. the member makes a written risk limit determination for each such counterparty that the member shall enforce pursuant to paragraph (e)(2)(H)(ii)b.]

b. Written Risk Limits: A member that engages in Covered Agency Transactions with any counterparty shall make a determination in writing of a risk limit for each such counterparty, including any counterparty specified in paragraph (e)(2)(H)(ii)a.1. of this Rule, that the member shall enforce. The risk limit for a counterparty shall cover all of the counterparty's Covered Agency Transactions with the member or guaranteed to a third party by the member, including Covered Agency Transactions specified in paragraph (e)(2)(H)(ii)a.2. of this Rule. The risk limit determination shall be made by a designated credit risk officer or credit risk committee in accordance with the member's written risk policies and procedures.

c. Mark to Market Margin: Members shall collect margin for each counterparty's excess net mark to market

loss, unless otherwise provided under paragraph (e)(2)(H)(ii)d. of this Rule. Members are not required to collect margin, or take capital charges, for counterparties' mark to market losses on Covered Agency Transactions other than excess net mark to market losses.

[c. The margin requirements specified in paragraph (e)(2)(H) of this Rule shall not apply to:]

[1. Covered Agency Transactions that are cleared through a registered clearing agency, as defined in paragraph (f)(2)(A)(xxviii) of this Rule, and are subject to the margin requirements of that clearing agency; and]

[2. any counterparty that has gross open positions in Covered Agency Transactions with the member amounting to $10 million or less in aggregate, if the original contractual settlement for all such transactions is in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions and the counterparty regularly settles its Covered Agency Transactions on a Delivery Versus Payment ("DVP") basis or for "cash"; provided, however, that such exception from the margin requirements

shall not apply to a counterparty that, in its transactions with the member, engages in dollar rolls, as defined in Rule 6710(z), or "round robin" trades, or that uses other financing techniques for its Covered Agency Transactions.]

d. Capital Charge in lieu of Margin: A member need not collect margin for a counterparty's excess net mark to market loss under paragraph (e)(2)(H)(ii)c. of this Rule, provided that:

1. the member shall deduct the amount of the counterparty's unmargined excess net mark to market loss from the member's net capital computed as provided in SEA Rule 15c3-1, if the counterparty is a non-margin counterparty or if the excess net mark to market loss has not been margined or eliminated by the close of business on the next business day after the business day on which such excess net mark to market loss arises;

2. if the member has any non-margin counterparties, the member shall establish and enforce risk management procedures reasonably designed to ensure that the member would not exceed either of the limits specified in paragraph

(e)(2)(I)(i) of this Rule and that the member's net capital deductions under paragraph (e)(2)(H)(ii)d.1. of this Rule for all accounts combined will not exceed $25 million;

3. if the member's specified net capital deductions exceed $25 million for five consecutive business days, the member shall give prompt written notice to FINRA. If the member's specified net capital deductions exceed the lesser of $30 million or 25% of the member's tentative net capital, as such term is defined in SEA Rule 15c3-1, for five consecutive business days, the member shall not enter into any new Covered Agency Transactions with any non-margin counterparty other than risk-reducing transactions, and shall also, to the extent of its rights, promptly collect margin for each counterparty's excess net mark to market loss and promptly liquidate the Covered Agency Transactions of any counterparty whose excess net mark to market loss is not margined or eliminated within five business days from the date it arises, unless FINRA has specifically granted the member additional time; and

<u>4. the member shall submit to FINRA such information regarding its unmargined net mark to market losses, non-margin counterparties and related capital charges, in such form and manner, as FINRA shall prescribe by Regulatory Notice or similar communication.</u>

[d. Transactions with Exempt Accounts: On any net "long" or net "short" position, by CUSIP, resulting from bilateral transactions with a counterparty that is an "exempt account" no maintenance margin shall be required. However, such transactions shall be marked to the market daily and the member shall collect any net mark to market loss, unless otherwise provided under paragraph (e)(2)(H)(ii)f. of this Rule. If the mark to market loss is not satisfied by the close of business on the next business day after the business day on which the mark to market loss arises, the member shall be required to deduct the amount of the mark to market loss from net capital as provided in SEA Rule 15c3-1 until such time the mark to market loss is satisfied. If such mark to market loss is not satisfied within five business days from the date the loss was created, the member shall promptly liquidate positions to satisfy the mark to market loss, unless FINRA has specifically granted

the member additional time. Members may treat mortgage bankers that use Covered Agency Transactions to hedge their pipeline of mortgage commitments as exempt accounts for purposes of paragraph (e)(2)(H) of this Rule.]

[e. Transactions with Non-Exempt Accounts: On any net "long" or net "short" position, by CUSIP, resulting from bilateral transactions with a counterparty that is not an "exempt account," maintenance margin, plus any net mark to market loss on such transactions, shall be required margin, and the member shall collect the deficiency, as defined in paragraph (e)(2)(H)(i)d. of this Rule, unless otherwise provided under paragraph (e)(2)(H)(ii)f. of this Rule. If the deficiency is not satisfied by the close of business on the next business day after the business day on which the deficiency arises, the member shall be required to deduct the amount of the deficiency from net capital as provided in SEA Rule 15c3-1 until such time the deficiency is satisfied. If such deficiency is not satisfied within five business days from the date the deficiency was created, the member shall promptly liquidate positions to satisfy the deficiency, unless FINRA has specifically granted the member additional time. No maintenance margin is required if the original contractual settlement for the

Covered Agency Transaction is in the month of the trade date for such transaction or in the month succeeding the trade date for such transaction and the customer regularly settles its Covered Agency Transactions on a DVP basis or for "cash"; provided, however, that such exception from the required maintenance margin shall not apply to a non-exempt account that, in its transactions with the member, engages in dollar rolls, as defined in Rule 6710(z), or "round robin" trades, or that uses other financing techniques for its Covered Agency Transactions.]

