

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93651; File No. SR-FINRA-2021-029)

November 23, 2021

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 6732 and Expand the Scope of Exemptions that FINRA May Grant ATSs from the TRACE Reporting Requirements

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 November 15, 2021, 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. 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 Rule 6732 to provide FINRA with authority to, subject to conditions, exempt transactions by a member alternative trading system (“ATS”) that meet specified criteria from the transaction reporting obligations of FINRA Rule 6730 (Transaction Reporting).

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Rule 6730 generally requires that each FINRA member that is a party to a transaction in a TRACE-Eligible Security³ report the transaction to TRACE within the period of time prescribed in the rule. “Party to a transaction” means an introducing broker-dealer, if any, an executing broker-dealer or a customer.⁴ Thus, in transactions in a TRACE-Eligible Security between members, each member is a party to the transaction and is required to report the transaction. An ATS is a party to each transaction in a TRACE-Eligible Security occurring through its system and has a TRACE transaction reporting obligation unless an exception or exemption applies.⁵

³ “TRACE-Eligible Security” generally is defined as a debt security that is 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; (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 or a Money Market Instrument as defined in paragraph (o). See Rule 6710(a).

⁴ “Customer” includes a broker-dealer that is not a FINRA member.

⁵ See Regulatory Notice 14-53 (November 2014).

FINRA adopted Rule 6732 (Exemption from Trade Reporting Obligation for Certain Alternative Trading Systems) in response to concerns raised by members regarding operational difficulties with respect to certain transactions on an ATS — particularly, with respect to ATS models where the ATS does not always have a role in the clearance and settlement of transactions occurring on its system.⁶ In such cases, because back-end systems often are programmed to clear against the contra-party identified on TRACE trade reports, member subscribers preferred to TRACE report against the party with which they clear and settle the trade (*i.e.*, another subscriber, rather than the ATS). Rule 6732 addresses these concerns by providing FINRA with the authority, subject to specified conditions, to exempt the ATS from the TRACE reporting requirement so that member subscribers can report against their contra-party for clearance and settlement purposes. To be eligible for the relief, the ATS must ensure, among other things, that: the trade is between FINRA members; the trade does not pass through any ATS account; and the ATS does not exchange TRACE-Eligible Securities or funds on behalf of the subscribers or take either side of the trade for clearing or settlement purposes (including, but not limited to, at DTC or otherwise), or in any other way insert itself into the trade.⁷

⁶ *See* Securities Exchange Act Release No. 76677 (December 17, 2015), 80 FR 79966 (December 23, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-055).

⁷ An ATS granted an exemption pursuant to Rule 6732 continues to be deemed a “party” to the transactions covered by the exemption; is required to submit monthly files of all exempted trades to FINRA; is required to remit to FINRA a transaction reporting fee based on the fee schedule set forth in Rule 7730(b)(1) for each exempted sell transaction occurring on the ATS; and is required to enter into an agreement with each member subscriber that is a “party to a transaction” with respect to any trade for which the ATS is exempted specifying that trades must be reported by such party pursuant to Rule 6730(c)(13) identifying the trade as having occurred on the ATS (using the ATS’s separate MPID obtained in compliance with Rule 6720(c)).

FINRA now is amending Rule 6732 to expand the scope of transactions that may be exempted under the rule to include trades that involve only one FINRA member (other than the ATS). FINRA has observed that in many cases, transactions on an ATS that involve only one member are otherwise similar to the transactions that are currently eligible for exemptive relief under Rule 6732. Specifically, in such transactions, the counterparties on the ATS (e.g., a member and a bank) may clear directly with each other rather than the ATS. FINRA believes that expanding the scope of the current exemption to permit its use for transactions between a member (other than the ATS) and a non-member subscriber would extend the benefits of the rule – including simplifying compliance with TRACE trade reporting obligations – for additional ATS models and member subscribers, while capturing substantially the same regulatory information and enabling public dissemination of the transaction in a more streamlined manner.

