

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59733; File No. SR-FINRA-2009-010)

April 8, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Expand TRACE to Include Agency Debt Securities and Primary Market Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 18, 2009, the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. On April 8, 2009, FINRA submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the FINRA Rule 6700 Series (except for Rules 6720 and 6740) and FINRA Rule 7730 as follows:

(1) in Rule 6710, to amend the defined terms (A) “TRACE-eligible security” in paragraph (a) to include securities issued or guaranteed by an agency or a government-sponsored enterprise (except securities issued by the U.S. Treasury) as TRACE-eligible debt securities

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 was a partial amendment that: (i) revised the definition of “Asset-backed security” set forth in the purpose section to accurately reflect the proposed rule text; (ii) amended the definition of “TRACE-eligible security” in both the purpose section and the rule text to remove a parenthetical that was inadvertently included in the original proposal; and (iii) made minor technical edits to the purposed rule text.

under the Rule 6700 Series (the Trade Reporting and Compliance Engine (“TRACE”) rules), to delete certain criteria for TRACE-eligibility, and to restate the definition, including incorporating technical changes; (B) “Reportable TRACE transaction” in paragraph (c) to include primary market transactions as reportable to TRACE and to incorporate technical changes; and (C) “Investment Grade” in paragraph (h) and “Non-Investment Grade” in paragraph (i) to classify unrated Agency debt securities, as defined herein, as Investment Grade securities for purposes of dissemination and to incorporate technical changes;

(2) in Rule 6710, to add the defined terms, “Agency,” “Agency debt security,” “Asset-backed security,” “Government-sponsored enterprise,” “Money market instrument,” “U.S. Treasury security,” “List or fixed offering price transaction” and “Takedown transaction,” as respectively, new paragraphs (k) through (r);

(3) in Rule 6710, to make technical changes to the defined terms, “Trade Reporting and Compliance Engine,” “Time of execution,” “Party to the transaction,” “TRACE Participant,” “Introducing Broker,” and “Split-rated,” in respectively, paragraphs (b), (d), (e), (f), (g) and (j);

(4) in Rule 6730, to establish end-of-day reporting requirements for primary market transactions that are List or fixed offering price transactions and Takedown transactions, to require indicators in transaction reports to distinguish secondary market transactions from primary market transactions and to further distinguish primary market transactions that are List or fixed offering price transactions and Takedown transactions from those that are not, and to incorporate other technical changes;

(5) in Rule 6750, to provide that transaction information for List or fixed offering price transactions and Takedown transactions will not be disseminated, and to incorporate other technical changes;

(6) in Rule 6760, to modify the information and notification requirements for newly issued TRACE-eligible securities to provide for more timely notice from members to FINRA and to incorporate technical and clarifying changes; and

(7) in Rule 7730, to establish reporting and market data fees for Agency debt securities transactions and primary market transactions at the same rates in effect for corporate bonds, to provide an exception for certain primary market transactions, and to incorporate technical changes.

The text of the proposed rule change is available on FINRA's Web site at (<http://www.finra.org>), at the principal office of FINRA, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

I. Introduction

FINRA believes that TRACE has had a positive impact on the corporate bond market and proposes to expand the scope of securities reportable to TRACE to increase transparency, enhance investor protection and foster market integrity across a larger portion of the debt market.

For debt securities that currently are TRACE-eligible, TRACE has contributed to better pricing, more precise valuations and reduced investor costs. In addition, TRACE data has enhanced surveillance of the corporate bond market.

The proposed rule change will expand TRACE to include Agency debt securities, as defined herein, and primary market transactions. FINRA proposes to add such securities to provide additional transparency and to foster the development of improvements observed in corporate bonds -- improved pricing, narrower bid-ask spreads, reduced investor costs, and more precise valuations -- across a broader portion of the debt market. Also, FINRA believes that the proposed expansion of TRACE, including certain primary market transactions that will not be disseminated, will enhance market surveillance. Many bonds have an intense period of trading during the primary offering and shortly thereafter, and the reporting of such transactions will permit FINRA to obtain information, observe patterns of trading, and otherwise engage in more in-depth surveillance of the debt market.

The proposed rule change amends FINRA Rule 6700 Series (except for Rules 6720 and 6740) and FINRA Rule 7730. The amendments to FINRA Rule 6700 Series add to TRACE securities that are issued or guaranteed by a Government-sponsored enterprise or a U.S. government agency (except the U.S. Department of the Treasury or Asset-backed securities issued or guaranteed by an Agency or a Government-sponsored enterprise) (collectively “Agency debt securities”) and primary market transactions. Certain primary market transactions that are defined as List or fixed offering price transactions and Takedown transactions will be subject to more flexible end-of-day reporting requirements, will not be disseminated, and will not be subject to reporting fees, if timely and accurately reported.

