November 10, 2015

By Electronic Submission
Robert W. Errett
Deputy Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Subject: *Multifamily Industry Coalition Comments on SR-FINRA-2015-036*, Proposed Rule to Amend FINRA Rule 4210 Margin Requirements for To Be Announced Transactions (published October 20, 2015)

Dear Mr. Errett:

The undersigned 15 national organizations represent numerous facets of the multifamily real estate finance industry, including lenders, for-profit and nonprofit multifamily apartment owners, rental housing developers and managers, seniors housing owners and operators and residential healthcare facility owners and operators. Our member companies and organizations are key participants in the multifamily rental housing market, which provides rental housing to more than 18 million U.S. households.[1]

The multifamily housing industry coalition previously requested an extension of the 21 day comment period in an October 29, 2015 letter. Given this initial comment period, we are submitting this letter at this time and look forward to submitting additional comments.

We urge the Commission and FINRA to remove coverage of multifamily agency forward-settling transactions from the proposed rule SR-FINRA-2015-036. As the proposed rule lacks any data or analysis on the impacts to the very distinct multifamily finance market, we question why it should cover multifamily agency securitizations at all. We are concerned that the proposed rule could have significant and unintended consequences on the financing of multifamily rental apartments, the vast majority of which are affordable to families earning median income or less. Some of the important considerations are identified below.

[1] Multifamily housing generally refers to rental housing properties with five or more dwelling units, including various types of apartments, affordable rental housing, seniors or residential healthcare rental housing and also some rural multifamily housing and student housing.

Multifamily forward settling agency transactions[2] *are vastly different from the single family To Be Announced (TBA) market*, which is the focus of the proposed rule. In fact there is no TBA market for multifamily transactions due to the very specific nature of this market. In the multifamily market, *one* identified unique rental property is collateral for *one* mortgage which is securitized into *one* mortgage backed security. As a one-off transaction, a multifamily property is reviewed and underwritten over several months through expensive and extensive third party reports assessing physical condition, rental income analysis, property management plans, and more. Property owners and lenders in the highly specialized multifamily agency market are well-aligned and highly motivated to close a trade given the investment of time and money (typically $25,000 or more for the borrower's hard costs for one multifamily transaction). Since each multifamily property is unique, involves property-specific underwriting and credit determinations and is issued in a security with a unique interest rate, it is difficult to see how the requirement to mark-to-market on a daily basis would work at all.

The multifamily finance market is vitally important but does not pose systemic risk due to its aggregate size. While providing affordable and workforce rental housing to millions of households, the multifamily market, especially the forward-settling part of the market covered by the proposal, is too small to raise the systemic risk concerns that drives the proposed rule. FHA and Fannie Mae annual multifamily lending volumes total in the range of $50 billion — compared to the well over $1 trillion in annual new originations in the single-family mortgage market. Fannie Mae did $28.9 billion in 2014 multifamily business, about double that of FHA/Ginnie Mae. The average weekly exposure of outstanding forward commitments in the Fannie Mae multifamily program in 2014 was estimated to be only $3.4 billion.

Forward-settling multifamily loans are originated by a network of lenders approved by FHA/Ginnie Mae or Fannie Mae which subject lenders to strict oversight and capital requirements from the agencies. Importantly, a *Good Faith Deposit* mandated by Fannie Mae and FHA/Ginnie Mae is posted for the benefit of the broker-dealer or the investor in the security. When an extremely rare breakage occurs, the Good Faith Deposit from the borrower has provided protection to the broker-dealer and investor. The Good Faith Deposit from the borrower and other contractual clauses governing damages, have provided strong safeguards during the decades in which these multifamily programs have operated.

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[2] The proposed rule covers forward-settling agency securities. Therefore, agency models that do not utilize a forward trade would not be directly impacted by the rule.

Multifamily agency portfolios have had excellent credit performance before, during and following the financial crisis. Currently, Fannie Mae's multifamily portfolio (over 31,000 loans) has a 5 basis point 60-day delinquency rate, while Freddie Mac has a delinquency rate of 1 basis point and the FHA multifamily portfolio which Ginnie Mae wraps with a mortgage backed security has a 15 basis point 60-day delinquency rate[3]. The FHA/Ginnie Mae executions frequently support providing liquidity to rental properties in secondary and tertiary geographic markets including those with smaller-sized properties that might not otherwise be served. And given that affordable housing rental properties often involve non-profit borrowers who require a variety of sources of capital, imposing margining would have an acute impact on this very important sector.

We urge the Commission and FINRA to exclude multifamily agency forward-settling transactions from the proposed rule. Examination of the distinct aspects of the multifamily housing market and the related economic impact is necessary before this rule moves forward.

Thank you for your consideration. If you have any questions, please contact any of the organizations below or Eileen Grey at egrey@mba.org or 202-557-2747.

Sincerely,

AMERICAN SENIORS HOUSING ASSOCIATION
COMMERCIAL REAL ESTATE FINANCE COUNCIL
COMMITTEE ON HEALTHCARE FINANCING
COUNCIL FOR AFFORDABLE AND RURAL HOUSING
INSTITUTE OF REAL ESTATE MANAGEMENT
MORTGAGE BANKERS ASSOCIATION
NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION
NATIONAL APARTMENT ASSOCIATION
NATIONAL ASSOCIATION OF AFFORDABLE HOUSING LENDERS
NATIONAL ASSOCIATION OF HOME BUILDERS
NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS
NATIONAL ASSOCIATION OF REALTORS
NATIONAL LEASED HOUSING ASSOCIATION
NATIONAL MULTIFAMILY HOUSING COUNCIL
THE REAL ESTATE ROUNDTABLE

[3] A 60-day delinquency rate is standard in the multifamily finance sector. All delinquency rates provided are for September 2015.