September 15, 2017
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Frequently Asked Questions & Guidance
Covered Agency Transactions Under FINRA Rule 4210

In June 2016, the SEC approved FINRA's rule change (SR-FINRA-2015-036) amending FINRA Rule 4210 to establish margin requirements for Covered Agency Transactions. Covered Agency Transactions include (1) To Be Announced (TBA) transactions, inclusive of adjustable rate mortgage (ARM) transactions, (2) Specified Pool Transactions and (3) 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 defined more fully in new paragraph (e)(2)(H)(i)c. of Rule 4210 as adopted pursuant to the rule change. In *Regulatory Notice* 16-31, FINRA noted that the rule change becomes effective in two phases:

- The amendments relating to the risk limit determination requirements became effective on December 15, 2016;

- All other amendments pursuant to the rule change go into effect on June 25, 2018 (***Modified*** pursuant to SR-FINRA-2017-029).

Below FINRA is providing guidance regarding the rule change. FINRA may update this guidance. Updates will be marked "Modified" or "New." All references to provisions under Rule 4210 are to the new amendments (the "amendments") as adopted pursuant to the rule change, unless stated otherwise.

Market Appreciation of Covered Agency Transactions; $250,000 De Minimis Transfer Amount

Question 1

Under the amendments, is it permissible for a member, in its Covered Agency Transactions with a counterparty, to apply market appreciation, subsequent to the transaction, to satisfy the counterparty's mark to market and, where applicable, maintenance margin requirements for its Covered Agency Transaction positions? If market appreciation subsequent to the transaction reduces the mark to market loss[1] or deficiency,[2] as applicable, to an amount that is below the $250,000 de minimis transfer amount, is the mark to market loss or deficiency cured for purposes of the amendments?

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[1] Paragraph (e)(2)(H)(i)g. defines "mark to market loss" to mean the counterparty's loss resulting from marking a Covered Agency Transaction to the market.

[2] Paragraph (e)(2)(H)(i)d. defines "deficiency" to mean the amount of any required but uncollected maintenance margin and any required but uncollected mark to market loss.

Answer

Yes. Under the amendments, Supplementary Material .03 states in part that, for purposes of paragraph (e)(2)(H), 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. Paragraph (e)(2)(H)(ii)f. provides in part that any mark to market loss or deficiency 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 the counterparty does not exceed $250,000. FINRA believes that it is consistent with the rule and longstanding practice that market appreciation, subsequent to the transaction, may be applied to meet the counterparty's mark to market and, where applicable, maintenance margin requirements. Further, if market appreciation subsequent to the transaction, prior to the time the margin call would otherwise need to be met, reduces the mark to market loss or deficiency below the $250,000 de minimis transfer amount, and the remaining uncollected amount, as a matter of the member's policies and procedures, is within the member's risk tolerance and counterparty exposure limits, then FINRA believes the mark to market loss or deficiency would be cured for purposes of the amendments.

<u>Mark to Market Disputes</u>

Question 2

Suppose the amount of the margin call exceeds the $250,000 de minimis transfer amount and a dispute arises in connection with the mark to market on the Covered Agency Transaction with the counterparty. If the member has not collected the full amount of the required margin prior to the time the margin call must be met, but the then-uncollected amount is less than the $250,000 de minimis transfer amount, is the mark to market loss or deficiency, as applicable, cured for purposes of the amendments? Do the liquidation requirements under the amendments apply if the mark to market loss or deficiency is <u>not</u> cured within the five business day period specified under the amendments?

Answer

FINRA anticipates that bona fide mark to market disputes arise in the Covered Agency Transaction market from time to time, thereby raising practical issues as to margin collection. FINRA expects that, because the amount of the margin call exceeds the $250,000 de minimis transfer amount, a member will make the margin call for the full amount and will, as a matter of its policies and procedures, evaluate whether the dispute is in good faith and under what conditions a call may be considered satisfied. FINRA expects the member will have a process to seek to resolve the dispute. In such cases, if, by the time the margin call is required to be met, the aggregate amount of the mark to market loss or deficiency, as applicable, with the counterparty is less than the $250,000 de minimis transfer amount and, as a matter of the member's policies and procedures, is within the member's risk tolerance and counterparty exposure limits, then, under the amendments, liquidation is not required.

However, FINRA notes that if the then-remaining mark to market loss or deficiency, as applicable, with the counterparty exceeds the $250,000 de minimis transfer amount, and if the margin call is not timely met, as specified in the amendments, the member, to avoid needing to promptly liquidate positions, would need to request an extension of time from FINRA. *See also* Questions 8 through 10 *below*.

