
APPENDIX IV-1

SECURITIES MARKETING AND TRADING REQUIREMENTS

- a. General. This Appendix, which supplements Chapter 12 of the Ginnie Mae MBS Guide, sets forth the securities marketing and trading requirements established by Ginnie Mae and applicable to all issuers under the Ginnie Mae Mortgage-Backed Securities Program. The requirements are intended to assure that issuers carry out their securities marketing and trading activities in a manner consistent with prudent business practices and their own and others' financial capacity.
- b. Definitions. As used in this Appendix, the following terms have the indicated meaning.
- (1) *“Delayed delivery contract”* means a contract for the purchase or sale of one or more securities to be delivered at an agreed future settlement date, which is more than thirty calendar days after the contract's trade date. The term includes both contracts which contemplate mandatory delivery and acceptance of the securities (including agreements to sell/purchase and subsequently repurchase/resell) and option contracts which give one party the right but not the obligation to deliver securities to, or demand delivery of securities from, the other party. The term does not include futures contracts or options contracts utilized in a contract market, or listed on an exchange, designated as such by, and in compliance with the requirements of, the Commodities Futures Trading Commission or the Securities and Exchange Commission. A delayed delivery contract is “open” if it has not been fulfilled by the delivery of securities or, in the case of an option, it has not been but still may be exercised.
 - (2) *“Mark to market”* means the act of determining the market price of securities purchased or sold pursuant to an open delayed delivery contract and the further act, by the party which has an unrealized loss (when the market price is measured against the contract's price), of depositing collateral for the benefit of the contract's other party.
 - (3) *“Regulated transaction”* means the purchase or sale of securities by an issuer pursuant to a delayed delivery contract, except that the term does not include:
 - a) A sale of securities where (i) the issuer holds a valid outstanding Commitment to guarantee Mortgage-Backed Securities (which is not applied in connection with another transaction) issued by Ginnie Mae in an amount at least equal to the face amount of the securities sold, and (ii) the settlement date under the contract is no later than the last day of the calendar month in which the 150th day after the contract's trade date falls;
 - b) A sale of securities guaranteed by Ginnie Mae under the Ginnie Mae I MBS Program and based on construction loans (construction loan securities) or project loans (project loan securities);
 - c) A sale or purchase of securities pursuant to a contract which does not obligate the issuer to actually sell/purchase securities; that is, a put or call transaction in which the issuer has the option to perform; or
 - d) A purchase (or sale) of mortgage participation certificates directly from (or to) Freddie Mac.

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- (4) “*Securities*” means any security guaranteed by Ginnie Mae pursuant to section 306(g) of the National Housing Act and mortgage participation certificates issued by Freddie Mac.
 - (5) “*Settlement date*” means the date agreed upon by the parties to a regulated transaction for the full and final payment of funds and delivery of securities or the date on which the parties make full and final payment of funds and delivery of securities.
 - (6) “*Trade date*” means the date on which the parties to a regulated transaction agree to the purchase or sale of securities, regardless of the date on which the securities are to be delivered or the right to deliver them may be exercised.
- c. Suitability of Issuer Marketing and Trading Transactions. An issuer shall enter into agreements to purchase or sell securities only to the extent the transactions are suitable for the issuer in view of its financial capacity and existing contractual obligations, including contracts with Ginnie Mae. An issuer shall not enter into any agreement to purchase or sell securities if the result of the transaction could materially jeopardize the issuer’s ability to continue to satisfy Ginnie Mae’s basic net worth requirements or the issuer’s ability to continue to administer its outstanding securities.
 - d. Prudent Business Practices. Issuers are required to exercise sound and prudent business practices in the marketing and trading of securities. For the most part, issuers’ relationships with the investing public are carried out through securities dealers. The following rules apply to issuers’ direct relationships with dealers as well as with all investment bankers, individuals, corporations, trusts, and other entities to which the issuer delivers, or makes commitments to deliver or purchase, securities.

Issuers must make provisions for the management elements listed below to assure prudent business practices in the issuance of, and in the making of commitments relating to, securities.

- (1) Procedures must be established by issuers to provide the basis for determining the financial integrity of the securities dealers, brokers and investors with whom they conduct business, and to assure that relationships with dealers, brokers and investors are carried out in a businesslike manner. These procedures must be in written form and be provided to all members of the issuer firm empowered to make commitments to deliver or acquire securities.

