

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70691; File No. SR-FINRA-2013-043)

October 16, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to TRACE Fees for Securities Act Rule 144A Transaction Data

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 2, 2013, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. 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 7730 to: (1) provide for Trade Reporting and Compliance Engine (“TRACE”) data fees for real-time and historic data sets of transactions in TRACE-Eligible Securities⁵ that are effected pursuant to Rule 144A⁶ under the Securities Act of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The term TRACE-Eligible Security is defined in FINRA Rule 6710(a).

⁶ 17 CFR 230.144A.

1933⁷ (“Rule 144A transactions”);⁸ (2) clarify Level II Full Service Web Browser fee rates in light of the availability of additional data sets; and (3) make other technical amendments.

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.⁹

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.

⁷ 15 U.S.C. 77a et seq. (hereinafter “Securities Act”).

⁸ See Securities Exchange Act Release No. 70345 (September 6, 2013), 78 FR 56251 (September 12, 2013) (Order Granting Approval of Proposed Rule Change Relating to the Dissemination of Transactions in TRACE-Eligible Securities that are Effected Pursuant to Securities Act Rule 144A; File No. SR-FINRA-2013-029) (“Rule 144A Dissemination Rule Change”). The Rule 144A Dissemination Rule Change amends FINRA Rule 6750, FINRA Rule 7730 and the TRACE dissemination protocols to provide for the dissemination of Rule 144A transactions and to establish real-time and historic data sets for Rule 144A transactions. The effective date for the Rule 144A Dissemination Rule Change will be established in a Regulatory Notice.

⁹ As part of the proposed rule change, FINRA submitted an Exhibit 4 and an Exhibit 5. The Exhibit 4 shows the text of the proposed rule change marked to show the proposed changes as compared to FINRA Rule 7730 including amendments approved by the SEC as if such amendments were effective. See note 8. The Exhibit 5 shows the text of the proposed rule change marked to show the proposed changes as compared to the current rule text of FINRA Rule 7730 in accordance with the requirements of Form 19b-4.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, FINRA amended FINRA Rule 6750, FINRA Rule 7730 and TRACE dissemination protocols to provide greater transparency in Rule 144A transactions in TRACE-Eligible Securities.¹⁰ In the Rule 144A Dissemination Rule Change, FINRA included amendments to FINRA Rule 7730 to establish data sets for real-time and historic Rule 144A transaction data.

In this proposed rule change, FINRA proposes to establish fees for the real-time disseminated Rule 144A transaction data and the Historic TRACE Data for Rule 144A transactions, clarify Level II Full Service Web Browser fee rates in light of the availability of additional data sets, and incorporate other technical amendments in FINRA Rule 7730.

Rule 144A Data Sets.

In the Rule 144A Dissemination Rule Change, FINRA amended FINRA Rule 7730(c) to establish the Rule 144A transaction data set (“Rule 144A Data Set”), which is similar to the data sets established for corporate bonds (“Corporate Bond Data Set”), Agency Debt Securities (“Agency Data Set”) and Asset-Backed Securities (“ABS Data Set”).¹¹ The Rule 144A Data Set will consist of information disseminated immediately upon receipt of a transaction report for a Rule 144A transaction. FINRA proposes to extend the market data fees currently in effect for similar real-time TRACE market data sets (i.e., the Corporate Bond Data Set, the Agency Data

¹⁰ See note 8. FINRA Rule 6750 will provide for the dissemination of Rule 144A transactions, provided the asset type (e.g., corporate bonds) currently is subject to dissemination under FINRA Rule 6750. The Rule 144A Dissemination Rule Change does not extend to equity transactions effected pursuant to Securities Act Rule 144A (17 CFR 230.144A).

¹¹ The terms Agency Debt Security and Asset-Backed Security are defined in FINRA Rule 6710(l) and FINRA Rule 6710(m), respectively.

