

Drafting Guide

**Form of Amendment to
Master Securities Forward
Transaction Agreement to
Conform with FINRA 4210
(the "4210 Amendment")**

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Form of Amendment to Master Securities Forward Transaction Agreement to Conform with FINRA 4210 (the "4210 Amendment")

Contributed by [GuyLaine Charles](#) of Charles Law PLLC

This Drafting Guide discusses the [Form of Amendment](#) to Master Securities Forward Transaction Agreement to Conform with [FINRA 4210](#) (the "4210 Amendment") published by FINRA in 2018. Instead of modifying the 2012 MSFTA to include provisions to conform it to the Adopted Rule 4210, the [Securities Industry & Financial Markets Association](#) (SIFMA) drafted an amendment for use with all MSFTA's with at least one FINRA member dealer as a party. The following outlines and explains the terms of the 4210 Amendment.

Title & Description	Drafting Issues & Analysis
<p>The 4210 Amendment is unnecessary and problematic if no FINRA member dealer is a party to the MSFTA.</p>	<p>Almost all MSFTA's with FINRA member Dealers include the 4210 Amendment or its 2017 predecessor. Occasionally an influential client will insist on including in Annex I only the 4210 Amendment provisions that it believes are necessary. Dealers generally acquiesce if the manager's assessment of necessary provisions is similar to their own.</p> <p>The amendment is effective only as of the effective date the Adopted Rule 4210 (currently, March 25, 2021), so that none of its provisions would apply to current transactions until that date.</p>
<p>Section 2 – <i>Reference to 4210 Status Annex</i></p>	<p>The complicated provisions governing which entities are required to post margin are handled by an attached "4210 Status Annex" and if the MSFTA is an umbrella agreement, a Multiple Principal Addendum, to that annex.</p>
<p>Section 3 – <i>Scope of the Agreement</i></p>	<p>This provision states that regardless of what has been previously agreed between the parties, Covered Transactions will be Transactions under the MSFTA. In addition, to encourage multi-family housing, Adopted Rule 4210 allows the parties to exempt multi-family housing MBS and project loan MBS from its requirements. If the parties anticipate trading those instruments, they may wish to include the optional language in this Section 3 to exempt those instruments.</p>
<p>Section 4 – <i>Minimum Transfer Amount</i></p>	<p>This provision reduces minimum transfer amounts (MTA) in excess of USD 250,000 down to the maximum amount permitted when Adopted Rule 4210 goes into effect. This provision can be excluded if the MTA in the MSFTA is already \$250,000 or lower.</p>
<p>Section 5 – <i>Threshold Amount</i></p>	<p>This provision reduces Threshold Amounts down to zero when revised Rule 4210 goes into effect. This provision can be amended to allow the Dealer to have a Threshold Amount.</p>
<p>Section 6 – <i>Maintenance Margin</i></p>	<p>If a party is subject to Maintenance Margin, this provision adds any required Maintenance Margin to the Additional Margin Amount once the Maintenance Margin requirements of Adopted Rule 4210 go into effect. Dealers would generally rely upon the representations made in the 4210 Status Annex and Multiple Principal Addendum and financial information supplied to them to make the determination of whether Maintenance Margin is applicable.</p>

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Section 7 – <i>Margin Turn-off</i>	This optional provision disapplies Para. 4 of the MSFTA (margin requirements) if a FINRA member dealer determines that a counterparty (for example, a sovereign) is exempt from all margining requirements under Adopted Rule 4210. In so doing, it relieves both the counterparty and the Dealer from margining obligations. The parties may nevertheless omit this provision and require margining even if not required by Adopted Rule 4210.
Section 8 – <i>Liquidation Period</i>	Adopted Rule 4210 requires that if a Dealer's counterparty does not meet a required margin call (where the unmarginated exposure exceeds any MTA) within five Business Days, the dealer must close out any or all Transactions to the extent necessary to eliminate the margin deficiency (<i>i.e.</i> , a mini close-out), or may call an Event of Default. Mini close-out in this context is exceedingly unlikely to eliminate the margin deficiency. Dealers may apply to FINRA for a delay of the requirement for up to 28 calendar days.
Section 9 – <i>Eligible Forward Collateral</i>	Although FINRA has not proposed any limitations on Eligible Forward Collateral or minimum margin percentages for types of collateral (haircuts), FINRA has suggested that it might do so in the future. This provision is included to apply any future restrictions automatically.
Section 10 – <i>Implementation Date</i>	This provision states that none of the 4210 Amendment nor the 4210 Status Annex will be effective until the date the Adopted Rule 4210 becomes effective.
Section 11 – <i>Effect of Notification</i>	SIFMA proposed a form of negative consent letter in 2017, which many Dealers sent to all their MBS counterparties. The letter vaguely amended existing MSFTA's as needed to comply with Rule 4210 as it may go into effect. Many counterparties objected to the letter and insisted on a formal amendment; this optional provision nullifies any prior negative consent letter.
4210 Status Annex	This Annex provides representations to be made by each party which determines the extent to which the terms of Adopted Rule 4210 apply to the relationship. The representations are somewhat confusing and need to be read carefully.