

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58520; File No. SR-FINRA-2008-040)

September 11, 2008

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to Eliminate the Requirement to Report Yield to TRACE and for FINRA to Calculate and Disseminate a Standard Yield

I. Introduction

On July 17, 2008, 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 ("Act")¹ and Rule 19b-4 thereunder,² a proposal to eliminate the requirement for members to report yield to the Trade Reporting and Compliance Engine ("TRACE") in connection with a transaction in a TRACE-eligible security, and instead for TRACE to calculate and disseminate a "standard yield." The proposal was published for comment in the Federal Register on August 7, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Background

NASD Rule 6230(c) currently requires a member, in connection with a transaction in a TRACE-eligible security, to report various pieces of information to TRACE, including, for most transactions, the lower of yield to call or yield to maturity.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 58283 (August 1, 2008), 73 FR 46108 (August 7, 2008) (SR-FINRA-2008-040).

⁴ The member is not required to report yield if the TRACE-eligible security is in default; the interest rate on the security floats; the interest rate will or may be "stepped-up" or "stepped-down" and the amount of increase or decrease is an

Upon receipt of that trade report, TRACE disseminates certain information about the transaction (except if it is a Rule 144A transaction), including the yield as reported by the member. TRACE calculates the standard yield⁵ but generally does not disseminate it.⁶

FINRA has proposed (1) to eliminate the requirement for members to report yield; and (2) to disseminate the standard yield in most cases.⁷ FINRA stated that there currently is no uniformity in the manner by which members calculate yield, and that disseminating standard yield – calculated according to a single formula and with a uniform set of assumptions – will provide more useful information to market participants. Moreover, FINRA believes that it may be useful for customers to compare the standard yield in a transaction as reported by TRACE against the member-calculated yield that the member provides on the customer confirmation required by Rule 10b-10 under the Act.⁸

Vendors. FINRA also has proposed to require that data vendors and redistributors

unknown variable; the security is a pay-in-kind (“PIK”) security; the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable; or if FINRA determines that reporting yield would provide inaccurate or misleading information concerning the price of, or trading in, the security. See NASD Rule 6230(c)(13).

⁵ FINRA stated that the standard yield in TRACE: (1) is calculated as the internal rate of return according to a discounted cash flow model; (2) is calculated, in a principal trade, on the reported price, which includes the mark-up/mark-down, and in an agency trade, on the reported price and reported commission; (3) does not include any fees or charges that are not included, in a principal trade, as part of the reported price, and in an agency trade, in the reported commission; (4) is calculated as the lower of yield to call (if the bond is callable) and yield to maturity, or so-called “yield-to-worst;” and (5) is calculated utilizing a methodology that is widely used by professionals in the securities industry.

⁶ Standard yield is included in the disseminated TRACE data when the member is required to report yield but fails to do so.

⁷ TRACE would not disseminate a standard yield for any transaction where a member currently is not required to report yield under NASD Rule 6230(c)(13). See supra note 4.

⁸ 17 CFR 240.10b-10.

that provide TRACE information display the yield. However, certain vendors desire to disseminate a yield calculated by the vendor, rather than the standard yield. FINRA would permit this flexibility, provided that a vendor displaying a yield other than the standard yield disclose that fact.

Effective Date. FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date would be no later than 90 days following publication of that Regulatory Notice.

III. Discussion and Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that FINRA rules 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 Commission believes that the proposal will likely improve transparency in the corporate debt markets by making available a standard yield for most transactions that is calculated using an industry-recognized formula with a uniform set of assumptions. At the same time, the proposal reduces regulatory burdens by relieving FINRA members of the obligation to calculate and report yield for each transaction in a TRACE-eligible security.

⁹ 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).

¹⁰ 15 U.S.C. 78o-3(b)(6).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-FINRA-2008-040) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant delegated authority.¹²

Florence E. Harmon
Acting Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).