In connection with the proposed expansion, FINRA amends the defined term “TRACE-eligible security” in Rule 6710(a) to add Agency debt securities as TRACE-eligible securities, to delete certain criteria, and to restate the definition to clarify its scope and the exceptions. In addition, FINRA proposes amendments to other defined terms in Rule 6710, the most important of which are the amendments to the term “Reportable TRACE transaction” to permit reporting of primary market transactions to TRACE and their dissemination. Also, FINRA proposes to add several defined terms to Rule 6710 that are related to the incorporation of Agency debt securities and primary market transactions in TRACE. Finally, FINRA will amend various currently defined terms in Rule 6710 to incorporate minor technical, stylistic or conforming changes.

The proposed rule change includes amendments to Rule 6730, Rule 6750 and Rule 6760. Rule 6730 contains reporting requirements and Rule 6750 addresses the dissemination of transaction information and the exceptions thereto. Rule 6760 requires members to provide notice to FINRA of new TRACE-eligible securities. In Rule 6730 and Rule 6750, generally, the proposed amendments address issues raised by the inclusion of primary market transactions. Certain primary market transactions – List or fixed offering price transactions and Takedown transactions -- will be subject to end-of-day reporting under amended Rule 6730 and not subject to dissemination under amended Rule 6750. The proposed amendments to Rule 6760 incorporate changes in the notification requirements and the notification deadlines to facilitate members’ timely reporting of TRACE-eligible securities.

Regarding market data fees, FINRA will distinguish TRACE transaction data as data sets for organizational purposes only, one comprised solely of corporate bond transaction information (the “Corporate Bonds Data Set”) and a second comprised solely of Agency debt securities transaction information (“Agency Data Set”). The fee schedule currently in effect in Rule 7730

also will apply to Agency debt securities transactions and primary market transactions. However, members will not be charged a reporting fee when reporting a List or fixed offering price transaction or a Takedown transaction on a timely and accurate basis.

In addition to the amendments discussed above, the proposed rule change includes additional proposed technical or clarifying amendments to FINRA Rule 6700 Series (except for Rules 6720 and 6740) and FINRA Rule 7730.

II. Agency Debt Securities

A. “TRACE-Eligible Security” and Related Rule 6710 Amendments

Under Rule 6710(a), a “TRACE-eligible security” is a U.S. dollar denominated bond, note or other debt instrument that is issued by a U.S. or foreign private issuer. The definition also requires that the debt security be registered under the Securities Act (or issued pursuant to Section 4(2) and purchased or sold in a transaction in compliance with Securities Act Rule 144A transaction (“Rule 144A transaction”)); depository eligible under NASD Rule 11310(d); and Investment Grade or Non-Investment Grade as defined, respectively, in Rules 6710(h) and 6710(i).⁴

U.S. Treasury securities, foreign sovereign debt and securities issued by U.S. government agencies or similar entities, such as government corporations, are not TRACE-eligible securities. In addition, the defined term expressly excludes securities that are issued by a government-sponsored enterprise, or are asset-backed securities, mortgage-backed securities, collateralized

⁴ On February 11, 2009, FINRA filed SR-FINRA-2009-004 to amend the definition of “TRACE-eligible security” to eliminate the requirement that a TRACE-eligible security be registered under the Securities Act. In addition, FINRA also proposed to eliminate, with respect to transactions in TRACE-eligible securities effected under Securities Act Rule 144A, the requirement that such securities be initially issued under Securities Act Section 4(2). See Securities Exchange Act Release No. 59519 (March 5, 2009), 74 FR 10630 (March 11, 2009) (notice requesting comment on SR-FINRA-2009-004).

mortgage obligations and money market instruments that at issuance have a maturity of one year or less.

FINRA proposes to amend and restate the definition of “TRACE-eligible security” in Rule 6710(a). The most significant amendment expands the definition to include “Agency debt securities” as defined below as TRACE-eligible securities. In addition, FINRA proposes to delete two criteria in the defined term as discussed below.

1. Amendments to “TRACE-Eligible Security” to Include Agency Debt Securities

FINRA proposes to expand the scope of the defined term, “TRACE-eligible security” to include Agency debt securities. Specifically, restated Rule 6710(a) will include a debt security that “is U.S. dollar denominated and issued or guaranteed by an Agency as defined in paragraph (k) or a Government-sponsored enterprise as defined in paragraph (n)” as a TRACE-eligible security. The proposed inclusion of Agency debt securities as “TRACE-eligible securities” does not require that such securities be registered under the Securities Act or issued pursuant to Securities Act Section 4(2) and purchased and sold pursuant to Rule 144A.

In connection with this amendment, FINRA also proposes to add the following defined terms to Rule 6710: “Agency debt security,” “Agency,” “Asset-backed security,” “Government-sponsored enterprise,” and “U.S. Treasury security.”

The proposed term “Agency debt security” is used to refer, collectively, to two types of securities that will be TRACE-eligible securities. “Agency debt security” as defined in proposed Rule 6710(l) means:

a debt security (i) issued or guaranteed by an Agency as defined in paragraph (k); or (ii) issued or guaranteed by a Government-sponsored enterprise as defined in paragraph (n). The term excludes a U.S. Treasury

security as defined in paragraph (p) and an Asset-backed security as defined in paragraph (m) where an Agency or a Government-sponsored enterprise is the sponsor of the trust or other entity that issues the Asset-backed security, or is the guarantor of the Asset-backed security.

