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Invested in America

December 17, 2013

Submitted Via Email to Rule-Comments@SEC.gov

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE., Washington, DC 20549–1090

Re: ***(Release No. 34-70906; File No. SR-FINRA-2013-046) Notice of Filing of Proposed Rule Change Relating to TRACE Reporting and Dissemination of Transactions in Additional Asset-Backed Securities***

Ladies and Gentlemen,

The Securities Industry and Financial Markets Association ("SIFMA")[1] is pleased to respond to the SEC's request for comment on FINRA's proposed rule (the "Proposal") to begin dissemination of data for transactions in asset-backed securities ("ABS") and non-Agency Commercial Mortgage Backed Security ("CMBS").[2]

1. Summary of the Proposal

The Proposal would implement shorter reporting timeframes for ABS transactions (initially forty-five minutes for six months, then fifteen minutes), as well as real-time dissemination of trade information. Volume information would be capped at $10MM. Trades above that amount would be displayed as "10+". The proposal also would amend the definition of ABS.

2. Summary of SIFMA Views

While SIFMA members agree with FINRA that there may be benefits to price discovery as a result of dissemination of trade information on ABS, we also believe the proposal has the potential to negatively impact market liquidity, as previous proposals have done in the TBA, specified pool and the high-yield markets. We request that FINRA not implement this proposal, and instead engage in further discussion with the industry as to how best to preserve ABS market liquidity, and re-propose this proposal after such discussions. We also offer granular comments on the proposal.

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[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

[2] 78 FR 70602 (November 26, 2013), available here: http://www.gpo.gov/fdsys/pkg/FR-2013-11-26/pdf/2013-28273.pdf

3. Maintaining Market Liquidity should be the Highest Priority

SIFMA members are most focused on ensuring the continued liquidity in the ABS markets. We are concerned that negative impacts of price dissemination that have extended to the high-yield bond market and more recently the TBA and specified pool market will extend to the proposed classes of ABS as defined in the proposal. Both our buy- and sell-side members have consistently noted impairment of liquidity in the TBA MBS markets since dissemination was introduced in 2012 and we have raised these concerns to FINRA staff. To summarize the concerns, members believe the implementation of dissemination of trade information for TBAs has contributed to an overall decrease in liquidity in this market, due in large part to a decrease in the willingness of market makers to take on risk. Market makers are less willing to take on large trades from their buy-side counterparties when the identity of their position becomes immediately known. This is not dissimilar to effects that have been noted in other markets subject to dissemination, in particular the MBS specified pool market and the high yield corporate market. In these markets, we believe that the benefits of improvements to price discovery have been far outweighed by the cost of decreased liquidity, and we continue to strongly urge FINRA to revise the dissemination paradigm it has created.

In particular, a recent quantitative study by Paul Asquith, Thomas R. Covert and Parag A. Pathak (of MIT, Harvard, and NBER, respectively) highlights the negative impact price dissemination had on liquidity in the high-yield corporate bond markets.[3] The paper studied how the implementation of mandatory transparency through TRACE affected trading in the corporate bond market. The researchers concluded that transparency caused a significant decrease in price dispersion for all bonds and a significant decrease in trading activity for certain categories of bonds. The largest decrease in daily price standard deviation, 24.7%, and the largest decrease in trading activity, 41.3%, occurred for bonds in the final phase of the study, which consisted primarily of high-yield corporate bonds. These results indicate that mandated transparency may help some investors and dealers through a decline in price dispersion, while it harms others through a reduction in trading activity. Based on these findings, we urge caution when contemplating trade price dissemination for less liquid sectors due to the serious negative impact such dissemination can have, as demonstrated by the authors' rigorous analysis.

We note that in this Proposal when FINRA draws a parallel between the high-yield corporate market and the ABS market, it also notes that there is *less* trading in ABS than high yield corporates. The Proposal states, *"although the size of the Asset-Backed Securities market is comparable to the market for publicly-traded Non-Investment Grade corporate bonds, there are substantially fewer trades in Asset-Backed Securities."*[4] In other words, ABS will be starting from a *weaker* liquidity position, and there is no reason to believe the impact of dissemination will be any different than it was for high yield corporates – negative for liquidity. While price transparency may be improved by the real-time dissemination of trade information, liquidity will be harmed if the dissemination is not carefully constructed. We recognize FINRA's efforts in this regard (e.g., direction of trade would not be disclosed under the proposal), but we believe further consideration of market dynamics is needed before this proposal is implemented. We do not see a net benefit to any of investors, market makers, or issuers if diminished liquidity is the outcome of TRACE dissemination.

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[3] *The Effects of Mandatory Transparency in Financial Market Design: Evidence from the Corporate Bond Market*, available here: http://economics.mit.edu/files/9018

[4] Proposal at 70604.

FINRA should not implement this proposal as currently constructed, and should instead delay implementation pending further discussion with the industry as to how best preserve essential liquidity in this market. After such discussion, FINRA should re-propose an amended version of this release.

Our more granular comments follow.

