# Regulatory Notice

# 15-26

## Trade Reporting and Compliance Engine (TRACE)

### FINRA Requests Comment on a New Academic TRACE Data Product

**Comment Period Expires: September 14, 2015**

## Executive Summary

FINRA is soliciting comment on a proposal to create a new Academic TRACE Data product that would be available to institutions of higher education. FINRA and the Municipal Securities Rulemaking Board (MSRB) have been engaged in ongoing dialogue to support a coordinated approach to potential rulemaking in this area. The MSRB also is publishing a notice soliciting comment on a similar proposal that would establish a historical data product of post-trade municipal securities transaction data collected though the MSRB's Real-time Reporting System (RTRS) for institutions of higher education.[1]

The proposed rule text is attached as Appendix A. Selected key terms from the User Agreement for the proposed new Academic TRACE Data product is attached as Appendix B.

Questions regarding this *Notice* should be directed to:

▶ Ola Persson, Vice President, Transparency Services, at (212) 858-4796; or

▶ Racquel Russell, Associate General Counsel, Office of General Counsel, at (202) 728-8363.

## Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by September 14, 2015.

**July 2015**

**Notice Type**
▶ Request for Comment

**Suggested Routing**
▶ Fixed Income
▶ Research
▶ Trading

**Key Topics**
▶ Fees
▶ Historic TRACE Data
▶ TRACE Transaction Data

**Referenced Rules and Notices**
▶ FINRA Rule 7730
▶ Regulatory Notice 10-14
▶ Regulatory Notice 15-24
▶ Securities Act Rule 144A

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Member firms and other interested parties can submit their comments using the following methods:

▶ Emailing comments to *pubcom@finra.org*; or

▶ Mailing comments in hard copy to:

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.[2]

Before becoming effective, the proposed rule change must be filed with the Securities and Exchange Commission (SEC) pursuant to Section 19(b) of the Securities and Exchange Act.[3]

**Important Notes:** The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.

## Background and Discussion

FINRA Rule 7730 sets forth the TRACE data products offered by FINRA. FINRA's data offerings include both real-time as well as aged historical data for most TRACE-eligible securities.[4] FINRA is soliciting comment on proposed changes to create a new Academic TRACE Data product, which would be made available solely to institutions of higher education and would include masked dealer identities.

### Academic TRACE Data

FINRA periodically receives requests from academics for enhanced historical TRACE data. FINRA's existing Historic TRACE Data product provides transaction-level data on an 18-month delayed basis for all transactions that have been reported to TRACE in the classes of TRACE-eligible securities that currently are disseminated.[5] While Historic TRACE Data is used by academic researchers today, it does not include any identifying information regarding the dealer reporting each transaction. Thus, where a researcher wishes to track the behavior of an individual dealer—even anonymously—the existing Historic TRACE Data product would not allow for this type of observation. As a result, academics have requested that FINRA make available an enhanced version of Historic TRACE Data that would include dealer identification.

In response to these requests from academics, FINRA is proposing to create a new Academic TRACE Data product that would include masked market participant identifiers (MPIDs). As noted previously, masked MPID information may be useful to academics in a variety of ways—for example, to enable researchers to track activity by individual dealers or group of dealers and observe their behaviors in studying the impact of various events on measures such as intermediation costs, dealer participation and liquidity. Academic TRACE Data would be made available only to academics (*i.e.,* requests originating from an institution of higher education) for a fee of $500 per data set per calendar year (with a one-time initial set-up fee of $500), and would include the same security classes as included in Historic TRACE Data.[6]

While FINRA understands that masked dealer identifications may be very useful to academics in connection with their research activities, we also appreciate that firms may be concerned regarding the potential for reverse engineering of dealer identities (even though masked). To address this issue, in addition to masking dealer MPIDs, FINRA proposes to take further measures to allay such concerns, including to: (1) explicitly require subscribers to agree that they will not attempt to reverse engineer the identity of any market participant; (2) prohibit the redistribution of data in the Academic TRACE Data product; (3) require users to disclose each intended use of the data (including a description of each study being performed and the names of each individual who will have access to the data for the study); and (4) require that the data be returned or destroyed if the agreement is terminated. Select key terms intended to be included in the User Agreement to safeguard the data are attached in Appendix B. In addition, the transactions included in the Academic TRACE Data product will be aged no less than 24 months.

## Economic Impact Analysis

### Need for the Rule

As discussed above, FINRA has received requests from academics for access to historical TRACE data that provides sufficient information to allow them to track the behaviors of individual dealers, even on an anonymous basis.

### Regulatory Objective

The proposed new Academic TRACE Data product with masked MPIDs is expected to enable academics to conduct research on a variety of topics related to dealer activities, which could enhance understanding of the fixed-income market and its participants.

### Economic Impacts

The proposal will not have any direct operational impact on firms, as it does not require firms to provide FINRA with any additional data. The purchase of TRACE data products will continue to be optional.

