

September 23, 2016

Mr. Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: File No. SR-FINRA-2016-027 - Response to Comments and  
Amendment No. 1**

Dear Mr. Fields:

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As a courtesy to commenters, attached is Amendment No. 1 to the above-referenced proposed rule change that was filed with the Securities and Exchange Commission earlier today. FINRA submitted by separate letter its response to comments on the proposed rule change.

If you have any questions, please contact me at [REDACTED].

Sincerely,



Brant K. Brown  
Associate General Counsel

Attachment

Required fields are shown with yellow backgrounds and asterisks.

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial \*  Amendment \*  Withdrawal  Section 19(b)(2) \*  Section 19(b)(3)(A) \*  Section 19(b)(3)(B) \*

Pilot  Extension of Time Period  
for Commission Action \*

PRE-FILED  
 PRE-FILED  
 PRE-FILED

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant  
to the Securities Exchange Act of 1934

Section 806(e)(1) \*

Section 806(e)(2) \*

Section 3C(b)(2) \*



Description

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Brant

Last Name \* Brown

Title \* Associate General Counsel

E-mail \* [REDACTED]

Telephone \* [REDACTED]

Fax [REDACTED]

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 09/23/2016

Senior Vice President and Director of Capital Markets  
Policy

By Stephanie Dumont

(Name \*)

Stephanie Dumont,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On July 18, 2016, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (the “Commission” or “SEC”) proposed rule change SR-FINRA-2016-027 (the “Proposal”), pursuant to which FINRA proposed to expand the Trade Reporting and Compliance Engine (“TRACE”) reporting rules to include most secondary market transactions in U.S. Treasury Securities.

The Commission published the proposed rule change for public comment in the Federal Register on July 25, 2016,<sup>1</sup> and received 12 comments in response to the Proposal. FINRA is submitting by separate letter its response to comments on the Proposal contemporaneously with this Partial Amendment No. 1. With this Partial Amendment No. 1, FINRA is including Exhibit 4, which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 1 and Exhibit 5, which reflects the changes to the current rule text that are proposed in the Proposal, as amended by this Partial Amendment No. 1.

In response to a comment received by the Commission from the Securities Industry and Financial Markets Association (“SIFMA”),<sup>2</sup> FINRA is proposing to amend the proposed rule text regarding the use of the “.S” trade modifier. In the Proposal, FINRA proposed that the “.S” modifier would be used “if the transaction is part of a series of transactions where at least one of the transactions is executed at a pre-determined fixed price or would otherwise result in the transaction being executed away from the current market.” In its comment letter, SIFMA ~~suggested that the use of the “.S” modifier be permitted when a reported transaction is part of a~~ series and meets the “.S” criteria regardless of whether one or more of the transactions in the series is, in fact, off market. FINRA agrees with this approach that the “.S” modifier should be permitted when a transaction is part of a series and therefore could be, but need not be, priced away from the market. Consequently, FINRA is proposing to amend the rule text regarding use of the “.S” modifier to require it “if the transaction is part of a series of transactions and may not be priced based on the current market.” FINRA believes this amendment will alleviate the need for firms to assess whether a particular transaction in the series of which the reportable transaction was a part was executed at a pre-determined price or was ultimately executed away from the current market.

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<sup>1</sup> Securities Exchange Act Release No. 78359 (July 19, 2016), 81 FR 48465 (July 25, 2016) (Notice of Filing of Proposed Rule Change; File No. SR-FINRA-2016-027).

<sup>2</sup> See Letter to Brent J. Fields, Secretary, SEC from Robert Toomey, Managing Director and Associate General Counsel, SIFMA, dated August 15, 2016.

**EXHIBIT 4**

Exhibit 4 shows the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed new language in this Partial Amendment No. 1 is underlined; proposed deletions in this Partial Amendment No. 1 are in brackets.

