

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79620; File No. SR-FINRA-2016-046)

December 20, 2016

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Reporting Transactions in U.S. Treasury Securities to the Trade Reporting and Compliance Engine

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 December 14, 2016, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. 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 6710 to clarify the definitions of “Auction Transaction” and “When-Issued Transaction” for the purposes of reporting transactions in U.S. Treasury Securities to the Trade Reporting and Compliance Engine (“TRACE”).

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

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6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

6710. Definitions

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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) through (ee) No Change.

(ff) “Collateralized Debt Obligation” (“CDO”) means a type of Securitized Product backed by fixed-income assets (such as bonds, receivables on loans, or other debt) or derivatives of these fixed-income assets, structured in multiple classes or tranches with each class or tranche entitled to receive distributions of principal and/or interest in accordance with the requirements adopted for the specific class or tranche. A CDO includes, but is not limited to, a collateralized loan obligation (“CLO”) and a collateralized bond obligation (“CBO”).

([ff]gg) “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]hh) “Auction Transaction” means [the purchase of] a transaction in which a member is awarded a U.S. Treasury Security in an Auction.

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

••• **Supplementary Material:** -----

.01 No Change.

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6730. Transaction Reporting

(a) through (b) **No Change.**

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

Each TRACE trade report shall contain the following information:

(1) through (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 executed before the Auction for the security, the yield as required by paragraph (d)(1) of this Rule[below];

(4) through (14) No Change.

(d) Procedures for Reporting Price, Capacity, Volume

(1) Price

(A) Except as noted in subparagraph (B) [for When-Issued Transactions in U.S. Treasury Securities], 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 executed before the Auction for the security and 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 executed before the Auction for the security and 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 (4) No Change.

(e) through (f) No Change.

••• **Supplementary Material:** -----

.01 through .05 No Change.

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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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 18, 2016, the Commission approved a proposed rule change to require FINRA members to report certain transactions in U.S. Treasury Securities to TRACE.³ The reporting requirements will be implemented beginning July 10, 2017.⁴ As part of the proposed rule change, FINRA adopted three new defined terms to address members' reporting requirements involving transactions in U.S. Treasury Securities that occur on a "when-issued" basis or that occur as part of an auction of U.S. Treasury Securities: "Auction," "Auction Transaction," and "When-Issued Transaction." FINRA is amending the definitions of "Auction Transaction" and "When-Issued Transaction" to clarify the application of those terms, and is amending Rule 6730 to clarify the reporting requirements in light of the changes to the definition of "When-Issued Transaction."⁵

First, FINRA is amending the terminology in the definition of "Auction Transaction" to conform to the regulations applicable to auctions of U.S. Treasury Securities. As adopted, the term "Auction Transaction" is defined as "the purchase of a U.S. Treasury Security in an Auction."⁶ Pursuant to the amendments to Rule 6730(e), Auction Transactions are exempt from the TRACE reporting requirements.

³ See Securities Exchange Act Release No. 79116 (October 18, 2016), 81 FR 73167 (October 24, 2016) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2016-027).

⁴ See Regulatory Notice 16-39 (October 2016).

⁵ On September 23, 2016, the Commission approved SR-FINRA-2016-023, which added a definition of "Collateralized Debt Obligation" to Rule 6710 as paragraph (ff). See Securities Exchange Act Release No. 78925 (September 23, 2016), 81 FR 67023 (September 29, 2016) (Order Approving File No. SR-FINRA-2016-023). The proposed rule change also amends the paragraph designations for the definitions of "Auction," "Auction Transaction," and "When-Issued Transaction" as (gg), (hh), and (ii), respectively.

⁶ The term "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."

When conducting auctions, the Department of the Treasury accepts bids and determines awards pursuant to the process set forth in the applicable regulations.⁷ Securities awarded during the auction process must then be paid for by the issue date established in the announcement for the auction.⁸ To incorporate the concept of “awards” and maintain consistency with the applicable Treasury regulations, FINRA is amending the definition of “Auction Transaction” to mean “the [sic]⁹ transaction in which a member is awarded a U.S. Treasury Security in an Auction.” Consequently, the acquisition of U.S. Treasury Securities on the issue date as a result of a successful bid in an Auction will not be reportable to TRACE by a FINRA member. Any secondary market transactions in the security following the initial acquisition on the issue date will be reportable.

Second, FINRA is amending the definition of “When-Issued Transaction” to conform to more common usage of the term. As adopted, the term “When-Issued Transaction” was defined as “a transaction in a U.S. Treasury Security that is executed before the Auction for the security.” Although “when-issued” trading typically refers to any trading conducted between the announcement of an auction for a U.S. Treasury Security and the issue date, which can often be several days after the auction for the security, FINRA defined the term to extend only until the auction for the security to reflect the change in how transactions are priced before and after the auction (i.e., transactions are generally conducted on a yield basis before the auction and on a price basis after the auction).

⁷ See 31 CFR 356.20 (How does the Treasury determine auction awards?).

⁸ See 31 CFR 356.25 (How does the settlement process work?).

⁹ The proposed rule text states: “‘Auction Transaction’ means a transaction in which a member is awarded a U.S. Treasury Security in an Auction.”

To conform the definition in the TRACE rules to more common usage, FINRA is amending the definition of “When-Issued Transaction” to mean “a transaction in a U.S. Treasury Security that is executed before the issuance of the security.” Under the amendment, therefore, the timing of When-Issued Transactions will still commence with the announcement of the Auction, but any transaction in the security subject to the Auction will be considered a “When-Issued Transaction” until the date the security is issued rather than the date the security is auctioned. Members will still be required to report yield, rather than price, for When-Issued Transactions up until the Auction for the security and price following the Auction; however, all When-Issued Transactions, both before and after the Auction up until the issue date, must be reported with the appropriate indicator. Because of the change in definition, FINRA also is amending Rule 6730 to clarify that, although the definition of the term “When-Issued Transaction” is being amended, there are no changes as to how members report price or yield on these transactions.¹⁰

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be July 10, 2017.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ 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. FINRA believes that the amendments will conform the terms in FINRA rules to their more common usage and

¹⁰ Similarly, the guidance FINRA has provided on the use of the When-Issued Transaction indicator and reopening transactions does not change as a result of these amendments. See Regulatory Notice 16-39 (October 2016).

¹¹ 15 U.S.C. 78o-3(b)(6).

use of these terms in applicable Treasury regulations. FINRA believes the amended definitions may reduce confusion regarding usage of the terms in the FINRA TRACE rules.

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. Because the amendments are limited to conforming the terms in FINRA rules to their more common usage and to the use of the terms in applicable Treasury regulations, FINRA believes that amending the definitions may reduce confusion regarding usage of the terms and will not result in any burden on competition.

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 Act¹² and Rule 19b-4(f)(6) thereunder.¹³

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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 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.

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. Please include File Number SR-FINRA-2016-046 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2016-046. 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 such 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-2016-046, 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.¹⁴

Eduardo A. Aleman
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).