May 14, 2021

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Request for Comment on Proposed Amendments to the Margin Rule Regarding When Issued and Other Extended Settlement Transactions

Dear Ms. Mitchell:

The American Securities Association (ASA)[1] welcomes this opportunity to comment on the Financial Industry Regulatory Authority's (FINRA) proposed changes to Rule 4210 regarding margin requirements for extended settlement transactions and when issued securities. (Proposal) We appreciate FINRA's ongoing work to review and update its rulebook for broker-dealers as markets evolve.

At the outset, we note that it is unclear what specific problem or market failure the Proposal is intended to address. Current market standards regarding extended settlement transactions and when issued securities have worked well in practice, and FINRA should not attempt to fix something that is not broken. There has been no evidence of increased credit risk or harm to investors as a result of current standards. We believe FINRA should clearly define the problem it is attempting to address prior to issuing a final rule.

Regardless, should FINRA decide to move forward with this rulemaking, we believe certain changes are necessary to ensure the Proposal achieves its intended impact without unnecessarily disrupting current market practices or creating implementation challenges for broker dealers. These changes include: 1) Expanding the public offering exception for when issued securities to include debt securities and follow-on offerings; and 2) Including an 18-month implementation timetable for compliance.

I. The public offering exception for when issued securities should include debt securities and follow-on offerings.

When issued securities are typically treated as an extended settlement transaction and are subject to margin requirements under FINRA Rule 4210(f)(3). A longstanding exception to these requirements has been in place for public offerings and, as the Proposal notes, FINRA member firms have typically interpreted this to apply to certain debt securities and follow-on offerings. Reliance on this exception has

[1] *The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership of almost one hundred members that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.*

become common within the industry and has not raised any type of investor protection or credit risks amongst member firms or their customers.

In a departure from current market standards, FINRA is seeking to narrowly apply this exception only to equity initial public offerings (IPOs). While FINRA justifies this approach by explaining that the exception was always "intended" to apply only to equity IPOs, it would disrupt existing practices that many broker-dealers and their customers rely on. Extended settlement cycles beyond T+2 are often appropriate for debt transactions, particularly for high yield or convertible debt offerings that can have longer settlement periods. Corporate debt would also be treated differently than Treasury and municipal securities under the Proposal.

When the Securities and Exchange Commission adopted final rules to shorten the settlement cycle to T+2 in 2017, the Commission did not distinguish between equity IPOs and debt securities in the context of extended settlement transactions.[2] The ASA does not believe the exclusion for when issue securities should be unworkably narrowed to include only equity IPOs. FINRA should instead amend the Proposal to reflect the market practices in place for years that have functioned well without creating undue risk.

II. FINRA should allow for a minimum 18-month implementation period for compliance.

The Proposal does not include a suggested implementation period, but we believe FINRA should allow member firms 18 months to come into compliance. Certain aspects of the Proposal will present operational complexities for broker-dealers, particularly smaller brokers that do not have the same compliance bandwidth as larger firms. FINRA notes that the Proposal could also result in capital charges in certain instances where firms had not been treating extended settlement transactions as extensions of credit. To prepare for some of these potential changes, we believe an 18-month implementation period is appropriate and necessary.

The ASA thanks FINRA for its work in releasing the Proposal, and we look forward to working with FINRA and the SEC as this important initiative moves forward.

Sincerely,

Kelli McMorrow

Kelli McMorrow
Head of Government Affairs
American Securities Association

[2] https://www.sec.gov/rules/final/2017/34-80295.pdf