The proposed Academic TRACE Data product with masked MPIDs may promote academic research on dealer behaviors; it also may raise concerns regarding the potential for reverse engineering of dealer identities. FINRA will explore this issue further using available data and information obtained through the comment process.

## Request for Comment

FINRA requests comment on all aspects of the proposal. FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible. FINRA specifically requests comment concerning the following issues.

▶ What public and investor protection benefits might arise from the addition of masked MPIDs to TRACE data available to academics?

▶ FINRA proposes that the Academic TRACE Data product be issued on a 24-month delayed basis. Is this delay an appropriate period of time to allay concerns regarding potential reverse engineering of dealer identities? If not, what other delay period would be appropriate to address these concerns, while still providing data that is timely enough to be useful for market research purposes?

▶ Would a shorter delay period, such as 12 months, be appropriate to enhance the timeliness of the data for research purposes while still minimizing the risk and potential impact of reverse engineering of dealer identities?

▶ Are there alternative ways that dealers may be identified in the Academic TRACE Data? Are there groupings of dealers based on dealer characteristics (*e.g.*, size of firm) that could be used to identify the type of dealer that executed each transaction? Are there behavioral groupings that may be used (*e.g.*, average daily trading volume across TRACE-eligible security asset classes)? How would this approach be preferable to a masked MPID approach in retaining the usefulness of the data to academics while presenting fewer concerns regarding reverse engineering of dealer identifiers?

▶ FINRA intends to limit the availability of Academic TRACE Data to academics currently associated with an institution of higher education in connection with their research activities. Is this an appropriate limitation? If not, please provide alternatives and explain how the alternatives would address concerns regarding reverse engineering of dealer identities. For example, should a data product containing masked MPIDs be made available more broadly to researchers, even if not part of an institution of higher education (e.*g.*, industry groups, non-profit organizations or research-oriented for-profit companies)? Would a broader subscriber base increase the likelihood that dealers or other market participants may obtain the data for competitive reasons?

▶ Are the key terms of the User Agreement in Appendix B sufficient in striking the appropriate balance between protecting member dealer transaction confidentiality interests and facilitating academic research? Should FINRA include any additional restrictions on the use of the data? Are any of the key terms in the User Agreement unduly restrictive such that they may potentially hinder research? Would academics be opposed to a requirement that a copy of all derivative works that rely on the Academic TRACE Data be provided to FINRA upon publication?

▶ How would dealers or other market participants be impacted if dealer identities were reverse engineered? Is there data or other evidence, including studies or research, that supports estimates of these impacts?

## Endnotes

1. *See* MSRB Notice 2015–10 (July 16, 2015), on *www.msrb.org*.

2. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (Online Availability of Comments) for more information.

3. *See* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the Federal Register. Some proposed rule changes take effect immediately upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.

4. FINRA adopted the Historic TRACE Data rule and related fees in 2010. *See* Securities Exchange Act Release No. 61012 (November 16, 2009), 74 FR 61189 (November 23, 2009) (Order Approving File No. SR-FINRA-2007-006). *See also Regulatory Notice 10-14* (March 2010).

5. FINRA recently published a *Regulatory Notice* seeking comment on a proposal to shorten the delay period for the Historic TRACE Data product from 18 months to six months. *See Regulatory Notice 15-24* (June 2015). That proposal would not impact the proposed 24-month delay for the Academic TRACE Data product.

6. Historic TRACE Data is transaction-level data and includes the following data sets: the Historic Corporate Bond Data Set, the Historic Agency Data Set, the Historic Securitized Product Data Set, and the Historic Rule 144A Data Set. Historic TRACE Data originally included only the Corporate Bond and Agency Data Sets; the Securitized Product and Rule 144A Data Sets were added to Historic TRACE Data later as information about transactions in those securities became subject to dissemination. Additional securities may be included in the data sets as they become subject to dissemination.

## APPENDIX A

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

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

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

\* \* \* \* \*

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

The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine ("TRACE"):

(a) through (e)  No Change.

| System Fees | Transaction Reporting Fees | Data Fees |
|---|---|---|
| \* \* \* \* \* | \* \* \* \* \* | \* \* \* \* \* |
| | | Academic TRACE Data: Set-Up Fee — a single fee of $500 for development and set-up to receive Academic TRACE Data. |
| | | Academic TRACE Data: Fee — $500/calendar year per Data Set for receipt of Academic TRACE Data. Redistribution of data is not permitted. |

(f)  Definitions

(1) through (4)  No Change.

(5)  "Academic TRACE Data" as used in Rule 7730 means historic transaction-level data with elements to be determined from time to time by FINRA in its discretion and as stated in a Regulatory Notice or other equivalent publication.  Academic TRACE Data will be delayed a minimum of 24 months and will not include MPIDs, but will substitute an identifier for each MPID included in the Data Set.  Academic TRACE Data is available only to institutions of higher education.  Academic TRACE Data includes the following Data Sets:

(A)  Academic Corporate Bond Data Set — includes all transactions in corporate bonds reported to TRACE, except Rule 144A transactions in corporate bonds;

(B)  Academic Agency Data Set — includes all transactions in Agency Debt Securities as defined in Rule 6710(l) reported to TRACE;

(C)  Academic SP Data Set — includes all transactions in Securitized Products as defined in Rule 6710(m) reported to TRACE, if transactions in the type of Securitized Products are subject to real-time dissemination under Rule 6750, but excludes historic Rule 144A transactions in Securitized Products; and

(D)  Academic Rule 144A Data Set — includes all Rule 144A transactions reported to TRACE, except transactions involving a type of TRACE-Eligible Security that is not subject to real-time dissemination under Rule 6750.