For example, under current reporting requirements, where a member (BD) sells a TRACE-Eligible Security to a non-member (C) on an ATS, Rule 6730 generally requires that BD report a sale to the ATS and the ATS report a buy from BD. The ATS must also report the corresponding sale to C.⁸ Under the proposed expansion to the exemption, where granted, the ATS would not be required to report its transaction with BD or C to TRACE. However, the overall transaction would continue to be transparent to the public, as the member subscriber would report the transaction with the non-member subscriber counterparty and the trade would be disseminated, subject to the limitations on dissemination set forth in Rule 6750 (Dissemination of Transaction Information).⁹

⁸ In transactions between members, FINRA disseminates only the sale transaction. However, in a transaction between a member and a non-member, FINRA disseminates the purchase or sale transaction with the non-member.

⁹ Under Rule 6750(c) (Transaction Information Not Disseminated), FINRA will not disseminate information on a transaction in a TRACE-Eligible Security that is: appended

Thus, for a sale transaction, BD would be required to report to TRACE a sale to C, identifying the trade as having occurred on the ATS in its TRACE report using the ATS's separate identifier obtained in compliance with Rule 6720(c) (Alternative Trading Systems). This sale transaction would be disseminated upon receipt consistent with Rule 6750.¹⁰ Similarly, for a purchase transaction, BD would be required to report to TRACE a buy from C, identifying the trade as having occurred on the ATS in its TRACE report using the ATS's separate identifier. This purchase transaction would be disseminated upon receipt consistent with Rule 6750.¹¹ In both cases, the ATS would be required to submit monthly files of all exempted trades to FINRA as is required under the existing exemption.

FINRA believes it is appropriate to expand the eligibility criteria for the Rule 6732 exemption to include transactions between a member and non-member because, where the parties clear directly with each other, these transactions can present the same operational challenges for members as trades between two members, and granting the exemption with regard to these types of trades would not compromise transparency because such transactions will continue to be trade reported by members and disseminated by FINRA in accordance with existing rules. Moreover, exempt trades would be disseminated by FINRA in a more streamlined manner because there would be one, rather than two, disseminated trade reports in connection

with the non-member affiliate-principal transaction indicator pursuant to Rule 6730(d)(4)(E); a transfer of certain proprietary securities positions effected in connection with a merger or direct or indirect acquisition; a List or Fixed Offering Price Transaction or a Takedown Transaction; a Securitized Product that is: a CMBS; a CDO; or a CMO if the CMO transaction value is \$1 million or more (calculated based upon original principal balance) and the transaction does not qualify for periodic dissemination under Rule 6750(b), except as may be otherwise provided in Rule 7730; or a U.S. Treasury Security.

¹⁰ See supra note 9.

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with the transaction on the ATS. In addition, the other conditions for the exemption would continue to apply, including the requirement that any ATS granted an exemption must enter into a written agreement with each member that is a “Party to a Transaction” with respect to exempted trades, thereby ensuring that reporting members are aware that the ATS has been granted a Rule 6732 exemption and that exempted trades on the ATS are subject to different reporting requirements — specifically, that the reporting member must identify a party other than the ATS as its contra-party and identify the ATS on which the trade had occurred in its TRACE reports. With respect to a transaction between a member and a non-member on an ATS that is a “covered ATS” under Rule 6730.07, the ATS must provide to the member subscriber (and the member subscriber must report to TRACE using) the FINRA-assigned identifier for each non-FINRA member subscriber.¹²

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. The effective date will be no later than 365 days following Commission approval of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,¹³ 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.

¹² Likewise, an exempt ATS that is a “covered ATS” under 6730.07 must use the FINRA-assigned identifier to identify each non-FINRA member subscriber in the monthly transaction files that are required to be submitted to FINRA.

¹³ 15 U.S.C. 78q-3(b)(6).

