By Electronic Mail (rule-comments@sec.gov)

May 10, 2022

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington D.C. 20549

Re: Order Granting Petition for Review and Scheduling Filing of Statements; In the Matter of Financial Industry Regulatory Authority, Inc. Regarding an Order Granting the Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036, 87 Fed. Reg. 23287 (Apr. 19, 2022) (the "Order").

Dear Ms. Countryman,

We are writing on behalf of SouthState Bank, N.A., Winter Haven, FL ("SouthState") and Duncan-Williams, Inc., Memphis, Tennessee ("DWI") commenting on the January 20, 2022 approval of an amendment to SR–FINRA–2015–036 by the Division of Trading and Markets of the Securities and Exchange Commission. This letter addresses the FINRA Rule 4210 issues that are central to the business of our bank dealer at SouthState and/or our FINRA-regulated dealer, DWI.

As background, SouthState is a national bank headquartered in Winter Haven, Florida, with branches located in the six Southeastern states of Alabama, Florida, Georgia, North Carolina, South Carolina and Virginia. As of March 31, 2022, SouthState had consolidated assets of approximately $46 billion and deposits of $39 billion and shareholders' equity of 5.2 billion. In addition to its commercial bank operations, SouthState also operates a nationwide correspondent banking and capital markets service division headquartered in Atlanta, Georgia for over 1,060 small and medium sized community financial institutions throughout the United States. Part of the Correspondent Division operations include bank dealer activities regulated by the Office of the Comptroller of the Currency ("OCC"). These bank dealer activities include the purchase and sale of fixed income securities including Agency MBS, CMO, RMBS and CMBS for its correspondent bank customers. These bank dealer activities have taken place for more than 20 years at SouthState and predecessor institutions.

DWI is a 53-year old regional, FINRA regulated broker-dealer headquartered in Memphis, Tennessee, and is a wholly owned subsidiary of SouthState. DWI operates as a fully-disclosed introducing broker-dealer to Pershing LLC. DWI has participated in the market for agency mortgage-backed securities ("MBS") for more than 25 years. DWI's typical clients are community banks and credit

unions, national and regional insurance companies and money managers, municipalities and other institutional fixed income investors. As a firm, DWI is active in trading a wide array of fixed income products, including Agency MBS, CMO, RMBS and CMBS, as well as providing execution services for non-Agency RMBS and CMBS.

SR–FINRA–2015–036 amends Rule 4210 to require broker-dealers who underwrite most new-issue agency MBS transactions to collect and hold variation margin from customers purchasing securities. Because FINRA has recognized that many smaller and mid size broker-dealers, like DWI, do not have and cannot obtain margin agreements or Master Securities Forward Transactions Agreements (MSFTAs) with their MBS customers, the amendment changes the requirements for covered agency transactions ("CATs") under Rule 4210 (the "CAT Amendment") to include an option for a dealer to take a capital charge in lieu of collecting margin on a dollar-for-dollar basis.

We understand that the "CAT Amendment was designed to address concerns that SR–FINRA–2015–036 would disproportionately and negatively impact the smaller and medium sized firms, like DWI, that participate in the market for new-issue agency MBS. The CAT Amendment, however, does not achieve that goal and ignores the very real possibility that routine, low-risk transactions could consume all of a firm's regulatory capital under the wrong market conditions. Therefore, we believe the Commission should reject the CAT Amendment and direct FINRA to revise SR–FINRA–2015–036 in line with long established market practices governing the clearance and settlement of new-issue agency MBS.

Specifically, the CAT Amendment does not address the most fundamental flaw with SR–FINRA–2015–036, which is that it does not comport with long-established market practices around the clearance and settlement of agency MBS. Sales of new-issue agency MBS settle on a monthly schedule established and published by SIFMA. Because of timing considerations inherent in the new-issue agency MBS market, dealers must obtain purchase commitments from investor customers well in advance of the scheduled settlement date. That time between when the customer commits to a purchase and when the securities are delivered would trigger the margin requirements under the CAT Amendment because it almost always exceeds two days.