The two issuers (or guarantors) referenced in the term “Agency debt securities” are “Agencies” and “Government-sponsored enterprises.” Under proposed Rule 6710(n), “‘Government-sponsored enterprise’ (‘GSE’) has the same meaning as defined in 2 U.S.C. 622(8).”⁵ Some of the most well-known GSEs include the Federal National Mortgage Association (“Fannie Mae” or “FNMA”), the Federal Home Loan Mortgage Corporation (“FHLMC” or “Freddie Mac”) and the various Federal Home Loan Banks. For purposes of the TRACE rules, securities issued or guaranteed by GSEs are included under the collective term,

⁵ The term “government-sponsored enterprise” is defined in 2 U.S.C. 622(8) as: a corporate entity created by a law of the United States that ---

- (A) (i) has a Federal charter authorized by law;
- (ii) is privately owned, as evidenced by capital stock owned by private entities or individuals;
- (iii) is under the direction of a board of directors, a majority of which is elected by private owners;
- (iv) is a financial institution with power to ---
 - (I) make loans or loan guarantees for limited purposes such as to provide credit for specific borrowers or one sector; and
 - (II) raise funds by borrowing (which does not carry the full faith and credit of the Federal Government) or to guarantee the debt of others in unlimited amounts; and
- (B) (i) does not exercise powers that are reserved to the Government as sovereign (such as the power to tax or to regulate interstate commerce);
- (ii) does not have the power to commit the Government financially (but it may be a recipient of a loan guarantee commitment made by the Government); and
- (iii) has employees whose salaries and expenses are paid by the enterprise and are not Federal employees subject to title 5.

Congress defined GSEs for purposes of the budgetary treatment of such entities in the Omnibus Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388, 607; 2 U.S.C. 622(8).

“Agency debt securities” although technically GSEs are instrumentalities of the U.S. government, and not agencies.

The collective term, “Agency debt security,” also includes securities issued or guaranteed by an Agency. For purposes of the TRACE rules, under proposed Rule 6710(k), “Agency” means: a U.S. “executive agency”⁶ as defined in 5 U.S.C. 105 that is authorized to issue debt directly or through a related entity, such as a government corporation, or to guarantee the repayment of principal and/or interest of a debt security issued by another. The term excludes the U.S. Department of the Treasury (“Treasury”) in the exercise of its authority to issue U.S. Treasury securities as defined in paragraph (p). Two examples of such Agencies are the Commodity Credit Corporation and the Export-Import Bank of the United States (issuing debt securities through its affiliate, the Private Export Funding Corporation, or “PEFCO”).

As noted previously, TRACE currently does not include U.S. Treasury securities, and this is not changed by the proposal to add Agency debt securities to TRACE. For purposes of TRACE, the defined term, “Agency,” “excludes the U.S. Treasury (‘Treasury’) in the exercise of

⁶ 5 U.S.C. 105 defines “executive agency” as:

For purposes of this title (5 U.S.C. 101 et seq.) “Executive agency” means an Executive department, a Government corporation, and an independent establishment.

“Executive department” is defined in 5 USC 101 as any of the major agencies or departments (e.g., The Department of State, the Department of the Treasury, the Department of Homeland Security, etc. The Secretaries of such agencies comprise the President’s Cabinet). “Government Corporation” is defined in 5 U.S.C. 103 as “a corporation owned or controlled by the Government of the United States. . . .” (e.g., the Pension Benefit Guaranty Corporation is a wholly owned government corporation). “Independent establishment” is defined in 5 U.S.C. 104 as (1) an establishment in the executive branch (other than the United States Postal Service or the Postal Regulatory Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment; and (2) the General Accounting Office.” (e.g., the Federal Reserve Banks are independent establishments).

(The Departments of the Army, Navy and Air Force, which are defined as military departments, are not executive agencies. 5 U.S.C. 102.)

its authority to issue U.S. Treasury securities” In addition, the defined term, “Agency debt security,” specifically excludes U.S. Treasury securities.

Certain Asset-backed securities are the second type of security that is excluded explicitly from the definition of Agency debt security. For purposes of TRACE, under proposed Rule 6710(l), Agency debt securities do not include Asset-backed securities “where an Agency or a Government-sponsored enterprise is the sponsor of the trust or other entity that issues the Asset-backed security, or is the guarantor of the Asset-backed security.” Instead, such a security is included as an “Asset-backed security” as defined in proposed Rule 6710(m).⁷

For purposes of TRACE, “Asset-backed security” is defined broadly. Proposed Rule 6710(m) defines “Asset-backed security” to mean:

asset-backed security as used in Securities Act Regulation AB, Section 1101(c), and other debt securities that are structured securities, synthetic asset-backed securities and/or instruments involving or based on the securitization of mortgages or other credits or assets. The term includes but is not limited to mortgage-backed securities, collateralized mortgage obligations, collateralized debt obligations, collateralized bond obligations, collateralized debt obligations of asset-backed securities and collateralized debt obligations of collateralized debt obligations.