The procedures must include standards for, and steps taken in, determining the financial capacity of dealers, brokers or investors to complete a transaction and determining the business reputation of the dealers, brokers or investors. While Ginnie Mae does not prescribe specific procedures, it is recommended that issuers do the following as a minimum:

- a) Obtain and review audited financial statements with the view toward assuring the adequacy of the dealer’s, broker’s or investor’s capital.
- b) Obtain financial and business references on the dealer, broker or investor firm.
- c) Obtain a general resolution of the Board of Directors (or other governing body) of the dealer, broker or investor firm designating the specific individuals

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- associated with the dealer, broker or investor who are authorized to carry out transactions in securities.
- d) Establish and record all of the terms and conditions of each delayed delivery contract entered into. Check all confirmations to assure they are complete and accurate.
 - e) Know and understand the standard business practices and trading ethics encouraged by the securities industry. Determine whether the firms under review follow these practices.
- (2) Internal management controls must be established to assure coordination of delayed delivery contract activities, controls on the issuer's market positions, and the competence and integrity of staff. The controls must include:
- a) The Board of Directors of the issuer must execute a resolution in writing designating a key person or persons responsible for the overall supervision and coordination of issuer activities relating to the marketing and trading of securities, including the maintenance of records on such activities.
 - b) In addition, the issuer must have a procedure for designating the specific individuals authorized to make commitments involving purchases or sales of securities in the name of the issuer. The key person(s) must maintain a list of such authorized individuals. Only such designated persons shall be permitted to enter into agreements on behalf of the issuer to make commitments to deliver or to acquire securities.
 - c) Records must be established and maintained on a current basis for all commitments entered into to either deliver or acquire securities. Such records shall include at a minimum for each transaction:
 - 1. Date of the transaction (trade date).
 - 2. Type of securities.
 - 3. Nature of transaction: purchase or sale; optional or mandatory delivery; repurchase or other credit arrangement.
 - 4. Settlement date.
 - 5. Dollar amount of securities.
 - 6. Interest rate on the securities.
 - 7. "Price" of the securities.
 - 8. Name of the firm and individual with whom the transaction was executed.
 - 9. Current market price (value) of the contract, to be recorded at least weekly.

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- d) In addition the records must include with respect to an issuer's aggregate [open] transactions in mortgage loans and securities:
1. The issuer's "net position." The specific definition of "net position" is left to the issuers, however, it should include all loans and securities closed and held for sale, plus those expected to be acquired, less commitments the issuer has available for disposing of loans and securities. It also should include any positions involving repurchase, reverse-repurchase, or other credit transactions. The issuer's "net position" must be calculated and recorded at least once each week.
 2. The amount in any margin or mark to market accounts held for the issuer or for a contra-party, with a notation explaining the computation of the amount on deposit, the location of the deposit, and the form of the collateral on deposit.
- e) All of the above records must be maintained for a period in accordance with established procedures for comparable records but for no less than one year from the date the sale or purchase actually is completed.
- e. Contract (Mark to Market) Requirements. These minimum contract requirements are applicable to regulated transactions.
- (1) Minimum contract requirements: Issuers may engage in a regulated transaction only if they undertake the transactions in accordance with executed delayed delivery contracts which require, at a minimum, each of the following (except paragraph (d) which the parties at their option may agree to require):
 - a) Both parties shall agree to mark to market at least once each week from the trade date until the settlement date.
 - b) A party which deposits collateral pursuant to its obligation to mark to market shall make the deposit with an independent federally regulated financial institution in the form of: (i) cash, (ii) unmatured negotiable debt obligations issued or guaranteed by the United States Government or an agency or instrumentality thereof, or (iii) irrevocable, unconditional letters of credit in the form prescribed in Appendix VI-3 of the Ginnie Mae Mortgage-Backed Securities Guide, and issued by a banking institution supervised by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Federal Reserve Board. The institution at which the collateral is deposited shall be unrelated to, not affiliated with, and in no way controlled by a party to the regulated transaction.
 - c) The collateral maintained with the independent financial institution shall be increased or adjusted at least weekly to the extent necessary to assure a deposit, by the party which has a net unrealized loss with respect to all its regulated transactions with the same contra-party, with a value equal to one hundred percent of the net unrealized loss.