Set and the ABS Data Set) to the Rule 144A Data Set. The proposed rule change would amend FINRA Rule 7730(c)(1), FINRA Rule 7730(c)(2) and the preceding table to provide that each data set is available at the same rate and eliminate redundant text.¹²

In addition, in the Rule 144A Dissemination Rule Change, FINRA amended FINRA Rule 7730(d) to establish a historic data set for Rule 144A transactions (“Historic Rule 144A Data Set”), which is similar to the data sets established for corporate bonds (“Historic Corporate Bond Data Set”), Agency Debt Securities (“Historic Agency Data Set”) and Asset-Backed Securities (“Historic ABS Data Set”) referenced in the rule.¹³ FINRA proposes to establish fees for the Historic Rule 144A Data Set at the same rates currently in effect in FINRA Rule 7730(d) for the existing historic data sets. The proposed rule change would amend FINRA Rule 7730(d)(1), FINRA Rule 7730(d)(2) and the preceding table to provide that each data set is available at the same rate and eliminate redundant text.¹⁴ In connection with the fees for the Historic Rule 144A Data Set, FINRA proposes to clarify in FINRA Rule 7730(d)(1)(A)(ii) and FINRA Rule 7730(d)(1)(B)(ii) that the 2003 Historic Rule 144A Data Set includes the 2002 Historic Rule 144A Data Set, and in FINRA Rules 7730(d)(1)(A)(i) and 7730(d)(1)(B)(i) that the set-up fee to receive Historic TRACE data is paid only one time, instead of per data set.¹⁵

¹² See Exhibit 4 to the Form 19b-4, which is available on FINRA’s website.

¹³ As noted in the Rule 144A Dissemination Rule Change, the Historic Rule 144A Data Set would include Rule 144A transactions in TRACE-Eligible Securities subject to dissemination, effected as of or after July 1, 2002, and, among other things, would include uncapped volume information. However, like all other Historic TRACE Data, Rule 144A transaction data included in the Historic Rule 144A Data Set would be released subject to a delay of approximately 18 months from the date of the transaction.

¹⁴ See Exhibit 4 to the Form 19b-4 on FINRA’s website.

¹⁵ FINRA Rule 7730(d) specifies: “Historic TRACE Data fees, except the Set-Up Fee, are charged for each Data Set.” See Exhibit 4 to the Form 19b-4 on FINRA’s website.

FINRA also proposes two clarifying amendments to other provisions of Rule 7730 as discussed below.

Level II Full Service Web Browser Fee.

FINRA proposes to clarify in FINRA Rule 7730(a)(1) applicable fees when a firm uses a TRACE web browser that includes access to real-time TRACE transaction data. The subscription rate for the Level II Full Service Web Browser includes the fees for a subscription to one or two data sets, which were established when there were only two data sets. When the Rule 144A Dissemination Rule Change becomes effective, there will be four available real-time data sets: Corporate Bond Data Set, Agency Data Set, ABS Data Set and Rule 144A Data Set. FINRA would extend the subscription rates currently applicable to first and second data sets (i.e., a discounted rate of \$30 per data set for a single user ID and \$60 per data set for additional user IDs) to the third and fourth data sets in two similar provisions. Specifically, in FINRA Rule 7730(a)(1)(B)(i), for a Level II Full Service Web Browser subscription for a single user ID or the first user ID, the current fee is \$50 per month¹⁶ (including one data set), and \$80 per month (including two data sets). As amended, the Level II Full Service Web Browser subscription fee would be \$110 per month (for subscribers to three data sets), or \$140 per month (for subscribers to four data sets). For Level II Full Service Web Browser subscriptions for additional user IDs, in FINRA Rule 7730(a)(1)(B)(ii), the current fee is \$80 per month per user ID (including one data set) and \$140 per month per user ID (including two data sets).¹⁷ FINRA would extend the same fee rate per data set to the third and fourth data sets, so that the Level II Full Service Web Browser subscription fee (applicable to additional users IDs) would be \$200 per month per user

¹⁶ Each fee includes the \$20 per month fee per user ID for Level I Trade Report Only Web Browser Access as specified in FINRA Rule 7730(a)(1)(A).

¹⁷ Again, each fee includes the \$20 per month fee per user ID for Level I Trade Report Only Web Browser Access. See note 16.

ID (for subscribers to three data sets), and \$260 per month per user ID (for subscribers to four data sets).

TBA Transaction Reporting Fee.

The trade reporting fees for transactions in TRACE-Eligible Securities are set forth in FINRA Rule 7730(b)(1). For Agency Pass-Through Mortgage-Backed Securities, as defined in FINRA Rule 6710(v), traded to be announced (“TBA”), as defined in FINRA Rule 6710(u), the trade reporting fee is \$1.50 per transaction. At the time the TBA reporting fee was established, FINRA had not defined TBA transactions to include those involving SBA-Backed ABS; however, FINRA intended the TBA reporting fee to apply to all TBA transactions. Accordingly, FINRA proposes to clarify that SBA-Backed ABS, as defined in FINRA Rule 6710(bb), traded TBA are subject to the \$1.50 per transaction trade reporting fee.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change will be the same as the effective date of the Rule 144A Dissemination Rule Change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Exchange Act,¹⁸ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

