

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65551; File No. SR-FINRA-2011-056)

October 13, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7730 Regarding TRACE Reporting Fees For Transactions in Agency Pass-Through Mortgage-Backed Securities Traded “To Be Announced”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 30, 2011, the Financial Industry Regulatory Authority, Inc. (“FINRA”) 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. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend FINRA Rule 7730 to establish a transaction reporting fee of \$1.50 per transaction for a TRACE-Eligible Security that is an Agency Pass-Through Mortgage-Backed Security traded “to be announced” and to incorporate minor technical amendments.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA, on the Commission's website at <http://www.sec.gov>, 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

On May 16, 2011, amendments to the FINRA Rule 6700 Series (the TRACE rules) and Rule 7730 (TRACE fees) became effective.<sup>5</sup> The amendments defined Asset-Backed Securities ("ABS") as TRACE-Eligible Securities and extended TRACE reporting requirements to transactions in ABS in the TRACE rules.<sup>6</sup> In addition, the TRACE reporting fees in effect for

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<sup>5</sup> See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010) (order approving File No. SR-FINRA-2009-065) ("TRACE ABS filing"); Securities Exchange Act Release No. 64364 (April 28, 2011), 76 FR 25385 (May 4, 2011) (order approving File No. SR-FINRA-2011-012) ("supplemental TRACE ABS filing"); Regulatory Notice 10-55 (October 2010) (establishing May 16, 2011 as the effective date for the TRACE ABS filing); and Regulatory Notice 11-20 (May 2011) (establishing May 16, 2011 as the effective date for the supplemental TRACE ABS filing).

<sup>6</sup> "Asset-Backed Security" and "TRACE-Eligible Security" are defined in, respectively, Rule 6710(m) and Rule 6710(a).

transactions in corporate bonds and Agency Debt Securities were extended to transactions in ABS in Rule 7730.<sup>7</sup>

As a result, currently the reporting fee for transactions in ABS, including Agency Pass-Through Mortgage-Backed Securities (“Agency Pass-Through MBS”) traded to-be-announced (“TBA”),<sup>8</sup> is based upon a sliding scale and ranges from \$0.475 to \$2.375 per transaction depending upon the size (volume) of the reported transaction.<sup>9</sup> Most ABS transactions, including Agency Pass-Through MBS traded TBA (“TBA transactions”), are in excess of \$1,000,000 par value (or, in the case of certain ABS, in excess of \$1,000,000 as measured by the

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<sup>7</sup> “Agency Debt Security” is defined in Rule 6710(l).

<sup>8</sup> As provided in Rule 6710(v), “Agency Pass-Through Mortgage-Backed Security” means a mortgage-backed security issued by an Agency or a Government-Sponsored Enterprise, for which the timely payment of principal and interest is guaranteed by an Agency or a Government-Sponsored Enterprise, representing ownership interests in a pool or pools of residential mortgage loans with the security structured to “pass through” the principal and interest payments made by the mortgagees to the owners of the pool(s) on a pro rata basis.

“Agency” and “Government-Sponsored Enterprise” (“GSE”) are defined in, respectively, Rule 6710(k) and Rule 6710(n).

As provided in Rule 6710(u), “TBA” means

“to be announced” and refers to a transaction in an Agency Pass-Through Mortgage-Backed Security . . . where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number).

In a transaction traded TBA, the parties agree on a price for delivering a given volume of Agency Pass-Through MBS at a specified future date.

<sup>9</sup> As set forth in Rule 7730(b)(1)(A), for trades up to and including \$200,000 par value, the reporting fee is \$0.475 per trade; for trades over \$200,000 and up to and including \$999,999.99 par value, the reporting fee is \$0.000002375 times par value (i.e., \$0.002375 per \$1000 par value) per trade; and for trades of \$1,000,000 par value or more, the reporting fee is \$2.375 per trade. (Trade reporting and other TRACE fees are also summarized in a fee chart in Rule 7730.)

original face value or Remaining Principal Balance of the security, as applicable).<sup>10</sup> Thus, for most ABS transactions, the highest reporting fee, \$2.375 per transaction, applies.

