

Cooper & Kirk

Lawyers

A Professional Limited Liability Company

1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036

David H. Thompson
dthompson@cooperkirk.com

(202) 220-9600
Fax (202) 220-9601

May 10, 2022

Via Electronic Mail

Vanessa Countryman, Esq., Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: 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, Release No. 34-94013; File No. SR-FINRA-2021-010.

Dear Ms. Countryman:

As Counsel for the Bond Dealers of America (“BDA”) and Brean Capital, LLC, (“Brean”) (collectively, “Petitioners”), and in response to the Commission’s April 14, 2022, Order Granting Petition for Review and Scheduling Filing of Statements, we submit this Statement in Opposition to Approval of the 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 (Securities Exchange Act Release No. 34-94013; File No. SR-FINRA-2021-010).

Respectfully submitted,



David H. Thompson
Harold S. Reeves
Peter A. Patterson

Thomas J. Fleming, Olshan Frome Wolosky, LLP
Adrienne M. Ward, Olshan Frome Wolosky, LLP

**Before the
SECURITIES AND EXCHANGE COMMISSION**

In the Matter of:)	
)	
)	
Proposed Rule Change, as Modified by)	
Amendment No. 1, to Amend the Requirements)	
for Covered Agency Transactions under FINRA)	File No. SR-FINRA-2021-010
Rule 4210 (Margin Requirements) as Approved)	
Pursuant to SR-FINRA-2015-036)	
)	

**PETITIONERS’ STATEMENT IN OPPOSITION
TO APPROVAL OF THE PROPOSED RULE CHANGE**

In response to the Commission’s April 14, 2022, Order Granting Petition for Review and Scheduling Filing of Statements, the Bond Dealers of America and Brean Capital, LLC (collectively, “Petitioners”) hereby submit this Statement in Opposition to Approval of the Proposed Rule Change in File No. SR-FINRA-2021-010 as Modified by Amendment No. 1, to Amend the Requirements for Covered Agency Transactions (“CATs”) under FINRA Rule 4210 as Approved Pursuant to SR-FINRA-2015-036 (“the Proposed Rule Change”). Petitioners have fully set forth their arguments in opposition to the Proposed Rule Change in their original Petition for Review and incorporate those arguments herein by reference.¹ Petitioners submit this statement to clarify three points that should aid the Commission in its review of the Proposed Rule Change.

First, it is imperative both that the stay of the Approval Order that was issued on January 20, 2022 in File No. SR-FINRA-2021-010 by the Division of Trading and Markets pursuant to delegated authority remain in place while the Commission reviews the Proposed Rule Change and

¹ See Petition for Review of the January 20, 2022, Order in File No. SR-FINRA-2021-010 issued by the Division of Trading and Markets pursuant to delegated authority Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Requirements for Covered Agency Transactions under FINRA Rule 4210 as Approved Pursuant to SR-FINRA-2015-036 (Feb. 3, 2022) (hereinafter “Petition for Review”) (available at <https://bit.ly/3N0CPS8>).

that the Commission promptly clarify the time frame that would apply for implementing the Proposed Rule Change in the event of an adverse ruling. Maintaining the stay is imperative given the many and immediate harms that the Proposed Rule Change would have on market participants. Clarifying that the Proposed Rule Change would, under no circumstances, take effect earlier than nine to ten months after the full Commission renders its final decision (*not* from the date of the January 2022 Approval Order) is necessary to avoid imposing unnecessary costs and inflicting pointless injuries on market participants. The broker-dealers who would have to comply with the Proposed Rule Change would need the full implementation period in order to bring their policies and procedures, as well as their back office systems and IT infrastructure, into compliance.²

And, as the President of the Government National Mortgage Association, Alanna McCargo, explained in her January 20, 2022, submission to the Commission, FINRA’s proposed margin requirements “would have a detrimental impact on smaller broker-dealers who are most focused on community institutions” that serve “first-time homebuyers, households of emerging or repairing credit, veteran families, and borrowers located in rural and underserved communities and tribes.”³ As Petitioners explained in their Petition for Review, Pet. for Rev. at 27–31, were the Proposed Rule Change approved, those community institutions and the other customers who today transact their business through smaller- and medium-sized broker-dealers would be forced to shift their business to larger market players and non-FINRA banks. This transition would not occur

² See Pet. for Rev. at 14–15. See also Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change To Amend FINRA Rule 4210 (Margin Requirements) To Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3, Exchange Act Release 34-78081 (Jun. 15, 2016), 81 Fed. Reg. 40364, 40376 (Jun. 21, 2016) (observing that eighteen months would be needed to implement the 2015 proposed rule change).