2. Other Amendments to “TRACE-Eligible Security”

FINRA also proposes two amendments to Rule 6710(a), the definition of TRACE-eligible security, which are not specifically related to the expansion of TRACE to include

⁷ The exclusion of such securities from the term “Agency debt security” is consistent with the current limitations in the definition of TRACE-eligible security, which excludes mortgage-backed, and asset-backed securities, and collateralized mortgage obligations.

Agency debt securities. Currently, the definition of a “TRACE-eligible security” includes criteria that such securities be “Investment Grade or Non-Investment Grade” and “depository eligible securities under NASD Rule 11310(d).” When TRACE became effective in 2002, the reference to the credit quality in Rule 6710(a) made clear that TRACE applied to debt securities of any credit quality in contrast to the FIPS system, which TRACE replaced.⁸ Under FIPS, members were required to report limited transaction information for transactions in Non-Investment Grade securities only. FINRA proposes to delete “Investment Grade or Non-Investment Grade” in Rule 6710(a) because it is no longer needed to clarify the scope of TRACE.

FINRA also required that TRACE-eligible securities be “depository eligible securities under NASD Rule 11310(d)” when TRACE was implemented to assure that such securities would have CUSIPs to identify them clearly and easily within the TRACE system. Operational enhancements now permit FINRA to receive, store and retrieve transaction information for securities that are not assigned CUSIPs. FINRA proposes to delete the unnecessary criterion in Rule 6710(a), which will permit FINRA to capture information on the few securities that are not assigned CUSIPs, but otherwise meet TRACE eligibility standards.

FINRA proposes to restate the definition of “TRACE-eligible security” to incorporate all the changes discussed above and certain technical amendments. Among other things, FINRA proposes to delete the definition of a money market instrument, which is embedded in the term, “TRACE-eligible security,” and add it as a separately defined term in new proposed Rule 6710(o) for stylistic consistency. The meaning of the term does not change. Proposed Rule 6710(a), as amended, will read as follows:

⁸ FIPS stands for Fixed Income Pricing System. The FIPS rules were rescinded and the FIPS system was dismantled shortly after TRACE began.

"TRACE-eligible security" means a debt security that is U.S. dollar-denominated, issued by a United States ("U.S.") or foreign private issuer, and either registered under the Securities Act or issued pursuant to Section 4(2) of the Securities Act and purchased or sold pursuant to Securities Act Rule 144A; or is a debt security that is U.S. dollar denominated and issued or guaranteed by an Agency as defined in paragraph (k) or a Government-sponsored enterprise as defined in paragraph (n). "TRACE-eligible security" does not include a debt security that is:

(1) Issued by a foreign sovereign or is a U.S. Treasury security as defined in paragraph (p);

(2) A restricted security as defined in Securities Act Rule 144(a)(3), except a restricted security that is issued pursuant to Section 4(2) of the Securities Act and purchased or sold in a transaction that is effected under Securities Act Rule 144A;

(3) A Money market instrument as defined in paragraph (o); or

(4) An Asset-backed security as defined in paragraph (m).⁹

B. Reporting and Dissemination

Rule 6730 contains the reporting requirements, including information that must be reported, deadlines for timely reporting, certain reporting modifiers and exceptions to the reporting requirement. Agency debt securities will be subject to the reporting requirements currently set forth in Rule 6730. Under Rule 6730, members will be required to report

⁹ Additional proposed amendments to Rule 6710 are discussed, *infra*, at II.B., "Reporting and Dissemination" (regarding dissemination protocols), III. "Primary Market Transactions" (regarding primary market transactions), and IV. "Other Changes" (regarding technical amendments).

transactions in Agency debt securities within 15 minutes of execution of the transactions, subject to the standard exceptions currently set forth in the Rule.¹⁰

Information on transactions in Agency debt securities will be disseminated by FINRA immediately upon receipt of transaction reports, which is the current requirement for corporate bond transactions under Rule 6750, subject to one exception for Securities Act Rule 144A transactions.¹¹ In addition, FINRA will continue to apply the current protocols that determine how volume information is disseminated.¹²

However, FINRA proposes to amend the defined term, “Investment Grade,” in Rule 6710(h) to treat unrated Agency debt securities as Investment Grade securities for purposes of the above-referenced dissemination protocols. FINRA also proposes conforming amendments regarding the treatment of such unrated securities in the term, “Non-Investment Grade,” as defined in Rule 6710(i), and technical, stylistic amendments in both provisions. Specifically, in Rule 6710(h), FINRA proposes to add a final sentence and amend the penultimate sentence, both as set forth below to provide:

If a TRACE-eligible security is unrated, FINRA may classify the TRACE-eligible security as an Investment Grade security. FINRA will classify an unrated Agency debt

¹⁰ Rule 6730(a)(1) through (4) provide exceptions to the 15-minute reporting requirement if a member executes a transaction while the TRACE system is closed or less than 15 minutes before the TRACE system will close.