FINRA proposes to amend the transaction reporting fee in Rule 7730 applicable to TBA transactions. Specifically, FINRA proposes to charge a member a flat fee of \$1.50 per TBA transaction in lieu of the current reporting fee that is based upon a sliding scale depending on the size (volume) of the transaction.<sup>11</sup>

Agency Pass-Through MBS are the most liquid sector among all ABS, and transactions in Agency Pass-Through MBS are a significant share of the volume of all ABS transactions. Many Agency Pass-Through MBS are TBA transactions. The proposed amendment to Rule 7730 to modify the reporting fee from multiple rates based upon transaction size (volume) to a flat rate of \$1.50 per transaction for TBA transactions regardless of transaction size (volume) would reduce the reporting fee for approximately 95 percent of all TBA transactions.<sup>12</sup> In

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<sup>10</sup> For some ABS transactions, including TBA transactions, par value is not the correct term to describe the size (volume) of a transaction. When calculating reporting fees for transactions in such securities, Rule 7730(b)(1)(B) provides that the size (volume) of a transaction is the lesser of the original face value or the Remaining Principal Balance. “Remaining Principal Balance” and “Time of Execution” are defined in, respectively, Rule 6710(aa) and Rule 6710(d).

<sup>11</sup> The proposed TBA transaction fee would be set forth in Rule 7730(b)(1)(B). FINRA also proposes three minor technical amendments to Rule 7730(b)(1). The provision regarding the sliding scale, which determines a reporting fee based on the size (volume) of a transaction, would be incorporated in Rule 7730(b)(1)(B) and deleted in Rule 7730(b)(1)(A). The provision indicating that, for ABS where par value is not used to determine the size (volume) of a transaction, for purposes of trade reporting fees, the size (volume) of a transaction is the lesser of the original face value or the Remaining Principal Balance would be incorporated in Rule 7730(b)(1)(A) and deleted in Rule 7730(b)(1)(B). In addition, the final sentence of current Rule 7730(b)(1)(B) would be deleted.

<sup>12</sup> A review of ABS transaction data reported to TRACE between May 16, 2011 and July 31, 2011, indicates that more than 95 percent of all TBA transactions are larger than \$1 million and, thus, are billed at the rate of \$2.375 per transaction. Reducing the reporting fee to a flat fee of \$1.50 per transaction will raise fees on approximately five percent of TBA transactions, and lower fees on approximately 95 percent of such transactions.

addition, the proposed fee reduction would substantially reduce reporting fees that members pay in connection with ABS transactions in general, as TBA transactions account for approximately 85 percent of the total volume (size) traded in ABS and approximately 51 percent of all ABS transactions.<sup>13</sup>

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be November 1, 2011.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>14</sup> 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. FINRA believes that the proposed amendment, which will establish a flat fee per transaction for reporting TBA transactions regardless of the size (volume) of the TBA transaction, is a reasonable and fair adjustment to TRACE reporting fees in that, currently, for TBA transactions, members are subject to the highest TRACE reporting fee for almost all such transactions, and the proposed amendment will reduce the reporting fee for 95 percent of such transactions, and will result in a more equitable allocation among members for ABS reporting fees.

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<sup>13</sup> A review of ABS transaction data reported to TRACE between May 16, 2011 and July 31, 2011, showed that TBAs trade in a liquid market. The average daily volume of TBA transactions is approximately \$219 billion. The average daily number of trades is slightly more than 7,000. The average daily volume of TBA transactions is approximately ten times the average daily volume of all corporate bonds.

<sup>14</sup> 15 U.S.C. 78o-3(b)(5).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>16</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2011-056 on the subject line.

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

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-2011-056. 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 website (<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 website viewing and printing 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-2011-056 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.<sup>17</sup>

Elizabeth M. Murphy  
Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).