³See Letter of Alanna McCargo, President, Government National Mortgage Association (Jan. 20, 2022) (available at <https://bit.ly/39KhNsx>).

instantaneously and entirely on the day the Rule actually took effect. Instead, clients would begin to shift their business away from these broker-dealers as soon as the ten-month clock proposed by FINRA begins to count down. If customers are today left in doubt as to when that clock might begin to run, they will begin to make those changes today. To avoid rendering the pending stay illusory, therefore, as well as to prevent further injury to these broker dealers and unnecessary disruption of the market, the Commission should clarify, as soon as practicable, that the Rule would not, under any circumstances, come into effect until nine to ten months from the date that the full Commission issues its final decision.

Second, the Commission should deny the 2021 Proposed Rule Change and continue to deny effectiveness to SR-FINRA-2015-036, insofar as that Rule would subject forward-settling transactions in federal government mortgage backed securities (“Agency MBS”) to margin requirements.⁴ As demonstrated in the Petition for Review, FINRA not only lacks the statutory authority to set margin for CATs, Pet. for Rev. at 20–26, but has proposed a margin regime that would be practically unworkable and, due to its impact on smaller- and medium-sized broker-dealers, unjustifiably anticompetitive, *id.* at 26–45. While FINRA is to be commended both for having agreed that the margin regime that it proposed in SR-FINRA-2015-036 was fatally flawed and should therefore not be allowed to take effect, and for having worked earnestly with industry participants thereafter, the fact remains that its effort to impose margin on forward-settling MBS remains unworkable and unlawful. Indeed, after all these years, FINRA has yet to demonstrate

⁴ Because the margin requirements set in SR-FINRA-2015-036 have never been allowed to take effect and would take effect now only if the Commission were to approve the implementation schedule under review in SR-FINRA-2021-010, the Commission could prevent both the 2015 and 2021 margin regimes from taking effect simply by denying the Proposed Rule Change. Petitioners do not challenge the risk limitation determination requirements of the 2015 Rule Change.

why it is necessary to impose a T+2 clearing standard on forward-settling new-issue Agency MBS, much less why the benefits to the market would outweigh the serious harms to smaller and medium-sized broker-dealers that doing so would cause. As Petitioners' submissions have demonstrated the 2021 Proposed Rule Change, along with the overall program, threatens to deprive the market of significant liquidity, creating the instability that it seeks to prevent. Petitioners therefore urge the Commission to reject the 2021 Proposed Rule Change, continue to defer indefinitely the effectiveness of the margin regime proposed in SR-FINRA-2015-036, and end FINRA's misguided effort to exercise an authority that it does not possess to address a problem that does not exist.

Finally, Petitioners hereby formally request that, if the Commission ultimately approves the Proposed Rule Change, the Rule be stayed pending resolution of the Petition for Review that Petitioners intend to file with the United States Court of Appeals for the District of Columbia Circuit in that event.


CONCLUSION

For the reason set forth above and in Petitioners' February 3, 2022, Petition for Review, the Approval Order should be reversed and the Proposed Rule Change denied.

DATED: May 10, 2022

Respectfully Submitted,

Adrienne M. Ward
Thomas J. Fleming
OLSHAN FROME WOLOSKY LLP
1325 Avenue of the Americas
New York, NY 10019
(212) 451-2300



David H. Thompson
Peter A. Patterson
Harold S. Reeves
COOPER & KIRK, PLLC
1523 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202) 220-9600

Counsel for Petitioners

CERTIFICATE OF SERVICE

I, David H. Thompson, counsel for the Bond Dealers of America and Brean Capital, LLC, hereby certify that on May 10, 2022, I served a copy of the attached Statement in Opposition to Approval of the 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 (Securities Exchange Act Release No. 34-94013; File No. SR-FINRA-2021-010) on Vanessa Countryman, Vanessa Countryman, Esq., Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090, by electronic mail at Secretarys-Office@sec.gov in compliance with SEC Rule of Procedure 150(c), and on FINRA, by electronic mail to their counsel of record at adam.arkel@finra.org.

Dated: May 10, 2022

/s/ David H. Thompson
David H. Thompson