

Larry W. Bowden
Executive Vice President
Fixed Income

May 10, 2022

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC 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,

On January 20, 2022 the Division of Trading and Markets of the Securities and Exchange Commission approved under delegated authority an amendment to SR-FINRA-2015-036, which amends the requirements for covered agency transactions ("CATs") under FINRA Rule 4210 (the "CAT Amendment"). Stephens Inc. desires, as provided for in the Order, to state its opposition to the action made pursuant to delegated authority and to support the Petition for Review filed by the Bond Dealers of America, Inc. (the "BDA") and Brean Capital, LLC ("Brean") on January 27, 2022 (the "Petition").

Stephens Inc. is an independent financial services firm that clears mortgage security transactions through Pershing LLC. We are an active participant in the market for agency mortgage-backed securities. Our client base includes regional mortgage originators, investment advisors, banking institutions, credit unions, foundations, state agencies and medium sized companies, most of which do not have relationships with primary dealers. Stephens Inc. maintains an inventory in a range of \$100 million to \$250 million in agency MBS securities and MBS transactions make up more than half of our sales and trading transactions. New-

Issue agency transactions for our customers are a significant and essential service, as many of our customers do not have direct access to primary dealers. The new-issue agency transactions are also essential to hedge our mortgage inventory and provide our mortgage originator clients with the ability to hedge their mortgage pipeline.

We believe the CAT Amendment would disproportionately and negatively impact the smaller- and medium-sized firms that participate in the market for new-issue agency MBS. The CAT Amendment disadvantages nonbank-affiliated broker-dealers relative to others and is therefore anticompetitive. We also believe, as set forth fully in the Petition that FINRA does not have regulatory authority to set margin on CATs, if the Commission finds otherwise it 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.

To date, Stephens Inc. has limited exposure to counterparties that require a margin agreement to transact MBS securities, as the rule has yet to go into effect. With even this very limited exposure to the margin rule, we have experienced unexpected burdensome and anti-competitive issues.

An early survey of our customers indicated many of our clients are uncomfortable with executing a Master Securities Forward Transaction Agreement that indicates there is a potential liquidity event or margin call in a volatile market, even if unlikely. This becomes an even greater problem for us because bank affiliated firms do not require the execution of such a document. Some of our mortgage originator clients have made us aware that the bank affiliated broker dealers are already using this regulatory difference to highlight the advantage of dealing with a bank affiliated firm rather than a FINRA regulated broker dealer.

Other problems highlight the advantage the larger clients and primary brokers have in administering this rule. The larger firms have an obvious advantage in dictating and arguing the terms when determining the price in calculating the margin. Since the larger firms have ready access to the mortgage secondary market, they can and do use this leverage to dictate price in disputes and have slow walked the return of posted margin. The larger firms understand the

relationship is critical to the smaller firm in order to get access to the secondary mortgage market, but the relationship is expendable to the larger firm.

Our very limited engagement with MSFTA agreements that require margin also have highlighted the lack of MBS margining infrastructure with our clearing firm, Pershing. Since we are not self-clearing, a margin call requires transfers of funds outside of normal clearing operations that have been confusing, delayed and inefficient.

We have also experienced confusion in dealing with investment advisors that have multiple custodial relationships, each with their own unique requirements.

These are just some of the issues we have encountered to date with very small exposure to the margin rule that has yet to go into effect. In our experience, there has been very few failures to deliver, receive, or pay for MBS securities and these have been worked out on a timely basis. We have had significant transaction activity during volatile periods, such as 2008 and 2020 without concerning losses due to mortgage exposure. While we can identify significant costs, complications, regulatory arbitrage and liquidity concerns from this rule, it is difficult to ascertain any offsetting benefit. The likely result of this margin rule would be to push regional FINRA regulated broker dealers out of the market during volatile market movements, which is when small and medium sized mortgage buyers and sellers would need them most. The cost to fully implement this rule would be extreme and would be very difficult to administer without the direct participation and support of our clearing firm.

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 impose a T+2 clearing standard on a market that simply does not support it. For this reason, we urge the Commission to direct FINRA to rewrite SR-FINRA-2015-036 in a manner consistent with market practices for clearing MBS trades. Trades should be marginable only if they settle outside the SIFMA settlement schedule.

We believe the issues regarding risk in the mortgage market is properly addressed simply by changing the definition of marginable trade in the CAT Amendment to

be consistent with well-established industry and market practices around monthly settlement schedules. New-issue agency MBS underwriting is not a T+2 market. It never has been. FINRA Rules should respect that. We urge 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,

A handwritten signature in black ink, appearing to read "L. Bowden", with a long horizontal flourish extending to the right.

Larry Bowden