Question 3

In the event of a mark to market dispute in connection with a Covered Agency Transaction, will FINRA staff provide guidance as to the correct mark to market?

Answer

The mark to market in connection with a Covered Agency Transaction is determined by the parties to the transaction. FINRA expects members to act in good faith when marking to market their Covered Agency Transactions. However, FINRA staff will not offer guidance as to the correct mark to market.

<u>Reduction of Mark to Market Loss or Deficiency Below the $250,000 De Minimis Transfer Amount</u>

Question 4

In a Covered Agency Transaction, if the collateral that a member receives from a counterparty reduces the mark to market loss or deficiency, as applicable, to an amount that is below the $250,000 de minimis transfer amount, is the mark to market loss or deficiency cured for purposes of the amendments?

Answer

FINRA expects that, under the amendments, a member will make the margin call for the full amount of the mark to market loss or deficiency, as applicable, when the mark to market loss or deficiency exceeds the $250,000 de minimis transfer amount. FINRA notes however that, under the amendments, if the sum of the mark to market loss or deficiency, in aggregate with a single counterparty, does not exceed the $250,000 de minimis transfer amount and, as a matter of the member's policies and procedures, is within the member's risk tolerance and counterparty exposure limits, then such sum need not be collected or charged to net capital. As such, FINRA believes that, if the collateral that the member receives from the counterparty reduces the mark to market loss or deficiency to an amount that is below the $250,000 de minimis transfer amount, prior to the specified five business day period, and the remaining uncollected amount, as a matter of the member's policies and procedures, is within the member's risk tolerance and counterparty exposure limits, then the member may treat the margin call as satisfied and, under the amendments, liquidation is not required.

Question 5

Suppose a counterparty's mark to market loss or deficiency with a member exceeds the $250,000 de minimis transfer amount as of the close of business on Day 1 and the member issues a call for the full amount of the mark to market loss or deficiency on the next business day (Day 2). Suppose further that on the business day after the call is issued (Day 3), owing to market appreciation or collateral received from the counterparty, the mark to market loss or deficiency falls below the $250,000 de minimis transfer amount, for example, as discussed under Questions 1, 2 and 4 above. Under the amendments, is the member required to liquidate positions of the counterparty if the call is not met within five business days from the day the loss was created (Day 6)?

Answer

The specified five business day period under the amendments applies to five consecutive business days after a mark to market loss or deficiency, as applicable, is created. As such, if market appreciation, or collateral received from the counterparty, reduces the mark to market loss or deficiency below the $250,000 de minimis transfer amount at any time during the five consecutive business days from when the mark to market loss or deficiency is created and, as a matter of the member's policies and procedures, is within the member's risk tolerance and counterparty exposure limits, the mark to market loss or deficiency is cured for purposes of the amendments and liquidation is not required. If on a subsequent date the mark to market loss or deficiency again exceeds the $250,000 de minimis transfer amount, a new five business day period would commence on the following business day.

Question 6

Suppose a member receives an extension of time from FINRA to satisfy a call and, within the period for which the extension is granted, the mark to market loss or deficiency is reduced to below the $250,000 de minimis transfer amount because of market appreciation or because of collateral received from the counterparty. Is the mark to market loss or deficiency cured for purposes of the amendments?

Answer

Yes. If, within the period for which FINRA grants a member an extension of time, market appreciation, or collateral received from the counterparty, reduces the mark to market loss or deficiency, as applicable, below the $250,000 de minimis transfer amount, the mark to market loss or deficiency is cured for purposes of the amendments and liquidation is not required. *See* Questions 8 through 10 *below* for further discussion of extensions of time.

Timing of Margin Collection and Liquidation: Foreign Holidays

Question 7

Under the amendments, do the timing requirements for liquidation of positions make any allowance for differences in business days owing to foreign holidays?

Answer

Liquidation requirements under the amendments apply if the mark to market loss or deficiency, as applicable, is not satisfied within five business days from the date the mark to market loss or deficiency was created. FINRA notes that the amendments expressly provide that FINRA may grant the member an extension of time with respect to the liquidation requirements. In assessing extension requests in connection with Covered Agency Transactions, FINRA will consider the impact of foreign holidays and will provide members additional time, as appropriate, through the extension request process, in order to satisfy the mark to market loss or deficiency, as applicable. FINRA will announce, at the appropriate time, an online education tool on how to use the Regulatory Extension (REX) system for extension requests in connection with Covered Agency Transactions. *See also* Questions 8 through 10 *below*.