FINRA believes that the proposed rule change will simplify compliance for certain ATSs and their member subscribers by permitting the ATS to report on a periodic basis to FINRA and permitting member subscribers to trade report with the party against which it will clear the trade. FINRA also notes that the regulatory information captured and the public transparency with respect to exempted trades will not be compromised because such transactions will continue to be trade reported by members and disseminated by FINRA in accordance with existing 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 Exchange Act. Any ATS that meets the criteria set forth in the proposed rule would be able to apply for the exemption with respect to eligible transactions occurring on its platform. In addition, irrespective of an ATS's model or whether the ATS is granted an exemption pursuant to this proposal, all ATSs that are a "party to a transaction" must continue to pay a transaction reporting fee based on the fee schedule set forth in Rule 7730(b)(1) for each exempted sell transaction occurring through the ATS.

Economic Impact Assessment

(a) Need for the Rule

As discussed above, an ATS is a party to a transaction in any TRACE-eligible securities occurring on that ATS. As such, an ATS must report the transaction to TRACE as provided for in Rule 6730, unless an exception or exemption applies. An ATS's business model structure impacts the way trades are facilitated on the platform and, therefore, which trades must be reported to TRACE and by whom. In instances where the functional activities of the ATS are more limited with respect to a transaction, as discussed above, FINRA believes that the proposed

rule change is appropriate and may simplify compliance for these ATSS and their member subscribers and enables public dissemination of these transactions in a more streamlined manner.

(b) Economic Baseline

Rule 6732 provides FINRA with authority to exempt an ATS from TRACE transaction reporting requirements where the transactions on the ATS meet the conditions of Rule 6732. Not all ATSS that have been granted the Rule 6732 exemption could benefit from the proposed expanded scope – which relates to trades between a member and a non-member occurring on the platform. However, to the extent that trades on an ATS involve a member and a non-member, then such ATS could benefit from the expanded exemption (if it satisfies the other conditions in the rule). It is also possible that other ATSS may adapt their business models and become eligible for the expanded exemption, or that new entrants could arise that may benefit from the proposed expanded rule.

(c) Economic Impacts

FINRA has identified a small number of current ATSS on which trades between a member and a non-member occur (i.e., trades that may potentially fall within the scope of the additional relief that the proposed exemption would provide).¹⁴ If the exemption is requested by and granted to an ATS, member subscribers who execute trades on such ATS may be impacted. Where granted, an ATS that operates under the exemption presumably would benefit from reduced compliance costs by shifting from contemporaneous reporting of transactions to TRACE to periodic reporting and by paying a reporting fee only on exempted sell transactions.

¹⁴ FINRA is unable to estimate the number of transactions that may be covered under the expanded scope of the exemption because information on whether all trades meet all of the rule's conditions is not readily available.

An ATS that seeks and is granted an exemption under this proposed rule may incur costs to modify its system and must update its policies and procedures to reflect reporting consistent with the requirements of the rule. Each ATS may determine independently whether it wants to request the exemption, and, thus, it is likely that an ATS would only seek this exemption where it is preferable to standard reporting requirements.

Where an ATS seeks and is granted the exemption, member subscribers who transact through the ATS also may incur costs associated with modifying the reporting system to identify the ATS on TRACE reports (and to report the non-member as its counter party). These costs may include additional programming and testing along with updating policies and procedures. Members may also benefit where they prefer to trade report against the contra-party with which they will clear and settle the trade. Both member subscribers and ATSs may incur additional costs associated with creating and maintaining a written agreement with respect to the reporting exempt trades.

FINRA also considered the potential impacts of the proposed rule on investors and other parties that might rely on TRACE reporting. The proposed rule would not reduce the information collected and disseminated by FINRA on TRACE-eligible securities transactions occurring on an ATS. Member subscribers would continue to report to TRACE transactions occurring on an ATS that was granted the exemption within the time prescribed by FINRA rules and would identify the ATS on which the trade occurred. In addition, public transparency with respect to exempted trades will not be compromised because exempted transactions will continue to be disseminated by FINRA in accordance with existing rules.

(d) Alternatives Considered

No alternatives were considered.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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-2021-029 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-FINRA-2021-029. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2021-029, 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.¹⁵

J. Matthew DeLesDernier
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).