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- d) The amount of collateral required may be adjusted downward to the extent the unrealized loss associated with an issuer's purchase of securities in a regulated transaction is offset by an unrealized gain (measured from the date of the issuer's purchase) with respect to a sale (to the same contra-party and on substantially the same terms) of securities, which sale is not a regulated transaction because of the exclusion provided in section b.(3)(a), above. The respective purchase and sale transactions will be considered to be on substantially the same terms if they provide for settlement in the same month and in the same type of securities. (If, for example, the purchase contemplates delivery of Ginnie Mae single family, level payment (SF) securities, the sale must contemplate delivery of such securities and not the delivery of GEM, GPM or manufactured home (MH) securities guaranteed by Ginnie Mae.)
 - e) Both parties shall agree to the method by which the market price of securities will be determined.
 - f) Each party shall maintain complete and accurate records of each regulated transaction, including its mark to market calculations and its deposits and adjustments of collateral made with respect to each delayed delivery contract under which it is obligated to make deposits. (See section f. below.)

Note: This provision relates to so-called "pair-off" transactions. When an issuer's forward market commitment to purchase securities is for the purpose of offsetting a forward market commitment to sell securities (to the same contra-party and on substantially the same terms) unrealized gains or losses are to be measured from the date of the purchase transaction. The net effect is that losses on the purchase side of the "pair-off" will be offset by gains on the sale side. As a result, no collateral requirement will arise, so long as the amount of the purchase transaction does not exceed the amount of the sale. In such a situation, the minimum contract requirements of section e.(1) are not applicable.

- g) The same institution may be the depository for collateral deposited by a party under different delayed delivery contracts. The collateral deposited by a party under one delayed delivery contract may be commingled with collateral deposited by that party under other delayed delivery contracts with the same contra-party.
- (2) Alternatively, issuers may satisfy these minimum contract requirements by carrying out regulated transactions through clearing and settlement procedures established by a central clearing facility, which procedures substantially conform with the requirements of this section, as determined by Ginnie Mae.
- f. Reports to Ginnie Mae. Issuers must be prepared to report to Ginnie Mae, upon demand by Ginnie Mae, on their compliance with the requirements of this Appendix. The call for such reports may be made by any authorized representative of the President of Ginnie Mae and may be made by mail, or visit to the issuer's offices. Reports requested by Ginnie Mae may include, but are not limited to, the following:

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- (1) Procedures established to determine the financial integrity of dealers, brokers and investors, including an explanation of standards for, and steps taken in, determining the financial capacity of dealers, brokers and investors to complete transactions.
 - (2) The names of key persons and other individuals authorized to make commitments involving securities.
 - (3) Copies of the resolutions designating the key persons.
 - (4) Records of all securities transactions and of “net position,” including all the information identified in section d.(2) (c) and (d) above.
 - (5) Copies of delayed delivery contracts and records evidencing compliance with Ginnie Mae mark to market deposit requirements.

Information on securities transactions, including information on “net position” and on mark to market deposits, may contain data which the issuer does not wish to be disclosed to the public. Accordingly, an issuer may identify data which it regards as confidential commercial or financial information, through the use of the legend set forth below. In responding to a Freedom of Information Act request for information covered by a legend, Ginnie Mae will honor the issuer’s desire for confidentiality to the extent permitted by law.

“Financial data contained in page(s) of this report is material which the issuer regards as confidential commercial or financial information which, if released to the public, would in the issuer’s opinion adversely affect its competitive position. Therefore, the issuer does not wish such material to be disclosed to the public. In utilizing this legend, the issuer understand that:

- a) Ginnie Mae will make every effort to honor this legend in responding to a Freedom of Information Act request for materials covered by the legend;
 - b) Notwithstanding the above, the Government must independently determine whether disclosure of any such material is necessary in light of the requirements of the Freedom of Information Act; and
 - c) The Government will disclose any and all requested material covered by an issuer’s legend if the Government determines that such disclosure is required by the Freedom of Information Act.”
- g. Failure to Comply. Failure by an issuer to comply with the requirements of this Appendix is sufficient basis for Ginnie Mae, at its option, to withhold from the issuer further commitments to guarantee mortgage-backed securities.