¹¹ Under Rule 6750, FINRA does not disseminate transactions in TRACE-eligible securities that are Securities Act Rule 144A transactions.

¹² Under the protocols: (1) for Investment Grade transactions in sizes less than or equal to \$5 million (by par value), actual volume is disseminated; and in sizes exceeding \$5 million, a “\$5 million +” capped volume indicator is disseminated; and, (2) for Non-Investment Grade transactions in sizes less than or equal to \$1 million, actual volume is disseminated; and in sizes exceeding \$1 million, a “\$1 million+” capped volume indicator is disseminated.

security as defined in paragraph (l) as an Investment Grade security for purposes of the dissemination of transaction volume.

The other proposed change to Rule 6710(h) is a technical, stylistic amendment to the first sentence, changing the first clause from, “The term ‘Investment Grade’ shall mean a TRACE-eligible security that,” to “‘Investment Grade’ means a TRACE-eligible security that,”

The proposed amendments to the defined term, “Non-Investment Grade,” will cross-reference in Rule 6710(i) the amendment regarding the treatment of unrated Agency debt securities proposed to Rule 6710(h). Also, FINRA proposes: (i) to make technical stylistic amendments to the first clause of Rule 6710(i) similar to such amendments to be incorporated in Rule 6710(h) as described above; and (ii) to delete certain detailed rule text in Rule 6710(i) that is no longer necessary.¹³

¹³ FINRA proposes to delete text in Rule 6710(i) that was used to classify certain Non-Investment Grade corporate bonds to determine when dissemination of transaction information would occur. The text is no longer necessary because transaction information on such bonds began to be disseminated several years ago. FINRA proposes to delete the following rule text, including the footnote text set forth in the second paragraph below:

and further classify it as being in one of the generic rating categories below the four highest such categories. If FINRA does not have sufficient information to make a judgment regarding the classification of an unrated TRACE-eligible security, for purposes of TRACE, FINRA will classify the TRACE-eligible security as having been rated B (or the equivalent rating of one or more NRSROs).

"B" is a rating of Standard & Poor's, a division of the McGraw-Hill Companies, Inc. ("S&P"). S&P is a nationally recognized statistical rating organization. S&P's ratings are proprietary to S&P and are protected by copyright and other intellectual property laws. S&P's licenses ratings to FINRA. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any such purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without S&P's prior written consent.

FINRA recognizes that extending TRACE reporting to Agency debt securities may result in certain trading desks having to report transactions to TRACE for the first time. As has been the case since TRACE inception, FINRA plans to implement TRACE reporting requirements and dissemination of Agency debt securities in a deliberate, yet efficient manner. FINRA has worked regularly with, and will continue to work with, broker-dealers and third party vendors to ensure effective and efficient TRACE implementation.

III. Primary Market Transactions

Currently, broker-dealers are required to report only secondary market transactions to TRACE. To provide a more comprehensive audit trail, FINRA proposes amendments to FINRA Rule 6700 Series to require broker-dealers to report all primary market transactions and designate such transactions with an identifier. FINRA proposes that all primary market transactions be reported because, for many bonds, the most active period of trading occurs during the primary offering and immediately afterward. To improve market surveillance of the debt markets, FINRA proposes that TRACE be expanded to include such transactions.

A. Amendments to Add Primary Market Transactions

FINRA proposes two rule amendments that will require members to report primary market transactions to TRACE. FINRA proposes to amend Rule 6710(c) to delete the words “secondary market” in the defined term “Reportable TRACE transaction” and make technical

As amended, FINRA Rule 6710(i) will provide:

“Non-Investment Grade” means a TRACE-eligible security that, if rated by only one NRSRO, is rated lower than one of the four highest generic rating categories; or if rated by more than one NRSRO, is rated lower than one of the four highest generic rating categories by all or a majority of such NRSROs. Except as provided in paragraph (h), if a TRACE-eligible security is unrated, for purposes of TRACE, FINRA may otherwise classify the TRACE-eligible security as a Non-Investment Grade security.

conforming amendments. Deleting the words “secondary market” in Rule 6710(c) will delete the limitation that currently does not allow the reporting of primary market transactions.

The other proposed amendments to Rule 6710(c) will: (i) incorporate technical and stylistic changes to the first clause of Rule 6710(c);¹⁴ and (ii) conform a phrase in Rule 6710(c) with Rule 6730(e) by deleting the phrase, “transactions exempt from reporting” and substituting “transactions that are not reported.”¹⁵

An amendment to Rule 6730(e)(1) is also required to include primary market transactions in TRACE. FINRA proposes to amend paragraph (1) of Rule 6730(e) to delete the current exclusion from reporting for “[T]ransactions that are part of a primary distribution by an issuer.”

B. Reporting Requirements

Members will be required to report primary market transactions, except primary market transactions that are “List or fixed offering price transactions” and “Takedown transactions,” within 15 minutes of the time of execution, in accordance with Rule 6730(a).¹⁶ However, FINRA proposes to liberalize the reporting requirements for List or fixed offering price transactions and Takedown transactions.

