

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69702; File No. SR-FINRA-2013-022)

June 5, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Dissemination of Agency-Pass Through Mortgage-Backed Securities and SBA-Backed Asset-Backed Securities Traded in Specified Pool Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 24, 2013, 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 and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ 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 the Trade Reporting and Compliance Engine (“TRACE”) dissemination protocols to provide a limited exception to dissemination requirements for certain Agency Pass-Through Mortgage Backed-Securities (“MBS”) and Asset-Backed Securities (“ABS”) backed by loans guaranteed as to principal and interest by the Small Business Administration (“SBA-Backed ABS”) traded in Specified Pool Transactions (collectively, “MBS

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

and SBA-Backed ABS Specified Pool Transactions”) that are reported late and to clarify that FINRA will disseminate an MBS or SBA-Backed ABS Specified Pool Transaction in instances where some but not all of the data elements are available and input in the TRACE System when the transaction is reported.⁴

The proposed rule change makes no changes to the rule text.

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 August 29, 2012, FINRA filed SR-FINRA-2012-042, a proposed rule change to amend FINRA Rule 6750 and certain dissemination protocols to disseminate information on MBS and SBA-Backed ABS Specified Pool Transactions immediately upon receipt of a transaction report (the “Specified Pool Filing”).⁵ On October 23, 2012, the SEC approved the

⁴ The terms Agency Pass-Through Mortgage-Backed Security, Asset-Backed Security, and Specified Pool Transaction are defined in FINRA Rule 6710(v), FINRA Rule 6710(m), and FINRA Rule 6710(x), respectively. The dissemination requirements were approved and will become effective on July 22, 2013. See note 5.

⁵ See Securities Exchange Act Release No. 68084 (October 23, 2012), 77 FR 65436 (October 26, 2012) (SEC Order Approving File No. SR-FINRA-2012-042 to provide for, among other things, the dissemination of MBS and SBA-Backed ABS Specified Pool Transactions and SBA-Backed ABS traded To Be Announced (“TBA”)). (The proposed

Specified Pool Filing.⁶ In December 2012, FINRA issued Regulatory Notice 12-56, announcing July 22, 2013 as the effective date for the dissemination of MBS and SBA-Backed ABS Specified Pool Transactions, and briefly describing information (hereinafter, “data elements”) to be disseminated for such transactions.⁷

FINRA proposes to amend the TRACE dissemination protocols to provide a limited exception to dissemination requirements for certain MBS and SBA-Backed ABS Specified Pool Transactions that are reported late in circumstances where dissemination may mislead or confuse investors and other market participants. In addition, the proposal would clarify that an MBS or SBA-Backed ABS Specified Pool Transaction will be disseminated at the time of reporting, in instances where some but not all of the data elements are available and input in the TRACE System when the transaction is reported, to make transparent those data elements that are available at the time of reporting.

Background. MBS and SBA-Backed ABS Specified Pool Transactions, which currently are required to be reported to TRACE, will be disseminated effective July 22, 2013. The dissemination protocols for MBS and SBA-Backed ABS Specified Pool Transactions will differ from the dissemination protocols that currently are used to disseminate other types of TRACE-Eligible Securities.⁸

rule change does not propose to amend dissemination requirements of SBA-Backed ABS traded TBA that were approved in the Specified Pool Filing.)

⁶ See note 5.

⁷ See Regulatory Notice 12-56 (announcing July 22, 2013 as the effective date of SR-FINRA-2012-042, and, in Attachment A thereto, describing certain data elements).

⁸ Currently, the data elements that are displayed by TRACE upon dissemination of a transaction in a TRACE-Eligible Security include, among other things, CUSIP, time of transaction, size (subject to dissemination caps), price, counterparty type (customer or dealer), and buy/sell indicator. The term TRACE-Eligible Security is defined in FINRA Rule 6710(a).

In dissemination protocols currently in use, the transaction information is disseminated together with the CUSIP of the security. The CUSIP may be cross-referenced with a file that contains certain reference data, such as issuer, coupon and maturity date. When disseminating information regarding an MBS or SBA-Backed ABS Specified Pool Transaction, the CUSIP will not be displayed, as described in the Specified Pool Filing and Regulatory Notice 12-56.⁹ FINRA instead will disseminate an identifier (a “reference data identifier” or “RDID”), which similarly may be cross-referenced with a file that contains certain data elements that describe the security (e.g., type of issuer) and provide information about characteristics of the Specified Pool at the Time of Execution (e.g., the WAM of the various credit instruments constituting the pool).¹⁰