Granting Extensions of Time and the FINRA Regulatory Extension (REX) System

Question 8

Is FINRA planning to update the Regulatory Extension (REX) system to handle requests for extension of time in connection with Covered Agency Transactions? Will FINRA make available training or other explanatory material?

Answer

FINRA will update the REX system to accommodate members' requests for extensions of time related to Covered Agency Transactions. FINRA will announce, prior to the effective date of the amendments, an online education tool on how to use the REX system for extension requests in connection with Covered Agency Transactions.

Question 9

In a Covered Agency Transaction, which party can request an extension of time? Will FINRA permit the counterparty to the member to request an extension of time?

Answer

Under Paragraph (f)(6) of Rule 4210 extensions of time are granted to the member that is exposed to the unmet margin requirement and that needs to obtain margin from its customer.

With respect to Covered Agency Transactions, extension requests are to be submitted by, and, when granted, will be granted to, the member that is exposed to the counterparty's unmet mark to market loss or deficiency, as applicable.

Question 10

In connection with a Covered Agency Transaction, how many extensions would FINRA permit?

Answer

With respect to a Covered Agency Transaction, FINRA will permit two extensions of time for 14 calendar days each and expects that such requests will typically be granted. However, consistent with longstanding practice, FINRA will individually evaluate additional extension requests beyond the initial two. As previously noted above, FINRA will make available an online education tool on how to use the REX system for extension requests in connection with Covered Agency Transactions.

Eligibility for the "Cash Account Exceptions"

Question 11

Is a counterparty that is a non-exempt account automatically ineligible for the exception from the maintenance margin requirement under the amendments if the counterparty uses a financing technique (for example, a dollar roll) or records the transaction in a Regulation T margin account? Similarly, is a counterparty automatically ineligible for the $10 million gross open positions exception if the counterparty uses a financing technique (for example, a dollar roll) or records the transaction in a Regulation T margin account? What systems should a member put in place to monitor its counterparties for compliance with the requirements for these exceptions?

Answer

Paragraph (e)(2)(H)(ii)c.2. of the rule provides a specified exception from the margin requirements under the amendments for any counterparty that has gross open positions in Covered Agency Transactions with the member amounting to $10 million or less in aggregate, provided among other things the counterparty regularly settles its Covered Agency Transactions on a DVP basis or for cash and meets other specified conditions. Paragraph (e)(2)(H)(ii)e. of the rule provides an exception from maintenance margin requirements under the amendments for non-exempt accounts that meet similar specified conditions. Together, these are sometimes referred to as the "cash account exceptions" and are intended for accounts that pose less risk to the member because they regularly settle on a DVP basis or for cash rather than using financing techniques.

FINRA did not intend that, under the amendments, a counterparty would automatically lose the benefit of the cash account exceptions simply by engaging, for instance, in an occasional dollar roll, round robin trade or other financing technique, if the counterparty otherwise regularly settles in cash (that is, for full payment) on the settlement date. FINRA stated in *Regulatory Notice* 16-31 that the member may look to the prevailing or dominant pattern of the counterparty's behavior, including the counterparty's history of transactions with the member and any other information of which the member is aware. Further, FINRA stated that members should be able to rely on the reasonable representations of their customers for purposes of the requirement. The rule in this regard is designed to permit members flexibility to design policies and procedures as appropriate to implement the requirement, and to permit members scope for the reasonable use of their judgment in ascertaining the counterparty's regular payment pattern.

Though FINRA expects that members would implement policies and procedures, FINRA also notes the amendments do not mandate that the member implement any particular system or systems for monitoring the behavior of its counterparties. FINRA believes that reasonable means by which the member is able to be familiar with the counterparty's pattern of transactions should suffice for purposes of this requirement. Further, FINRA believes that recording a Covered Agency Transaction in a Regulation T margin account would not, of itself, automatically render the transaction a financing transaction.

<u>Master Securities Forward Transaction Agreements (MSFTAs) and Other Documentation</u>

Question 12

Does FINRA require the use of any agreement or other documentation between the parties to a Covered Agency Transaction, such as a Master Securities Forward Transaction Agreement (MSFTA) or other documentation? Can the provisions of an MSFTA supplant FINRA requirements under the amendments, such as the provisions as to liquidation of positions?