List or fixed offering price transaction and Takedown transaction refer to two types of sale transactions that may occur during a primary offering: those executed at a previously fixed price, from a broker-dealer acting as an underwriter to a purchaser; and certain sale transactions

¹⁴ In Rule 6710(c), the first phrase, “The term ‘reportable TRACE transaction’ shall mean . . .” will be amended to read, “‘Reportable TRACE transaction’ means. . . .”

¹⁵ As amended, Rule 6710(c) will provide: “‘Reportable TRACE transaction’ means any transaction in a TRACE-eligible security except transactions that are not reported as specified in Rule 6730(e).”

¹⁶ As noted, *supra*, at n. 9, exceptions to 15-minute reporting are provided in Rule 6730(a)(1) through (4) for trades that occur outside of TRACE system hours or immediately prior to its closing.

among certain market professionals involved in the placement of the offered securities. For purposes of the TRACE rules, such transactions must occur on the first day of the offering.

The terms “List or fixed offering price transaction” and “Takedown transaction” are defined for purposes of TRACE in, respectively, proposed Rule 6710(q) and (r). “List or fixed offering price transaction” is defined in Rule 6710(q) to mean:

a primary market sale transaction sold on the first day of trading of a new issue: (i) by a sole underwriter, syndicate manager, syndicate member or selling group member at the published or stated list or fixed offering price, or (ii) in the case of a primary market sale transaction effected pursuant to Securities Act Rule 144A, by an initial purchaser, syndicate manager, syndicate member or selling group member at the published or stated fixed offering price.

“Takedown transaction” is defined in Rule 6710(r) to mean:

a primary market sale transaction sold on the first day of trading of a new issue: (i) by a sole underwriter or syndicate manager to a syndicate or selling group member at a discount from the published or stated list or fixed offering price, or (ii) in the case of a primary market sale transaction effected pursuant to Securities Act Rule 144A, by an initial purchaser or syndicate manager to a syndicate or selling group member at a discount from the published or stated fixed offering price.

Under proposed Rule 6730(a)(5), members executing such List or fixed offering price transactions or Takedown transactions will have until the end of the business day -- until the TRACE system closes -- to report such transactions. If a primary offering prices after 5:00 p.m. Eastern Time and thereafter broker-dealers execute transactions that qualify as List or fixed offering price transactions or Takedown transactions, broker-dealers will have until the end of

the next business day to report such transactions under Rule 6730(a)(5)(B)(i). In addition, if broker-dealers execute transactions that are List or fixed offering price transactions or Takedown transactions at any time outside of the TRACE system hours, broker-dealers will have until the close of the TRACE system on the next business day to report such transactions under Rule 6730(a)(5)(B)(ii) and (iii).¹⁷

Price discovery is the most significant reason underlying the TRACE requirement for the reporting of transactions within 15 minutes of execution and thereafter, the immediate dissemination of such information. FINRA proposes to liberalize the reporting requirements for List or fixed offering price transactions and Takedown transactions, because, in most cases, the prices of such transactions will be the same, or subject to only minor differences based on the underwriting structure, and will not contribute meaningfully to price discovery. FINRA proposes end-of-day reporting for the two types of primary market transactions because FINRA does not believe that price transparency will be adversely affected. Moreover, the proposed end-of-day requirement will provide broker-dealers operational flexibility and will ease compliance burdens, particularly during the implementation of the proposed changes.¹⁸

All other primary market transactions, such as those that are effected at prices other than a fixed (or list) offering price and those that are effected at a fixed price other than on the first

¹⁷ Under proposed Rule 6730(a)(5)(B)(iii), the reporting requirements for List or fixed price offering transactions or Takedown transactions that a broker-dealer executes on a Saturday, Sunday, or a federal or religious holiday when the TRACE system is closed include specific information requirements and have certain parallels to the reporting requirements for transactions reported under Rule 6730(a)(4).

¹⁸ The proposed amendments will harmonize substantially the TRACE reporting rules with current requirements under Municipal Securities Rulemaking Board (“MSRB”) Rule G-14 for reporting primary market transactions in municipal securities, and should reduce operational burdens to firms. For primary market transactions, as with Agency debt securities, FINRA will work with broker-dealers and third party vendors to ensure effective and cost efficient implementation.

day of new issue trading, will be subject to the 15-minute reporting requirements and the exceptions thereto currently set forth in Rule 6730(a)(1) through (4).

Currently, the TRACE data collected for surveillance, review, and research contains information on secondary market transactions only. With the inclusion of primary market transaction data, FINRA will require broker-dealers to assign one of three indicators in their trade reports under proposed subparagraph (D) of Rule 6730(d)(4). The indicators will distinguish primary market transactions from secondary market transactions and further distinguish List or fixed offering price transactions and Takedown transactions from other primary market transactions.

C. Dissemination

Generally, dissemination of transaction information for primary market transactions will be implemented at the same time FINRA implements reporting of such transactions.