\* \* \* \* \*

**6000. QUOTATION AND TRANSACTION REPORTING FACILITIES**

\* \* \* \* \*

**6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)**

\* \* \* \* \*

**6730. Transaction Reporting**

(a) through (c) No Change.

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**(d) Procedures for Reporting Price, Capacity, Volume**

(1) through (3) No Change.

**(4) Modifiers; Indicators**

Members shall append the applicable trade report modifiers or indicators as specified by FINRA to all transaction reports.

(A) through (F) No Change.

**(G) U.S. Treasury Security Indicators and Modifiers**

(i) If reporting a When-Issued Transaction, select the appropriate indicator.

(ii) Select the modifier:

a. “.B,” if the transaction is part of a series of transactions where at least one of the transactions involves a futures contract;

b. “.S,” if the transaction is part of a series of transactions

[where at least one of the transactions is executed at a pre-

determined fixed price or would otherwise result in the transaction being executed away from] and may not be priced based on the current market.

(e) through (f) No Change.

••• **Supplementary Material:** -----

.01 through .05 No Change.

\* \* \* \* \*

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**EXHIBIT 5**

Exhibit 5 shows the text of the proposed rule change, as amended by this Partial Amendment No. 1. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**BY-LAWS OF THE CORPORATION**

\* \* \* \* \*

**Schedule A to the By-Laws of the Corporation**

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation shall be determined on the following basis.

**Section 1—Member Regulatory Fees**

(a) No Change.

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(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) No Change.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(A) through (I) No Change.

(J) Transactions in security futures held in futures accounts; [and]

(K) Proprietary transactions in TRACE-Eligible Securities by a firm that is a member of both FINRA and a national securities exchange and that are effected in the firm's capacity as an exchange specialist or exchange market maker; and.]

(L) Transactions in U.S. Treasury Securities, as that term is defined in Rule 6710.

\* \* \* \* \*

(3) through (4) No Change.

(c) through (e) No Change.

\* \* \* \* \*

**FINRA RULES**

\* \* \* \* \*

**0100. GENERAL STANDARDS**

\* \* \* \* \*

**0150. Application of Rules to Exempted Securities Except Municipal Securities**

(a) through (b) No Change.

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(c) Unless otherwise indicated within a particular Rule, the following FINRA and NASD

rules are applicable to transactions in, and business activities relating to, exempted securities, except municipal securities, conducted by members and associated persons: FINRA Rules 2010, 2020, 2060, 2111, 2122, 2150, 2210, 2212, 2261, 2268, 2269, 2320(g), 3110, 3220, 3270, 3280, 4120, 4130, 4210, 4311, 4330, 4360, 4510 Series, 4530, 5160, 5210, 5220, 5230, 5310, 5340, 6700 Series, 8110, 8120, 8210, 8310, 8311, 8312, 8320, 8330 and 9552; NASD Rules IM-2210-2, 2340, 2510, 3050 and 3140.

(d) No Change.

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**6000. QUOTATION AND TRANSACTION REPORTING FACILITIES**

\* \* \* \* \*

## 6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

### 6710. Definitions

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. For the purposes of this Rule 6700 Series, the following terms have the following meaning:

(a) "TRACE-Eligible Security" means a debt security that is United States ("U.S.") dollar-denominated and is: (1) issued by a U.S. or foreign private issuer, and, if a "restricted security" as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; [or is a debt security that is U.S. dollar-denominated and] (2) issued or guaranteed by an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n); ~~or (3) a U.S. Treasury Security as defined in paragraph (p).~~ "TRACE-Eligible Security" does not include a debt security that is[:] issued by a foreign sovereign[, a U.S. Treasury Security as defined in paragraph (p),] or a Money Market Instrument as defined in paragraph (o).

(b) through (n) No Change.

(o) "Money Market Instrument" means, other than a U.S. Treasury Security, a debt security that at issuance has a maturity of one calendar year or less, or, if a discount note issued by an Agency, as defined in paragraph (k), or a Government-Sponsored Enterprise, as defined in paragraph (n), a maturity of one calendar year and one day or less.