Procedures for clearing and settling MBS trades involving monthly closing dates have existed since 1981. The processes and systems that support agency MBS issuance are established and proven. The system of monthly settlements functioned robustly during the financial crisis. FINRA has not demonstrated why it is necessary to alter the current function of a successful market. For this reason, we urge the Commission to direct FINRA to rewrite SR–FINRA–2015–036 in a manner consistent with existing market practices for clearing MBS trades. Trades should be marginable only if they settle outside the SIFMA settlement schedule.

Unlike large broker-dealers, many mid-size broker-dealers active in the agency MBS market, like DWI, do not have margin agreements or MSFTAs with their investor customers. That means most mid-size broker-dealers have no means to collect and hold margin funds from customers. Moreover, many mid-size MBS dealers are correspondent or introducing dealers whose trades clear through a clearing firm. That means even if the correspondent firm with the customer relationship was able to obtain a MSFTA from a customer, it cannot directly enter into a margin agreement with the customer. Additionally, for correspondent firms like DWI which clear through clearing dealers, the CAT Amendments could result in requirements for dealers to post variation margin to their clearing firms in addition to taking capital charges in lieu of customer margin, doubling the financial hit those firms face under the Rule. For these reasons, if the CAT Amendment becomes fully implemented, firms like DWI will have challenges collecting and holding customer margin funds and would in almost all cases need to take capital charges in lieu of margin while likely facing additional and duplicative capital charges from their clearing brokers.

With the only means of compliance available to most mid-size firms being capital charges, these underwriters could see substantial impairment of regulatory capital in just the kind of market conditions we are witnessing today. Customer orders of new-issue agency MBS result in long customer positions. In a rising rate environment like today, capital charges in lieu of variation margin, and any duplicative capital charges received from clearing brokers, could quickly consume all the capital a firm can allocate to this activity. The CAT Amendment would result in situations where some firms' activities are essentially frozen until the monthly MBS settlement date. This would severely handicap firms who compete with dealers who are able to collect and hold customer margin funds. And it would be applied to transactions which are fully hedged or offset from the dealer's perspective and present very little risk.

Ultimately mid-size broker-dealers like DWI may face significant market pressure from numerous larger FINRA regulated counter-parties, under the threat of reduced trading lines, to enter into MSFTA's and to simultaneously have to provide margin across all of those multiple counter-parties without the assured ability to offset with margin collected from its investor customers. In addition to the capital constraints previously mentioned, this situation could create a significant resource and administrative burden and could result in DWI and other similar market participants deciding to limit its trading counter-parties and its market participation, thereby lessening competition and liquidity in the overall market.

The CAT Amendment is not the solution. However, going back to the version of the Rule adopted by the Commission in 2016 would be an even worse outcome. FINRA has already acknowledged its negative impact on smaller and medium sized firms. That version of the Rule requires collecting both maintenance and variation margin on CAT trades and does not allow for a dealer

capital charge in lieu of collecting margin. The 2016 Rule, by disallowing the capital charge in lieu of collecting margin, would squeeze all but the largest FINRA dealers and banks out of the MBS business immediately and completely.

From the perspective of SouthState, because it also operates a bank dealer and is a customer in the market facing FINRA broker-dealers which are subject to the CAT Amendment, SouthState will face significant market pressure from numerous larger FINRA regulated counter-parties to enter into MSFTA's under the threat of reductions of trading lines. These MSFTA's require SouthState to simultaneously provide margin across all of those multiple counter-parties. This situation could create a significant resource and administrative burden and could result in SouthState and other market participants deciding to limit trading counter-parties and its market participation, thereby lessening competition and liquidity in the overall market.

In conclusion, the definition of marginable trade in the CAT Amendment should be changed to be consistent with well-established industry and market practices around monthly settlement schedules. FINRA Rules should respect that the new-issue agency MBS market is currently functioning efficiently and it has proven its ability to do so during prior periods of market stress as its system of monthly settlements functioned robustly during the financial crisis. We urge the Commission to reject the CAT Amendment and direct FINRA to revise the proposal in keeping with industry standards by requiring margin only on transactions that clear outside the scheduled settlement window.

Respectfully submitted,

DUNCAN-WILLIAMS, INC.

Duncan F. Williams
President

SOUTHSTATE BANK, N.A.

Brad Jones
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