

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64041; File No. SR-FINRA-2011-004)

March 4, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to the Trading Activity Fee Rate for Transactions in Asset-Backed Securities

I. Introduction

On January 10, 2011, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to provide a new method of calculating the Trading Activity Fee (“TAF”) for transactions in Asset-Backed Securities. The proposed rule change was published for comment in the Federal Register on January 27, 2011.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

FINRA proposes to amend Section 1 of Schedule A to the FINRA By-Laws to provide a new method of calculating the TAF<sup>4</sup> for transactions in Asset-Backed Securities.<sup>5</sup> The TAF is one of the member regulatory fees FINRA uses to fund its member regulation activities, which include examinations; financial monitoring; and FINRA’s policymaking, rulemaking, and

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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> See Securities Exchange Act Release No. 63751 (January 21, 2011), 76 FR 4966 (“Notice”).

<sup>4</sup> See FINRA By-Laws, Schedule A, § 1 (describing how the TAF is applied).

<sup>5</sup> See FINRA Rule 6710(m) (defining “Asset-Backed Security”).

enforcement activities.<sup>6</sup> Generally, the TAF is assessed on the sale of all exchange-registered securities wherever executed (except debt securities that are not Trade Reporting and Compliance Engine (“TRACE”) -Eligible Securities), over-the-counter equity securities, security futures, TRACE-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to MSRB reporting requirements. The rules governing the TAF also include a list of transactions exempt from the TAF.<sup>7</sup>

In 2010, the Commission approved a proposed rule change that generally makes transactions in Asset-Backed Securities reportable to TRACE.<sup>8</sup> Because Asset-Backed Securities will be TRACE-Eligible Securities, transactions in Asset-Backed Securities will generally be subject to the TAF.

Currently, when reporting the size of a corporate bond transaction to TRACE, the number of bonds is reported and the TRACE System, which is programmed to reflect that one bond equals \$1,000 par value, calculates the total dollar volume of the transaction (e.g., 10 bonds x \$1,000 = \$10,000).<sup>9</sup> Based on this reporting structure, the TAF is assessed on a per-bond basis, but the number of bonds is a proxy for the size of the total dollar volume of a transaction in \$1,000 increments. Although some Asset-Backed Securities are structured like conventional corporate bonds, many are structured differently. For example, many Asset-Backed Securities are based on financial assets that amortize, and the principal (or face) value declines over time. Accordingly, transactions in Asset-Backed Securities will not be reported to TRACE on a per-

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<sup>6</sup> In addition to the TAF, the other member regulatory fees are the Gross Income Assessment and the Personnel Assessment.

<sup>7</sup> See FINRA By-Laws, Schedule A, § 1(b)(2).

<sup>8</sup> See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010). See also Regulatory Notice 10-23 (April 2010).

<sup>9</sup> See FINRA Rules 6730(c)(2) and 6730(d)(2).

bond basis like conventional corporate bonds, but rather will be reported based on the original principal (or face) value of the underlying security or the Remaining Principal Balance.

Consequently, FINRA is proposing to conform the TAF rate for sales of Asset-Backed Securities consistent with the reporting of such transactions to TRACE. Accordingly, FINRA is proposing to base the TAF for sales of Asset-Backed Securities on the size of the transaction as reported to TRACE (i.e., par value, or, where par value is not used to determine the size of the transaction, the lesser of original face value or Remaining Principal Balance) at a rate of \$0.00000075 times the size of the transaction as reported to TRACE, with a maximum charge of \$0.75 per trade.

The effective date of the proposed rule change will be the date the proposed rule change SR-FINRA-2009-065 becomes effective, which is currently anticipated to be May 16, 2011.<sup>10</sup>

### III. Discussion and Commission's Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>11</sup> In particular, the Commission finds that the proposal is consistent with Section 15A(b)(5) of the Act,<sup>12</sup> which requires that a national securities association have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using any facility or system that the association operates or controls. The Commission believes that the proposal is reasonably

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<sup>10</sup> See Securities Exchange Act Release No. 63223 (November 1, 2010), 75 FR 68654 (November 8, 2010) (extending the operational date of SR-FINRA-2009-065 to no later than June 1, 2011).

<sup>11</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78q-3(b)(5).

designed to impose equitable fees on members that transact in Asset-Backed Securities, where the principal value of the securities may decline over time.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-FINRA-2011-004), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).