Answer

The amendments do not require the parties to a Covered Agency Transaction to use any particular agreement or documentation, whether an MSFTA or otherwise. The choice of documentation among the parties is a matter of the parties' commercial relationship. However, FINRA requirements must be met, regardless of the documentation the parties choose. The party that is responsible for extension of credit and is exposed to risk from the counterparty is responsible for compliance with Rule 4210. *See also* Question 13 *below*.

Compliance With Amendments and Implementation of MSFTAs

Question 13

Under the amendments, is it permissible for a member not to make a call for collateral to satisfy a mark to market loss or deficiency because an MSFTA or other documentation has not been completed or otherwise executed by the counterparty?

Answer

No. As discussed above, the amendments do not require the parties to a Covered Agency Transaction to use any particular agreement or documentation, whether an MSFTA or otherwise. A member is subject to the requirements of the amendments, with respect to all Covered Agency Transactions that the member engages in, without regard to whether an MSFTA or other agreement is completed or otherwise executed.

Risk Limits – General

Question 14

Does a member's obligation to make risk limit determinations under the rule change include counterparties that do not exceed the $10 million gross open positions exception or the $250,000 de minimis transfer thresholds? Is a member required to make and enforce a risk limit determination for each such counterparty?

Answer

Yes. A member must make, and enforce, a written risk limit determination[3] for each counterparty with which the member engages in Covered Agency Transactions. As such, the requirement, by its terms, applies to all counterparty accounts, including those that do not exceed the $10 million gross open positions or $250,000 de minimis transfer thresholds and thereby do not trigger the margin delivery requirements under the amendments. The rule is not intended to prescribe a particular methodology as to how members devise the written risk

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[3] Specifically, new paragraph (e)(2)(H)(ii)b. of Rule 4210 provides in part that members that engage in Covered Agency Transactions with any counterparty shall make a determination in writing of a risk limit for each such counterparty that the member shall enforce. The rule change also makes conforming revisions to the risk limit requirements that apply to current paragraphs (e)(2)(F) and (e)(2)(G) of Rule 4210. Paragraph (e)(2)(F) addresses transactions with exempt accounts involving certain good faith securities. Paragraph (e)(2)(G) addresses transactions with exempt accounts involving highly rated foreign sovereign debt securities and investment grade debt securities.

limits, provided the requirements as set forth under the amendments in paragraph (e)(2)(H)(ii)b. and Supplementary Material .05, which further addresses risk limit determinations, are complied with. FINRA believes, from the standpoint of managing a member's risk and in the interest of efficiency, it is reasonable that, in devising risk limits for multiple or larger numbers of counterparty accounts, similarly situated counterparties would be treated similarly. As such, it may be reasonable for members to establish risk limits for a counterparty based upon the aggregate characteristics of similar counterparties rather than performing an individual risk analysis of each individual counterparty.

Risk Limits – Advisory Accounts

Question 15

If an investment adviser allocates its Covered Agency Transactions among multiple accounts, may the member make the risk limit determination at the adviser level, or must risk limit determinations be made at the individual accounts level?

Answer

For purposes of any risk limit determination pursuant to the amendments, 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. This provision is intended to reduce the potential regulatory burdens that members otherwise would face. In making risk limit determinations as to advisory accounts, FINRA expects members to exercise appropriate diligence in understanding the extent of their risk and to craft their risk limit determinations accordingly.

Advisory Accounts and $10 Million Gross Open Positions Exception

Question 16

For purposes of transactions with advisory clients of a registered investment adviser, does the $10 million gross open position exception under paragraph (e)(2)(H)(ii)c.2. apply at the investment adviser level or at the individual accounts level?

Answer

The $10 million gross open position exception applies at the individual counterparty account level. FINRA expects that the amount would be applied to the account to which the investment adviser allocates the Covered Agency Transactions.

Advisory Accounts: "Cash Account Exceptions"; Treatment as Exempt Accounts

Question 17

For purposes of transactions with advisory clients of a registered investment adviser, may a member rely on representations by or information from the adviser when determining whether to treat a counterparty account as eligible for the "cash account exceptions" or for treatment as an exempt account?

Answer

FINRA believes that members, when evaluating whether an advisory client of a registered investment adviser satisfies the requirements specified under the amendments as to the "cash account exceptions," or when evaluating whether to treat such an advisory client as an exempt account under the rule, should be able to rely on the reasonable representations of the adviser and to place reasonable reliance on documentation and other relevant information provided by the adviser. FINRA expects members to exercise appropriate diligence when relying upon such representations, documentation or information.