[f. Any aforementioned deficiency, as set forth in paragraph (e)(2)(H)(ii)e. of this Rule, or mark to market losses, as set forth in paragraph (e)(2)(H)(ii)d. of this Rule, with a single counterparty shall not give rise to any margin requirement, and as such need not be collected or charged to net capital, if the aggregate of such amounts with such counterparty does not exceed $250,000 ("the de minimis transfer amount"). The full amount of the sum of the required maintenance margin and any mark to market loss must be collected when such sum exceeds the de minimis transfer amount.]

[g. Unrealized profits in one Covered Agency Transaction position may offset losses from other Covered

Agency Transaction positions in the same counterparty's account and the amount of net unrealized profits may be used to reduce margin requirements. With respect to standbys, only profits (in-the-money amounts), if any, on "long" standbys shall be recognized.]

(I) Limits on Net Capital Deductions

[(i)] In the event that:

(i) the net capital deductions taken by a member as a result of [deficiencies or] marked to the market losses incurred under paragraphs (e)(2)(F), [and] (e)(2)(G) [of this Rule] (exclusive of the percentage requirements established thereunder), or (e)(2)(H)(ii)d.1. of this Rule, plus any unmargined net mark to market losses below $250,000 or of small cash counterparties [as set forth under paragraph (e)(2)(H)(ii)d. of this Rule and any deficiency as set forth under paragraph (e)(2)(H)(ii)e. of this Rule, and inclusive of all amounts excepted from margin requirements as set forth under paragraph (e)(2)(H)(ii)c.2. of this Rule or any de minimis transfer amount as set forth under paragraph (e)(2)(H)(ii)f. of this Rule,] exceed:

a. for any one account or group of commonly controlled accounts, 5 percent of the member's tentative net capital (as such term is defined in SEA Rule 15c3-1), or

b. for all accounts combined, 25 percent of the member's tentative net capital (as such term is defined in SEA Rule 15c3-1);[,] and[,]

(ii) [c.] such excess as calculated in paragraph (e)(2)(I)(i) [paragraphs (e)(2)(I)(i)a. or b.] of this Rule continues to exist on the fifth business day after it was incurred;[,]

the member shall give prompt written notice to FINRA and shall not enter into any new transaction(s) subject to the provisions of paragraphs (e)(2)(F), (e)(2)(G) or (e)(2)(H) of this Rule that would result in an increase in the amount of such excess [under, as applicable, paragraph (e)(2)(I)(i) of this Rule].

(3) through (8) No Change.

(f) Other Provisions

(1) through (5) No Change.

(6) Time Within Which Margin or "Mark to Market" Must Be Obtained

The amount of margin or "mark to market" required by any provision of this Rule[, other than that required under paragraph (e)(2)(H) of this Rule,] shall be obtained as promptly as possible and in any event within 15 business days from the date such deficiency occurred, unless FINRA has specifically granted the member additional time.

(7) through (10) No Change.

(g) through (h) No Change.

• • • Supplementary Material: --------------

.01 No Change.

.02 Guaranteed. For purposes of paragraph (e)(2)(H) of this Rule, a member is deemed to have "guaranteed" a transaction if such member has become liable for the performance of either party's obligations under such transaction.

[**.02 Monitoring Procedures.** For purposes of paragraph (e)(2)(H)(ii)d. of this Rule, members shall adopt written procedures to monitor the mortgage banker's pipeline of mortgage loan commitments to assess whether the Covered Agency Transactions are being used for hedging purposes.]

[**.03 Mark to Market Loss/Deficiency.** For purposes of paragraph (e)(2)(H) of this Rule, to the extent a mark to market loss or deficiency is cured by subsequent market movements prior to the time the margin call must be met, the margin call need not be met and the position need not be liquidated; provided, however, if the mark to market loss or deficiency is not satisfied by the close of business on the next business day after the business day on which the mark to market loss or deficiency arises, the member shall be required to deduct the amount of the mark to market loss or deficiency from net capital as provided in SEA Rule 15c3-1 until such time the mark to market loss or deficiency is satisfied.]

[**.04 Determination of Exempt Account.** For purposes of paragraph (e)(2)(H) of this Rule, the determination of whether an account qualifies as an exempt account shall be made based upon the beneficial ownership of the account. Sub-accounts managed by an investment adviser, where the beneficial owner is other than the investment adviser, shall be margined individually.]

.03 [.05] Risk Limit Determination.

[(a)] For purposes of any risk limit determination pursuant to paragraphs (e)(2)(F), (e)(2)(G) or (e)(2)(H) of this Rule:

(a) [(1)] If a member engages in transactions with advisory clients of a registered investment adviser, the member may elect to make the risk limit determination at the investment adviser level;

(b) [(2)] Members of limited size and resources that do not have a credit risk officer or credit risk committee may designate an appropriately registered principal to make the risk limit determinations;

(c) [(3)] The member may base the risk limit determination on consideration of all products involved in the member's business with the counterparty, provided the member makes a daily record of the counterparty's risk limit usage; and

(d) [(4)] A member shall consider whether the margin required pursuant to this Rule is adequate with respect to a particular counterparty account or all its counterparty accounts and, where appropriate, increase such requirements.

.04 Reserved.

.05 Reserved.

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