Dissemination will occur immediately upon receipt of transaction reports in primary market transactions as provided in Rule 6750(a), with one exception. Proposed Rule 6750(b)(2) provides that primary market transactions that are List or fixed offering price transactions or Takedown transactions will not be disseminated. FINRA will study the reported data for these primary market transactions for a period of time after reporting begins and, at a later date, determine if dissemination of the information is appropriate, and if appropriate, develop a dissemination strategy.

In contrast, primary market transactions that are not List or fixed offering price transactions or Takedown transactions will be disseminated as soon as primary market transaction reporting begins. These transactions, such as certain “at-the-market” transactions,

provide transparency about current market pricing that is otherwise not available to the public and many market participants.

IV. Other Changes

A. FINRA Rule 6760

Currently, Rule 6760 requires members to notify FINRA regarding securities that are about to be offered in a primary offering if such securities are TRACE-eligible. In most cases, members must notify FINRA Operations by 5:00 p.m. Eastern Time on the business day before an offering begins, although for some types of offerings, the deadlines currently extend to 5:00 p.m. of the business day following the first offer date. FINRA must have this information in the TRACE system to facilitate timely transaction reporting by all members that have effected transactions in a newly issued TRACE-eligible security.

FINRA proposes to amend the notice and information requirements in Rule 6760 to facilitate members' timely reporting of TRACE-eligible securities in both primary and secondary market transactions. Under Rule 6760(b), a broker-dealer providing notice will be required to include "the time the new issue is priced," among other information requirements. In addition, the amendment requires that the information be provided "prior to the commencement of primary market transactions." The amendment also recognizes that FINRA may require information not specifically listed in Rule 6760(b) if, among other things, a security will not be assigned a CUSIP.

FINRA also proposes a series of minor clarifying changes to the Rule. The proposed amendments require that the notice be provided to FINRA Operations by the managing underwriter, or if a managing underwriter is not appointed, an underwriter, or, if there are no underwriters, an initial purchaser. When multiple underwriters or initial purchasers participate in

the offering and there is no lead, all are liable under Rule 6760 to provide notice to FINRA Operations, but the parties may agree to submit a single notice. Also, the proposed rule change includes amendments to delete the word “secondary” in the first line of paragraph Rule 6760 (a)(1), delete references to “TRACE Operations Center” in the rule and substitute the term “FINRA Operations,” and amend the rule title to read, “Obligation To Provide Notice.”

B. Technical and Conforming Amendments

FINRA also proposes several minor technical, stylistic, or conforming changes as follows. In Rule 6710, in the first paragraph, after the sentence, “The terms used in this Rule 6700 Series shall have the same meaning as those defined in the FINRA By-Laws and rules unless otherwise specified.,” FINRA will add the following sentence: “For the purposes of this Rule 6700 Series, the following terms have the following meaning:”

In Rule 6710, in paragraphs (b), (d), (e), (f), (g) and (j), which set forth various defined terms, FINRA proposes to incorporate conforming technical and stylistic changes to the first line of text of each defined term. The amendments to each defined term reflect the stylistic changes shown as follows for Rule 6710(b). The initial phrase of Rule 6710(b), which provides, “The term ‘Trade Reporting and Compliance Engine’ or ‘TRACE’ shall mean . . .” will be amended to read, “‘Trade Reporting and Compliance Engine’ or ‘TRACE’ means”¹⁹

¹⁹ As noted above, FINRA proposes to incorporate the same technical and stylistic changes to paragraphs (d), (e), (f), (g) and (j) of Rule 6710. The initial phrase of Rule 6710(d), which provides, “The term ‘time of execution’ for a transaction in a TRACE-eligible security shall be . . .” will be amended to read, “‘Time of execution’ for a transaction in a TRACE-eligible security means” The initial phrase of Rule 6710(e), which provides, “The term ‘party to a transaction’ shall mean . . .” will be amended to read, “‘Party to a transaction’ means” The initial phrase of Rule 6710(f), which provides, “The term ‘TRACE Participant’ shall mean . . .” will be amended to read, “‘TRACE Participant’ means” The initial phrase of Rule 6710(g) will be amended to read, “The term ‘Introducing Broker’ shall mean . . .” will be amended to read, “‘Introducing Broker’ means” The initial phrase of Rule 6710(j), which provides, “The term ‘split-rated’ shall mean . . .” will be amended to read, “‘Split-rated’ means”

In Rule 6710(e), the phrase, “[F]or purposes of this Rule,” will be deleted.

In Rule 6730(a), FINRA will add a new first sentence providing, “Each member that is a party to a transaction in a TRACE-eligible security must report the transaction.” Other minor technical changes are also proposed in the same paragraph, including clarifying the term “TRACE system hours.”²⁰ Paragraphs (5) and (6) of Rule 6730(a) are renumbered as paragraphs (6) and (7), and, in paragraph (7), a cross reference to new paragraph (a)(5) is added. Also, in Rule 6750, FINRA proposes minor technical changes to paragraph (b), including revising the header by deleting “Securities Act Rule 144A Transactions” and substituting the new header, “Transaction Information Not Disseminated.”