Allocation of Responsibilities in Correspondent Clearing and Carrying Arrangements

Question 18

Under the amendments, is an introducing broker responsible for enforcing the specified margin and risk limit requirements as to the counterparty accounts with which it engages in Covered Agency Transactions, or is this the responsibility of the firm that carries the introducing broker's accounts?

Answer

The amendments do not address, and are not intended to change, current requirements as to allocation of responsibilities between introducing and carrying firms. Broadly, under FINRA Rule 4311(c)(1), extension of credit is among the responsibilities that must be allocated in a carrying agreement pursuant to that rule. To the extent members enter into MSFTAs or other agreements in connection with their Covered Agency Transactions and such agreements address extension of credit, members may wish to review their carrying agreements.

Eligible Collateral

Question 19

What is eligible collateral for purposes of satisfying a margin call under the amendments? May a counterparty satisfy a margin call with cash or with securities?

Answer

FINRA believes that, subject to the agreement of the parties, cash or any marginable securities should be permitted as collateral to satisfy a margin call under the amendments.

Aggregating Across Multiple Accounts of a Counterparty

Question 20

Suppose a counterparty has multiple accounts with a member, for example, an account for Covered Agency Transactions and a margin account. If the counterparty has a mark to market loss or deficiency, as applicable, in excess of the $250,000 de minimis transfer amount in the Covered Agency Transaction account and has margin excess in the margin account, is it permissible to apply the margin excess in the margin account to the mark to market loss or deficiency in the Covered Agency Transaction account?

Answer

Yes. FINRA believes that margin excess in an account other than the account in which the Covered Agency Transaction is recorded may be applied to reduce the mark to market loss or deficiency in the Covered Agency Transaction account, provided the accounts are of the same counterparty. This is consistent with Rule 4210(f)(5), which provides in part that when two or more accounts are carried for a customer, the margin to be maintained may be determined on the net position of said accounts, provided the customer has consented that the money and securities in each of such accounts may be used to carry or pay any deficit in all such accounts. FINRA expects that, to be considered accounts of the same counterparty, the accounts would be of the same legal name and tax ID. The member should ensure that any excess margin used in this manner is not used for any other margin requirement. FINRA has provided similar guidance in the context of satisfying a portfolio margining deficiency.[4]

Account in Which Covered Agency Transaction is Booked

Question 21

Under the amendments, is a member obligated to record its Covered Agency Transactions in a cash account, margin account, or any other type of specified account?

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4 *See* Interpretation /01 of FINRA Rule 4210(g)(10)(A) in the Interpretations of FINRA's Margin Rule, available at: <www.finra.org/industry/guidance>.

Answer

The amendments do not specify the type of account in which Covered Agency Transactions must be recorded. Members should be mindful of the requirements of Regulation T when considering the type of account in which to record Covered Agency Transactions.

Computation of Maintenance Margin

Question 22

Under the amendments is it permissible for a member to compute maintenance margin based on market value of the relevant Covered Agency Transaction?

Answer

Under paragraph (e)(2)(H)(i)f. of the rule, maintenance margin is defined to mean margin equal to 2 percent of the contract value of the net "long" or net "short" position, by CUSIP, with the counterparty. In establishing the rule, FINRA noted its intent to reflect ordinary and consistent industry usage with respect to the maintenance margin computation. FINRA believes that, with respect to computing maintenance margin for Covered Agency Transactions, the rule's intent is to capture the meaningful economic value of the position that is relevant to the member's risk. To the extent a member has in place systems or processes that are designed to refer to the market value of a position for purposes of the computation, FINRA believes that such should be permissible.

Valuation of Collateral

Question 23

Do the amendments impose or otherwise alter any requirements for valuing collateral posted to a member?

Answer

No. The amendments are not intended to address or otherwise change longstanding market practices and applicable requirements for valuing collateral posted to a member.

Determination of Exempt Account

Question 24

For purposes of determining whether a person[5] may be treated as an exempt account under the amendments, what are the factors that are permissible to take into account? Is it permissible to take into account such data as the person's assets under management for purposes of paragraph (a)(13)(b)(ii)e. of Rule 4210?

Answer

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 SEA 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 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 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, and meets specified conditions as set forth under paragraph (a)(13)(B)(ii).