(g)  No Change.

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## APPENDIX B

Selected key terms of proposed data agreement. Some of these terms may be modified in the final version of the agreement.

## Authorized Use

▶ Except as otherwise provided in the agreement, Licensee is granted a world-wide, non-transferable, non-exclusive, non-assignable, limited right and license to use the Academic Data Set in accordance with the agreement and its attachments, and to create and publish derivative works.

▶ Authorized use is limited to accessing, receiving, using, processing, manipulating and storing the Academic Data Set and creating and publishing derivative works in accordance with the agreement and attachments. Licensee is prohibited from disseminating the Academic Data Set or any Data contained therein to third parties.

▶ Licensee must submit to FINRA a new attachment to the agreement for each new intended use of the Academic Data Set by Licensee. Any use of the Data, by a Licensee or its Internal Users, unless expressly described in an Attachment B received by FINRA, is prohibited.

▶ Internal Users of Licensee listed on a separate attachment to the agreement are authorized to use the specifically identified Academic Data Set in accordance with the terms and conditions of the agreement and its attachments. Licensee warrants that those individuals listed in the attachment fall within the definition of Internal Users set out in the agreement.

▶ Licensee remains liable to FINRA for any breach of the agreement resulting from the action/inaction of Licensee's Internal Users or any other individual or entity that accesses the Academic Data Set via Licensee or to whom Licensee provides any derivative works.

▶ If Licensee learns of any Unauthorized Use of the Data, it shall immediately provide FINRA with written notice of the Unauthorized Use, and shall assist FINRA in investigating, halting and prosecuting, if necessary, any such Unauthorized Use. If FINRA so elects, Licensee shall assign and shall ensure that its, agents assign, all right, title and interest in and to any suit, including its subject matter, of or concerning the Data or which otherwise arises out of or is related to the agreement, to FINRA.

▶ FINRA reserves the right to monitor and review the activities of Licensee to ensure that no Unauthorized Use of the Data occurs. Licensee agrees to cooperate with FINRA, and use reasonable efforts to obtain the cooperation of its Internal Users with FINRA, at Licensee's cost, in any such review. In the event that FINRA identifies any Unauthorized Use, Licensee shall, upon notice from FINRA, immediately cease all such use and confirm to FINRA that such use has been terminated. At such time when the Unauthorized Use, in the sole, reasonable judgment of FINRA, has been cured, FINRA

*may* grant Licensee permission to resume using Academic Data Set and disseminating the Derivative Data.  This remedy is in addition to and not in place of any other remedy FINRA may have as a matter of law or equity.

## Restrictions and Redistribution

▶ As the Data includes masked identification of the FINRA Member executing the trade, Licensee will not attempt to reverse engineer or take any other measures, nor will it assist any other person or entity, in taking any measures, to discover the true identity of any FINRA Member at any time.

▶ Licensee shall not redistribute the Academic Data Set or any Data comprising the Academic Data Set to any other individual or entity with the exception of the Internal Users listed in the attachment to the agreement and shall use commercially reasonable measures to cause Licensee's Service to be configured and operated in such a manner as to protect the Data.  Such measures may include, but not be limited to, the use of user IDs and passwords and other forms of entitlements to gain access to the Data.  Additionally, Licensee shall administer reasonable security procedures in the place(s) where Licensee's Service and the Data are used, accessed, processed, stored or transmitted in order to ensure that the Academic Data Set remains, at all times, secure from unauthorized access or interference and to prevent the Academic Data Set from being accessed or taken from or in any way communicated, divulged or published except through authorized channels of transmission or reception.

▶ If Licensee is a Public University, terms to protect the Data from FOIA laws of Licensee's state shall be applicable.

## Publication of Derivative Works

All Data results included in any draft or final version provided to or made available in any way whatsoever, to any third party, shall be sufficiently aggregated to ensure that no third party can identify any specific FINRA Member, or reverse engineer any specific transaction. Licensee shall inform all of its Internal Users and Authorized Users to act accordingly and shall take reasonable measures to ensure their compliance.  **Any disclosure of the identity of any FINRA Member, whether willful or accidental, is considered a material breach of the agreement and will result in immediate Termination of the agreement for Cause**.

## Termination

Immediately upon conclusion or termination of the agreement for any reason, Licensee shall, without additional cost to or demand from FINRA, return to FINRA in an orderly and expeditious manner or destroy all information, records, documentation, data, and other property supplied to Licensee by and for FINRA, and shall certify in writing that it has done so.