In contrast to a CUSIP, which is constant over the life of the security, an MBS or SBA-Backed ABS Specified Pool will be identified by and mapped by the TRACE system to different RDIDs over the life of the security. This is due primarily to the amortization of the securities. Ordinarily, the values of several of the data elements constituting the RDID (such as WAC and WAM) will change approximately once a month, when the GSEs and agencies (e.g., the Federal National Mortgage Association (“Fannie Mae”), Federal Home Loan Mortgage Corporation (“Freddie Mac”), Government National Mortgage Association (“Ginnie Mae”) and the SBA)

⁹ For example, for an MBS Specified Pool Transaction, some of the data elements to be provided to evaluate pricing include: (a) coupon; (b) weighted average coupon (“WAC”); (c) original maturity; (d) weighted average maturity (“WAM”); (e) original loan-to-value (“original LTV”); (f) the average loan size (“ALS”); and (g) weighted average loan age (“WALA”). These data elements will be displayed as rounded and truncated values. In addition, to identify the type of security traded, in lieu of the CUSIP, FINRA will include data elements that identify the pool by agency or government-sponsored-enterprise (“GSE”), product type and amortization type. See the Specified Pool Filing and Regulatory Notice 12-56, Attachment A, for a more detailed description of the data elements to be used in disseminating information about MBS and SBA-Backed ABS Specified Pool Transactions.

¹⁰ The term “Time of Execution” is defined in FINRA Rule 6710(d).

publish updated data based on the payments made on the underlying debt and the amortization of such securities.¹¹ Thus, an MBS or SBA-Backed ABS Specified Pool will be identified by and mapped by the TRACE system to only one RDID at a given point in time, but will be identified by and mapped to various RDIDs over the life of the security as the values of the data elements are updated.¹² In disseminated data, market participants will cross-reference the RDID with a file that contains the corresponding values of the data elements for the security at the Time of Execution of the MBS or SBA-Backed ABS Specified Pool Transaction.

The dissemination protocol to provide an RDID that market participants will use to cross-reference a file that contains the data elements was developed by FINRA because it will be impractical to disseminate directly and immediately upon receiving a TRACE transaction report the multiple data elements that describe a particular MBS or SBA-Backed ABS Specified Pool. As a result of this new dissemination protocol, the TRACE system will maintain vast amounts of past and current information. The TRACE system will store as readily accessible (for transaction processing purposes, including real-time dissemination) the most current version of the RDID (the RDID that identifies and maps to the current MBS or SBA-Backed ABS Specified Pool) and one prior version. However, the TRACE system will archive all prior RDID versions,

¹¹ FINRA notes that, in connection with a specific MBS or SBA-Backed ABS Specified Pool, an RDID may be superseded by a subsequent RDID more frequently than monthly if any of the values of the data elements change (except a change so minor that the truncated and rounded number does not change, as explained in note 9). For example, an RDID may be superseded at any time to correct inaccurate data elements provided to FINRA by the agency, FINRA's reference data provider, or a member.

¹² On a specific date in connection with a specific MBS or SBA-Backed ABS Specified Pool, (such as the date of execution of a transaction in a specific MBS or SBA-Backed ABS Specified Pool), only one RDID will identify and map to the particular MBS or SBA-Backed ABS Specified Pool. In many cases, however, on a specific date a single RDID may identify and map to more than one MBS or SBA-Backed ABS Specified Pool, because the values of certain data elements are rounded or truncated.

and although the archived RDIDs will be available for regulatory purposes, they will not be available to be displayed in real-time disseminated data.

Proposal. FINRA proposes to modify TRACE dissemination protocols to provide a limited exception to the dissemination of MBS or SBA-Backed ABS Specified Pool Transactions when two conditions are present: the MBS or SBA-Backed ABS Specified Pool Transaction is reported late and the RDID (i.e., the version of RDID that is applicable at the Time of Execution of the transaction) has been archived by the TRACE system. Such transactions would not be disseminated because the applicable RDID, if archived, is not available to be displayed in disseminated data.¹³ This would happen if the Time of Execution of the transaction reported is prior to the applicable start date of both the current and the previous RDID.¹⁴ FINRA believes

¹³ For example, assume that a GSE or agency typically publishes updated information regarding an MBS or SBA-Backed ABS Specified Pool monthly on the sixth day, that the date and Time of Execution of a MBS or SBA-Backed ABS Specified Pool Transaction is 1:00 p.m. on September 5, 2013, and that the transaction is reported late (or “as/of”) on October 7, 2013.