(p) "U.S. Treasury Security" means a security, other than a savings bond, issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities. The term "U.S. Treasury Security" also includes separate principal and interest components of a U.S. Treasury Security that has been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program operated by the U.S. Department of Treasury.

(q) through (cc) No Change.

(ff) “Auction” means the bidding process by which the U.S. Department of the Treasury sells marketable securities to the public pursuant to Part 356 of Title 31 of the Code of Federal Regulations.

(gg) “Auction Transaction” means the purchase of a U.S. Treasury Security in an Auction.

(hh) “When-Issued Transaction” means a transaction in a U.S. Treasury Security that is executed before the Auction for the security.

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## **6730. Transaction Reporting**

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### **(a) When and How Transactions are Reported**

Each member that is a Party to a Transaction in a TRACE-Eligible Security must report the transaction. A member must report a transaction in a TRACE-Eligible Security as soon as practicable, but no later than within 15 minutes of the Time of Execution, except as otherwise specifically provided below. Transactions not reported within the specified timeframe will be designated as “late.” A member must transmit the report to TRACE during TRACE System Hours.

(1) through (3) No Change.

#### **(4) Reporting Requirements — U.S. Treasury Securities**

Transactions in U.S. Treasury Securities must be reported as provided in this paragraph (a)(4).

#### **(A) General Reporting Requirements**

Transactions in U.S. Treasury Securities executed on:

(i) a business day at or after 12:00:00 a.m. Eastern Time through 5:00:00 p.m. Eastern Time must be reported the same day during TRACE System Hours;

(ii) a business day after 5:00:00 p.m. Eastern Time but before the TRACE system closes must be reported no later than the next business day (T + 1) during TRACE System Hours, and, if reported on T + 1, designated “as/of” and include the date of execution; or

(iii) a business day at or after 6:30:00 p.m. Eastern Time through 11:59:59 p.m. Eastern Time, or a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T + 1) during TRACE System Hours, designated “as/of” and include the date of execution.

**([4]5)** Members have an ongoing obligation to report transaction information promptly, accurately, and completely. The member may employ an agent for the purpose of submitting transaction information. However, the primary responsibility for the timely, accurate, and complete reporting of transaction information remains the non-delegable duty of the member obligated to report the transaction.

**([5]6)** A member may be required to report as soon as practicable to the Market Regulation Department on a paper form, the transaction information required under Rule 6730 if electronic submission into TRACE is not possible. Transactions that can be reported into TRACE, including transactions executed on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day (determined using Eastern Time), and transactions that can be submitted

on the trade date or a subsequent date on an “as/of” basis shall not be reported on a paper form.

~~(f)~~ If a member that is a Party to a Transaction makes a good faith determination that a transaction involves a TRACE-Eligible Security, the member must report the transaction as provided in this Rule, and if the TRACE-Eligible Security is not entered in the TRACE system, the member must promptly notify and provide FINRA Operations the information required under Rule 6760(b) prior to reporting the transaction.

**(b) No Change.**

**(c) Transaction Information To Be Reported**

Each TRACE trade report shall contain the following information:

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(1) and (2) No Change.

(3) Price of the transaction (or the elements necessary to calculate price, which are contract amount and accrued interest) or, for When-Issued Transactions in U.S. Treasury Securities, the yield as required by paragraph (d)(1) below;

(4) through (14) No Change.