IV. Fees

FINRA proposes to amend Rule 7730 to establish reporting and market data fees for Agency debt securities transactions and primary market transactions. Generally, the fees proposed for Agency debt securities are equivalent to the fees charged for corporate bonds. Primary market transactions, whether in corporate bonds or Agency debt securities, will be subject to the same reporting fees currently in effect, with one exception.

FINRA proposes not to charge a reporting fee for the timely and accurate reporting of primary market transactions that are List or fixed offering price transactions or Takedown

As discussed previously, FINRA proposes the same technical and stylistic amendments to paragraphs (c), (h) and (i) of Rule 6710.

²⁰ As amended, Rule 6730(a) will provide:

Each member that is a Party to a transaction in a TRACE-eligible security must report the transaction. A member must report transaction information within 15 minutes of the time of execution, except as otherwise provided below, or the transaction report will be “late.” The member must transmit the report to TRACE during the hours the TRACE system is open, which are 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time, unless otherwise announced by FINRA (“TRACE system hours”). Specific trade reporting obligations during a 24-hour cycle are set forth below.

transactions as provided in amendments to Rule 7730(b)(1). However, the fees that are currently in effect for late reports and corrections will apply to such transactions. Eliminating the standard reporting fee for such transactions should reduce the cost of compliance for firms as they implement changes to report such transactions.

FINRA will distinguish TRACE transaction data as two data sets, one comprised solely of corporate bond transaction information (the “Corporate Bonds Data Set”) and a second data set comprised solely of Agency debt securities transaction information (“Agency Data Set”) for organizational purposes only. Market data fees will be charged for each Data Set, as provided in amended Rule 7730(c)(1)(A), (B) and (C).²¹ Each Data Set will include the relevant transaction data, including primary market transactions in such securities, provided that the primary market transactions are subject to dissemination.²²

Generally, the proposed fees for the Agency Data Set will be set at the same rates currently in effect for corporate bond market data (to be sold in the future as the Corporate Bonds Data Set). For example, in Rule 7730(c)(1)(B), the current Vendor Real-Time Data Feed Fee is \$1500 per month for receipt of continuous Real-Time TRACE transaction data for internal, non-display use for corporate bonds for persons or organizations other than qualifying Tax-Exempt Organizations. FINRA proposes to charge \$1500 per month for the same data

²¹ Such proposed changes will be incorporated in Rule 7730(c)(1)(A), the Bond Trade Dissemination Service (“BTDS”) Professional Real-Time Data Display Fee; Rule 7730(c)(1)(B), the Vendor Real-Time Data Feed Fee and Snapshot Real-Time TRACE Data Fee; and Rule 7730(c)(1)(C), the Vendor Real-Time Data Feed Fee (for certain Tax-Exempt Organizations).

²² By definition, market data does not include information on transactions that are required to be reported but are not subject to dissemination. Currently, Securities Act Rule 144A transactions are accorded this treatment and under the proposed rule change, primary market transactions that are List or fixed offering price transactions and Takedown transactions also will not be disseminated, and, thus, will not be included in data packages.

package for the Agency Data Set. A vendor that desires to obtain a real-time data feed for both Data Sets will pay \$3,000 per month (\$1500 for the Corporate Bonds Data Set and \$1500 for the Agency Data Set).

One “System Related Fee,” for “Web Browser Access,” as set forth in FINRA Rule 7730(a)(1), provides access for reporting, but also includes an embedded charge for access to market data. FINRA proposes to amend the “Web Browser Access” fee in FINRA Rule 7730(a)(1) to set one fee for professionals that want a reporting system plus access to one Data Set and a second, higher fee for those desiring a reporting system plus access to both Data Sets.

FINRA proposes to continue its policy to provide Non-Professionals access at no charge to all or any portion of any data, whether from one or both Data Sets, under proposed amendments to Rule 7730(c)(2).

Finally, FINRA also proposes minor technical and clarifying amendments to Rule 7730.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²³ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and Section

²³ 15 U.S.C. 78q-3(b)(6).

15(A)(b)(5) of the Act,²⁴ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls in that: (i) the proposed rule change will increase transparency in the debt market significantly, will enhance the ability of institutional investors, retail investors and broker-dealers to compare and negotiate prices in Agency debt securities transactions, and will enhance FINRA's surveillance of the debt market in connection with primary market transactions and Agency debt securities generally; and (ii) the proposed fee proposal provides for reporting and market data fees that are reasonable and mirror the fees currently in effect for corporate bonds, and provides for the equitable allocation of such fees and charges among members and other professional market participants, qualifying Tax-Exempt Organizations and public data consumers.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

²⁴ 15 U.S.C. 78q-3(b)(5).

- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2009-010 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-010. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00

p.m. Copies of the filing will also be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-FINRA-2009-010 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Florence E. Harmon
Deputy Secretary

²⁵ 17 CFR 200.30-3(a)(12).