As noted above, the version of the RDID that must be used in the disseminated data is the RDID in effect at the Time of Execution. In this case, the RDID on August 6, 2013 is the applicable RDID for the September 5, 2013 transaction. This August 6 RDID was superseded by the RDID on September 6, 2013 (as a result of the monthly updates of the data elements) and superseded again on October 6, 2013 (again, due to the monthly updates). On October 6, 2013, the August 6 RDID must be archived, and is no longer available to be disseminated (the TRACE system would retain the October 6 RDID and the September 6 RDID). Thus, when the September 5, 2013 transaction is reported late on October 7, 2013 and the applicable August 6 RDID has been archived, the late reported transaction cannot be disseminated with an RDID that would cross-reference accurate data. If FINRA were to disseminate the transaction in the above example, which was priced based upon the security characteristics of the MBS or SBA-Backed ABS Specified Pool that were valid at the time the August 6 RDID was the applicable RDID, by disseminating either the September 6 or October 6 RDID, market participants would be misled by the disseminated RDID and the inaccurate information that such RDID would cross-reference.

¹⁴ FINRA’s ability to surveil the market for such transactions will not be affected, as the transaction is available for review by FINRA Market Regulation staff. In addition, the transaction will be available in the historical data.

that if an RDID is displayed in disseminated data, the RDID must be the one in effect at the Time of Execution of a transaction, not the time of reporting. If the relevant RDID is archived and a subsequent version of the RDID were used to disseminate the transaction for the sake of disseminating all transactions in an MBS or SBA-Backed ABS Specified Pool, the data disseminated, such as the values for WAC and WAM, would not correspond to the data values (e.g., such as WAC and WAM), that are accurate as of the Time of Execution, and may mislead and confuse investors and market participants. FINRA recognizes that given the amortization of MBS and SBA-Backed ABS Specified Pools, to provide meaningful transparency for MBS or SBA-Backed ABS Specified Pool Transactions, the data elements applicable at the Time of Execution must be the data elements cross-referenced by any RDID that is disseminated by TRACE to characterize accurately the security [sic] the subject of the transaction. If such RDID is not available for dissemination, the transaction should not be disseminated.

The proposed amendments to the TRACE dissemination protocols will allow the dissemination of almost all MBS or SBA-Backed ABS Specified Pool Transactions to proceed while providing notice that, in rare circumstances, a limited number of transactions will not be disseminated.¹⁵ The proposed rule change will not alter a member's obligation to report timely MBS or SBA-Backed ABS Specified Pool Transactions and FINRA's surveillance of the market and member reporting practices will not be affected. FINRA will continue to have access to all reported transactions. All information, including the superseded versions of RDID, will be archived and available at any time for surveillance purposes to review the trading and pricing of

¹⁵ Based on a review of the rate of late transaction reporting in MBS and SBA-Backed ABS Specified Pool Transactions, FINRA believes that a limited number of transactions will not be disseminated. In 2012, approximately 0.1% of all reported MBS and SBA-Backed ABS Specified Pool Transactions were reported late such that FINRA would not be able to disseminate the transaction.

MBS or SBA-Backed ABS Specified Pool Transactions and correlated TBA transactions.¹⁶

Finally, all transaction information will be maintained in Historic TRACE Data¹⁷ and be available, following the aging of such transactions, as provided in FINRA Rule 7730.

FINRA is also proposing to clarify the dissemination protocols to indicate that FINRA will disseminate an MBS or SBA-Backed ABS Specified Pool Transaction immediately upon receipt of the transaction report in instances where some but not all of the data elements are available and input in the TRACE System when the transaction is reported. FINRA will make transparent the data elements that are available at the time the transaction is reported.

As noted above, FINRA previously published a list of certain data elements that would be accessible in lieu of a CUSIP to provide transparency for MBS and SBA-Backed ABS Specified Pool Transactions. However, an MBS or SBA-Backed ABS Specified Pool Transaction may occur and be reported to TRACE prior to the receipt and input to the TRACE system of all of the data elements described previously.¹⁸ FINRA clarifies the dissemination protocols to provide that, in such cases, FINRA will disseminate information on an MBS or a SBA-Backed ABS Specified Pool Transaction, by disseminating an RDID that cross-references a file that contains the data elements that the TRACE system has received regarding that security as of the Time of

¹⁶ For example, FINRA will surveil to identify patterns of late reporting in MBS and SBA-Backed ABS Specified Pool Transactions, alone, or with correlated TBA transactions.

¹⁷ FINRA currently provides access to aged transaction-level data for a fee. Historic TRACE Data is defined in FINRA Rule 7730(f)(4) and is delayed a minimum of 18 months.