**(d) Procedures for Reporting Price, Capacity, Volume**

**(1) Price**

(A) Except as noted in paragraph (B) for When-Issued Transactions in U.S. Treasury Securities, [F]for principal transactions, report the price, which must include the mark-up or mark-down. (However, if a price field is not available, report the contract amount and, if applicable, the accrued interest.) For agency transactions, report the price, which must exclude the commission. (However, if a price field is not available, report the contract amount and, if applicable, the accrued interest.) Report the total dollar amount of the

commission if one is assessed on the transaction. Notwithstanding the foregoing, a member is not required to include a commission, mark-up or mark-down where one is not assessed on a trade-by-trade basis at the time of the transaction or where the amount is not known at the time the trade report is due. A member must use the “No Remuneration” indicator described in paragraph (d)(4)(F) where a trade report does not reflect either a commission, mark-up or mark-down, except for an inter-dealer transaction, a “List or Fixed Offering Price Transaction,” as defined in Rule 6710(q), or a “Takedown Transaction,” as defined in Rule 6710(r).

(B) For When-Issued Transactions in U.S. Treasury Securities conducted on a principal basis, report the yield, which must include the mark-up or mark-down, of the security in lieu of price. For When-Issued Transactions in U.S. Treasury Securities conducted on an agency basis, report the yield, which must exclude the commission, of the security in lieu of price. Report the total dollar amount of the commission.

(2) through (3) No Change.

**(4) Modifiers; Indicators**

Members shall append the applicable trade report modifiers or indicators as specified by FINRA to all transaction reports.

(A) through (F) No Change.

**(G) U.S. Treasury Security Indicators and Modifiers**

(i) If reporting a When-Issued Transaction, select the appropriate indicator.

(ii) Select the modifier:

a. “.B.” if the transaction is part of a series of transactions where at least one of the transactions involves a futures contract;

b. “.S.” if the transaction is part of a series of transactions and may not be priced based on the current market.

**(e) Reporting Requirements for Certain Transactions and Transfers of Securities**

The following shall not be reported:

(1) through (6) No Change.

(7) Bona fide repurchase and reverse repurchase transactions involving TRACE-Eligible Securities.

(8) Auction Transactions.

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(f) No Change.

**• • • Supplementary Material: -----**

**.01 through .03** No Change.

**.04 Time of Execution for Transactions in U.S. Treasury Securities.** When reporting transactions in U.S. Treasury Securities executed electronically, members must report the time of execution pursuant to paragraph (c)(8) to the finest increment of time captured in the member’s system (e.g., millisecond, microsecond), but at a minimum, in increments of seconds.

**.05 STRIPS Program (Separate Trading of Registered Interest and Principal of Securities).** Members are not required to report transactions undertaken as part of the process of separating and reconstituting securities pursuant to the STRIPS Program operated by the U.S. Department of Treasury under which eligible U.S. Treasury Securities are authorized to be separated into principal and interest components and transferred separately.

\* \* \* \* \*

**6750. Dissemination of Transaction Information**

(a) No Change.

**(b) Transaction Information Not Disseminated**

FINRA will not disseminate information on a transaction in a TRACE-Eligible Security that is:

(1) through (2) No Change.

(3) a List or Fixed Offering Price Transaction or a Takedown Transaction; [or]

(4) a Securitized Product, except:

(A) an Agency Pass-Through Mortgage-Backed Security;

(B) an SBA-Backed ABS; and

(C) an Asset-Backed Security; or[.]

(5) a U.S. Treasury Security.

\* \* \* \* \*

**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS, AND FACILITY CHARGES**

\* \* \* \* \*

**7700. CHARGES FOR OTC REPORTING FACILITY, OTC BULLETIN BOARD AND TRADE REPORTING AND COMPLIANCE ENGINE SERVICES**

\* \* \* \* \*

**7730. Trade Reporting and Compliance Engine (TRACE)**

\* \* \* \* \*

(a) No Change.

**(b) Transaction Reporting Fees**

[For c]Each transaction in a TRACE-Eligible Security that is reportable to FINRA pursuant to the Rule 6700 Series[,] is subject to the [following] charges in this paragraph (b), and these charges shall be assessed against each member responsible for reporting the transaction.[:] Transactions in U.S. Treasury Securities that are reportable to FINRA pursuant to the Rule 6700 Series are not subject to transaction reporting fees under this paragraph (b).

(1) through (3) No Change.

(c) through (g) No Change.

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