FINRA believes that the proposed fees for the Rule 144A Data Set and Historic Rule 144A Data Set that are an extension of the fee rates that are assessed currently for existing real-time and historic data sets are reasonable, equitably allocated and not unfairly discriminatory. FINRA believes that the proposed fees are reasonable in light of FINRA’s regulatory and

¹⁸ 15 U.S.C. 78o-3(b)(5).

operational costs, including personnel, technology and storage costs to collect and provide real-time and historic Rule 144A transaction data and the increase in such costs incurred by FINRA over time. FINRA proposes fees at the rates that have been in effect for several years for similar data bases, and such fees are designed to defray a portion of such costs.

FINRA believes that the proposed rule change provides for the equitable allocation of the proposed fees among member firms and other market participants and data users, and is not unfairly discriminatory. The Rule 144A Data Set and Historic Rule 144A Data Set would be accessible by all member firms and other market participants and data users, subject to the same fee rates that are in effect for the real-time and historic Corporate Bond, Agency and ABS data sets. As with fees for other data sets (real-time and historic) provided by FINRA, the proposed fees would be charged only to those member firms and other market participants and data users that opt to receive a subscription to the applicable data set. FINRA proposes to charge qualifying Tax-Exempt Organizations¹⁹ reduced fees for the Rule 144A Data Set and Historic Rule 144A Data Set, which are the same reduced fee rates that FINRA currently charges such organizations to access other data sets. The proposed reduced data fees for qualifying Tax-Exempt Organizations are an equitable allocation of fees in that the lower rate provides greater access to TRACE information to organizations that are formed exclusively for a charitable purpose. FINRA also believes that the Rule 144A Data Set and Historic Rule 144A Data Set fees are not unfairly discriminatory because the data sets would be available to all similarly

¹⁹ Tax-Exempt Organization is defined in FINRA Rule 7730(f)(2) and means an organization that is described in Section 501(c) of the Internal Revenue Code (26 U.S.C. §501(c)) and has received recognition of the exemption from federal income taxes from the Internal Revenue Service.

situated members and other data users on an equal basis at the same rates, except for the proposed lower rates for qualifying Tax-Exempt Organizations.

FINRA believes that the proposed amendments regarding the Level II Full Service Web Browser subscription fees are reasonable in light of FINRA's regulatory and operational costs, including personnel, technology and storage costs to collect and provide real-time transaction data and the increase in such costs incurred by FINRA over time. FINRA proposes amendments to allow members to access additional data bases at the same fee rate that has been in effect for several years, and such fees are designed to defray a portion of such costs. FINRA also believes that such amendments provide for the equitable allocation of fees among member firms in that the combined service/market data product, which allows members to report and review the member's transactions and to access market data, is available to all firms that wish to subscribe at the same rate. In addition, FINRA believes that the additional proposed fees for access to additional data sets as part of the Level II Full Service Web Browser are not unfairly discriminatory because the Level II Full Service Web Browser service is available to all members.

Finally, FINRA believes that applying the TBA reporting fee that currently applies to almost all TBA transactions to an additional small number of TBA transactions is a reasonable and fair fee assessment, and results in a fee that is equitably allocated among members engaged in similar transactions. Also, the proposed fee is not unfairly discriminatory in that all members engaged in such TBA transactions will be subject to the same fee.

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. The proposed fees for the Rule 144A Data Set and Historic Rule 144A Data Set, which are

consistent with current rates for subscriptions to similar TRACE data sets, are reasonable, equitably allocated and not unfairly discriminatory, and will permit a broad spectrum of members, data vendors and other market participants, including qualifying Tax Exempt Organizations, to obtain and use the data in furtherance of market integrity and the protection of investors in such securities. Similarly, FINRA does not believe that the proposed amendments to the Level II Full Service Web Browser subscription, providing a member access to multiple data sets as part of such service, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Access to the Rule 144A Data Set and Historic Rule 144A Data Set as well as the Level II Full Service Browser subscription may facilitate competition in the market for such securities in that access to such data will assist members and customers in: (1) determining the quality of their executions; (2) price discovery; and (3) assessing the accuracy and integrity of the valuation of positions.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and paragraph (f) of Rule 19b-4²¹ thereunder. 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 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

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f).

Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change 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-2013-043 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-FINRA-2013-043. 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, D.C. 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; 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-2013-043 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.²²

Kevin M. O'Neill
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).