¹⁸ This may occur if a GSE or an agency has not published a data element with respect to a specified MBS or SBA-Backed ABS Specified Pool. FINRA notes that certain data elements are not available for some MBS because the GSE or agency only recently started providing such information (e.g., Fannie Mae began publishing weighted average original LTVs for its MBS in 2003, and Ginnie Mae began to do so in 2004), and the GSE and agencies do not make such information available for MBS they issued prior to the applicable date. This also may occur when the information is not provided timely or accurately to FINRA by the GSE or agency, a reference data provider, or, a member.

Execution. The value provided by making the transaction information available and transparent outweighs any negative impact of disseminating a transaction for which not all of the data elements are available.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change will be the first day on which MBS and SBA-Backed ABS Specified Pool Transactions will be disseminated.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁹ 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. The public dissemination of information on MBS and SBA-Backed ABS Specified Pool Transactions immediately upon receipt of a transaction will provide transparency to the MBS and SBA-Backed ABS Specified Pool market for the first time, and given the correlation between the pricing of such Specified Pool Transactions and TBAs, also will enhance the information available to the public and investors regarding the pricing of TBA transactions. FINRA believes that the additional transparency in these two segments of the ABS market will promote just and equitable principles of trade for the benefit of investors, the public and market participants, and will aid in the prevention of fraudulent and manipulative acts and practices. FINRA believes that the approach to disseminating MBS and SBA-Backed ABS Specified Pool Transactions using a new and substantially more complex methodology strikes a balance between providing transparency for such securities transactions and addressing concerns regarding anonymity

¹⁹ 15 U.S.C. 78o-3(b)(6).

expressed by both buy and sell-side market participants. The proposed rule change to provide a limited exception to the dissemination of all MBS or SBA-Backed ABS Specified Pool Transactions will permit the broad dissemination initiative to begin, in furtherance of the public interest, the protection of investors, and just and equitable principles of trade, while providing notice that a limited number of MBS or SBA-Backed ABS Specified Pool Transactions, if reported late and for which the applicable RDID has been archived, will not be disseminated.²⁰ Further, the proposed rule change is in furtherance of the prevention of fraudulent and manipulative acts and practices because FINRA will continue to engage in surveillance of late transaction reporting and enforce a member's obligation to timely report to deter and address conduct that may interfere with the timely dissemination of transaction information.

In addition, FINRA believes that disseminating an MBS or SBA-Backed ABS Specified Pool Transaction immediately upon receipt of the transaction report in instances where some but not all of the data elements are available at the time the transaction is reported is consistent with providing additional transparency because the occurrence of such modified transaction dissemination will be limited and it provides information to the market to the extent it is available. Further FINRA believes the proposed additional transparency enhances the ability of investors and other market participants to identify and negotiate fair and competitive prices for such securities, aids in the prevention of fraudulent and manipulative acts and practices in the market in such securities, and is in furtherance of just and equitable principles of trade.

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. The

²⁰ See note 15.

proposed amendments to the dissemination protocols are appropriate given the value of providing transparency in the market for MBS and SBA-Backed ABS Specified Pool Transactions, when weighed against the limited exception and modifications that FINRA proposes. FINRA's proposal to amend the dissemination protocols and proceed as scheduled on July 22, 2013, with the dissemination of MBS and SBA-Backed ABS Specified Pool Transactions, provides transparency in a market sector for the first time, which may foster more competitive, negotiated, and fairer pricing of such transactions among members, institutional investors and other investors, and, in some cases, may result in lower prices for investors.

Also, FINRA does not believe that the proposed rule change would result in any differential impact on members or data recipients. FINRA's surveillance and enforcement of a member's obligation to timely report would apply equally to all members. FINRA will surveil for late reporting of MBS or SBA-Backed ABS Specified Pool Transactions, especially late reporting that results in the non-dissemination of one or more MBS or SBA-Backed ABS Specified Pool Transactions and may provide a competitive advantage, and will enforce rigorously all member obligations, including timely reporting, to address such conduct and deter other members from engaging in such activity. In addition, all members would continue to be subject to transaction reporting fees, including late fees, and any member that reported MBS or SBA-Backed ABS Specified Pool Transactions late would be liable for late trade reporting fees under FINRA Rule 7730(b)(3). The proposed limited exception to dissemination also would not have a differential impact on data recipients, in that all data recipients would receive the same information.

Finally, FINRA's clarification that it will disseminate a MBS or SBA-Backed ABS Specified Pool Transaction immediately upon receipt of a transaction report in instances where

some but not all of the data elements are available when the transaction is reported, provides notice of a dissemination practice that will have no differential impact in that all data recipients will receive the same information.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²²

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.

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

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-2013-022 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-2013-022. 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 also will 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 Number SR-FINRA-2013-022 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Kevin M. O'Neill
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).