4. Redefining ABS – It is Inappropriate to Group Non-Agency CMBS, CLOs, and CDOs with Consumer ABS Products

SIFMA members are generally in agreement with the proposed re-definition of ABS that includes securities backed by consumer or student loans, a lease or a secured or unsecured receivable but excludes Agency Pass-MBS, Agency CMOs and Agency and Non-Agency RMBS. However, the inclusion of CDOs, CLOs and Non-Agency-Backed CMBS is pressing the revised definition of ABS beyond what is appropriate.

As a general matter, most CDOs are backed by RMBS or other mortgage assets, not ABS. RMBS are not included in this proposal for dissemination, and we believe that re-securitizations of RMBS should be treated as analogous to RMBS, not consumer ABS, since the credit analysis required incorporates the analysis required on RMBS with the additional complexity from the nature of the transaction as a resecuritization. Similarly, CLOs are backed by corporate loans, and share more similarities with RMBS than consumer ABS in terms of investor base, liquidity, and trading patterns. They should not be analyzed for the purposes of dissemination in conjunction with consumer ABS securities, with which they share few similarities and trade in a very different way.

Similarly, non-agency CMBS should also be subject to a different analysis than consumer ABS such as credit card, time share, royalty, equipment lease, and cell phone tower ABS. Non-agency CMBS play a critical role in the provision of credit to the commercial real estate market, and regulators must ensure that efforts to increase price transparency do not hamper the liquidity of the products. Non-agency CMBS are far more similar to Agency CMBS than other ABS asset classes, and we do not understand why they have been grouped with consumer and other ABS for the purposes of dissemination instead of with Agency CMBS. As above, the analysis of the appropriate dissemination protocols should be done in conjunction with other more similar products, such as Agency CMBS and other mortgage products.

Unlike the consumer ABS with which they are currently grouped, credit analysis on non-Agency CMBS, CLOs and CDOs requires extensive analysis and an in depth study of the real estate or other assets collateralizing the securities to formulate an opinion on the value of the tranche. For example, junior non-agency CMBS securities are in many instances reliant upon the outcome of a small amount of loans (or even a single loan) to return principal to the tranche. In contrast, an auto loan or credit card master trust may have many thousands of granular assets.

Dealers and investors generally must perform intensive credit work on the assets that back the securities to formulate opinions of value. Opinions on the assets often vary, in many cases by multiple points. If prices were disseminated to the market on these securities without appropriate consideration, it would likely be the case that inexperienced investors could use the trade print in one junior bond as a proxy for a nominally similar piece of paper. However, the reality is that each deal and its assets are very unique, and require a separate analysis. For example, using a print on a 2007 'C' tranche off of one CMBS deal as a proxy for a 2007 'C' tranche off of another CMBS deal is likely to be misleading. Potential investors with less experience in CMBS credit analysis could use TRACE as a substitute for in-depth credit analysis, and could find themselves owning securities that do not perform as expected.

Additionally, TRACE prices may not always reflect the fundamental credit risk of a security, but may instead be influenced by technical factors. For example, it is not uncommon in markets for deeply discounted legacy CMBS credit that a party may seek to purchase a specific tranche as a means of obtaining control rights in a transaction. As a result, a bond can trade at a pronounced premium to its fundamental value because the control right is worth a significant amount for a special servicer who can extract value with special servicing and liquidation fees which are not available to a typical investor and may not exist for long. This may cause another investor with less experience to believe that this specific bond (or a similar bond) is worth a more than it actually would be if he or she were to purchase it. Our members have also reported that, due to technical factors similar to the one above, there have been instances when the same CDO tranche has traded at prices varying by as much as 10 points on a single trading day. Access to disseminated pricing for CDOs and CMBS may create a false sense of security for investors who are less familiar with these markets.

We do not believe the grouping of non-Agency CMBS with consumer ABS is appropriate, and as discussed above, we believe there are specific concerns in the more credit-sensitive areas of the CMBS market that warrant further discussion and consideration. We have similar concerns for CLOs and CDOs. We therefore request that FINRA revise the definition of ABS to exclude non-agency CMBS, CDOs and CLOs, and include them in the proposal for the dissemination of RMBS, Agency CMBS and other mortgage products after further discussion with industry participants.

5. Regulation S ABS Securities

We suggest an increased reporting period for TRACE reportable Regulation S securities. Regulation S securities are reported using a "G-CUSIP" which is part of the security's ISIN number. However, key vendors are not able to publish this CUSIP on their systems. Trades are therefore required to be booked using a dummy CUSIP, which later must be updated manually and reported to FINRA. This is a manual and time consuming process very much like that required for not-good-delivery TBA trades, and would be difficult if not impossible to consistently complete within the proposed timeframes.

We suggest having bifurcated reporting periods for Regulation S and other ABS products much like the current reporting periods for GD TBAs and NGD TBAs, where the reporting window in the pilot phase was 120 minutes and then reduced to 60 minutes.

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Please contact Chris Killian ([redacted]) or Joe Cox [redacted]) with any questions or for more information. Thank you for your consideration of our comments.

Regards,

Chris Killian
Managing Director, Securitization