Under paragraph (a)(13)(B)(ii)e., one specified condition is that the person "makes available to the member such current information regarding such person's ownership, business, operations and financial condition (including such person's current audited statement of financial condition, statement of income and statement of changes in stockholder's equity or comparable financial reports), as reasonably believed by the member to be accurate, sufficient for the purposes of performing a risk analysis in respect of such person." FINRA believes that

[5] For purposes of Rule 4210, "person" has the meaning as in SEA Section 3(a)(9), which defines "person" to mean a natural person, company, government, or political subdivision, agency, or instrumentality of a government.

the rule provides sufficient scope for a member, using reasonable judgment and diligence, in accord with its policies and procedures and overall risk management, to consider such information as to the person's business or operations, including such information as the assets under management, that enable the member to make an assessment as to whether to treat the person as an exempt account.

Third Party Custodial Arrangements

Question 25

If a counterparty is subject to a prohibition, by virtue of regulatory requirements, from posting collateral directly to a broker-dealer, is it permissible for such a counterparty, in connection with its Covered Agency Transactions, to post the required collateral by means of a third party custodial arrangement?

Answer

FINRA has stated that the amendments do not address third party custodial arrangements. However, FINRA believes that, under the amendments, any third party custodial arrangements that are currently permissible under SEC rules and SEC staff guidance, or were otherwise permissible under FINRA Rule 4210 prior to the rule change, should also be permissible for Covered Agency Transactions. For reference, FINRA has addressed a similar Question in FINRA's Portfolio Margin FAQ, under "Portfolio Margin Account Management."[6]

Standby Commitments

Question 26

How should members treat standby commitments?

Answer

A standby commitment represents the equivalent of a short put option in a counterparty account that gives the member the right to deliver to the counterparty, against payment, a Covered Agency Transaction on a specified future date.[7] The margin requirements under the amendments apply to the amount of a counterparty's forward purchase commitments in Covered Agency Transactions pursuant to such long standby, that is, short put option. The

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6 Available at: <http://www.finra.org/industry/portfolio-margin-faq>.

7 For reference, *see* Interpretation /01 of FINRA Rule 4210(e)(2)(F) in the Interpretations of FINRA's Margin Rule, available at: <www.finra.org/industry/guidance>.

counterparty's margin requirement, pursuant to paragraph (e)(2)(H)(ii)g., may be reduced by profits (that is, in-the-money amounts), if any, on long standbys. FINRA will shortly update the Interpretations of FINRA's Margin Rule.

Clearing Agencies

Question 27

What is a registered clearing agency for purposes of the amendments? Do the amendments impose any requirements as to which registered clearing agencies are permissible for purposes of clearing Covered Agency Transactions?

Answer

Paragraph (f)(2)(A)(xxviii) under Rule 4210 provides that a registered clearing agency means a clearing agency as defined in Section 3(a)(23) of the Exchange Act that is registered pursuant to Section 17A(b)(2) of that Act. Further information on registered clearing agencies is available on the SEC website at: <https://www.sec.gov/divisions/marketreg/mrclearing.shtml> and <https://www.sec.gov/rules/sro.shtml>.

Paragraph (e)(2)(H)(ii)c.1. provides that the margin requirements specified under the amendments shall not apply to Covered Agency Transactions that are cleared through a registered clearing agency, as defined in paragraph (f)(2)(A)(xxviii), and are subject to the margin requirements of that clearing agency. Other than to specify the definition of a registered clearing agency under the Exchange Act, the amendments are not intended to specify which registered clearing agencies qualify for purposes of the exception or are permissible for purposes of clearing Covered Agency Transactions.

CMOs Collateralized Solely by Multifamily Housing Securities or Project Loan Program Securities

Question 28

If the collateral underlying a CMO consists solely of multifamily housing securities or project loan program securities, would that CMO be subject to the margin requirements under the amendments? Is there a process by which members may request designation by FINRA for products that are within the scope of the exception for multifamily and project loan securities as set forth under the amendments?

Answer

Paragraph (e)(2)(H)(ii)a.2. provides that a member is not required to apply the margin requirements under the amendments with respect to Covered Agency Transactions with a counterparty in multifamily housing securities or project loan program securities, provided, in part, that such securities are issued in conformity with a program of an Agency as defined in FINRA Rule 6710(k), or a Government-Sponsored Enterprise, as defined in FINRA 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.[8] FINRA expects that a CMO that is collateralized solely by multifamily or project loan securities, as specified in the rule, would be consistent with the scope of the exception. Under the amendments, this exception from the margin requirements further applies to "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." Members with questions about whether a product may be treated as a multifamily housing security or project loan security for purposes of the amendments may contact covered.agency.margin@finra.org.

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8 Under the amendments, the requirement to make and enforce written risk limit determinations, as specified under paragraph (e)(2)(H)(ii)b., applies.