

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94365; File No. SR-FINRA-2021-030)

March 4, 2022

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to TRACE Reporting of Corporate Bond Trades That Are Part of a Larger Portfolio Trade

I. Introduction

On November 22, 2021, 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 proposed rule change to require members to append a modifier to a corporate bond trade that is part of a larger portfolio trade when reporting to FINRA’s Trade Reporting and Compliance Engine (“TRACE”). The proposed rule change was published for comment in the Federal Register on December 7, 2021.³ On January 20, 2022, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission received three comments on the proposal.⁶ On

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 93699 (December 1, 2021), 86 FR 69337 (December 7, 2021) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 94011 (January 20, 2022), 87 FR 4097 (January 26, 2022).

⁶ See Letter from Howard Meyerson, Managing Director, Financial Information Forum, to Vanessa A. Countryman, Secretary, SEC, dated December 23, 2021 (“FIF Letter”); Letter from Chris Killian, Managing Director, Securitization and Credit, Securities Industry and Financial Markets Association, to Vanessa A. Countryman, Secretary, SEC, dated

March 4, 2022, FINRA filed Amendment No. 1 to the proposed rule change.⁷ The Commission is publishing notice of Amendment No. 1 and approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

For purposes of the proposed rule change, FINRA considers a “portfolio trade” to be a trade between two parties for a basket of corporate bonds at a single aggregate price for the entire basket. FINRA rules do not allow for reporting of a single portfolio trade with an aggregated price. Instead, a member firm must report to TRACE a trade for each individual bond in the portfolio with an attributed dollar price for each bond. FINRA believes that, in many cases, the reported price for each bond in a portfolio trade is in line with the bond’s current market price, while in other cases the attributed price reported for an individual bond might deviate from its current market price.

In 2020, the Commission’s Fixed Income Market Structure Advisory Committee (“FIMSAC”)⁸ approved a recommendation that FINRA amend the TRACE reporting rules to

December 28, 2021 (“SIFMA Letter”); Letter from Michael Grogan, V.P. & Head of US Fixed Income Trading – Investment Grade, Dwayne Middleton, V.P. & Head of Fixed Income Trading, Brian Rubin, V.P. & Head of US Fixed Income Trading – Below Investment Grade, and Jonathan Siegal, V.P. & Senior Legal Counsel – Legislative & Regulatory Affairs, T. Rowe Price, to Vanessa A. Countryman, Secretary, SEC, dated December 30, 2021 (“T. Rowe Price Letter”).

⁷ In Amendment No. 1, FINRA revised the proposal to remove any requirements relating to delayed Treasury spot trades so that it can further consider this issue, and responded to comments relating to the portfolio trade aspects of the proposal. Amendment No. 1 to the proposed rule change is available at <https://www.sec.gov/comments/sr-finra-2021-030/srfinra2021030.htm>.

⁸ The FIMSAC is a federal advisory committee formed in November 2017 to provide the Commission with advice and recommendations on matters related to fixed income market structure. See <https://www.sec.gov/files/fimsac-charter.pdf>.

require members to identify corporate bond trades that are part of a portfolio trade.⁹

Accordingly, FINRA is proposing to add new paragraph (d)(4)(H) to Rule 6730 to require a member to append a designated modifier if reporting a transaction in a corporate bond that: (i) is executed between only two parties; (ii) involves a basket of corporate bonds of at least ten¹⁰ unique issues;¹¹ and (iii) has a single agreed price for the entire basket. The new portfolio trade modifier would be disseminated through TRACE, together with other information about the transaction, immediately upon receipt of a transaction report. FINRA will publish the specific format for the new portfolio trade modifier in the TRACE technical specifications. FINRA also has represented that it will publish a Regulatory Notice announcing the effective date of the proposed rule change no later than 90 days following Commission approval, and the effective date will be no later than 365 days following publication of the Regulatory Notice.

The Notice also included proposed requirements relating to TRACE reporting of a delayed Treasury spot trade, defined by FINRA in the Notice to mean a transaction in a corporate bond that occurs on the basis of a spread to a benchmark U.S. Treasury Security, where the agreed-upon spread is later converted to a dollar price by “spotting” the benchmark

⁹ See FIMSAC, Recommendation Regarding Additional TRACE Reporting Indicators for Corporate Bond Trades (February 10, 2020), available at: <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-additional-trace-flags-recommendation.pdf>.

¹⁰ The FIMSAC recommended a size threshold for portfolio trades of at least 30 unique issuers. In the Notice, FINRA stated that it was proposing a lower size threshold—ten rather than 30—believing that the lower threshold would provide greater informational benefits to market participants by capturing a greater number of transactions that satisfy the other conditions the rule.

¹¹ In the Notice, FINRA stated its belief that using the number of issues, rather than the number of issuers, would provide a simpler and more effective way to identify portfolio trades for purposes of the proposed rule change.

U.S. Treasury Security at a designated time. As discussed further below, FINRA amended the proposed rule change to remove the provisions relating to delayed Treasury spot trades.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹² In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹³ which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.

The proposal appears reasonably designed to improve transparency for portfolio trades, and the individual components thereof, without imposing undue burdens on members who report these trades and who must report other TRACE modifiers under FINRA rules.¹⁴ Requiring a TRACE modifier for each corporate bond transaction that is part of a portfolio trade will allow market participants and other market observers to know that the price reported for that

¹² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78o-3(b)(6).

¹⁴ See, e.g., Rule 6730(d)(4)(B) (requiring members to append a trade report modifier if the price of the transaction is determined using a weighted average price method); Rule 6730(d)(4)(F) (requiring members to append a trade report modifier where a trade report does not reflect either a commission, mark-up, or mark-down).

transaction might not reflect the price for the individual bond if it were individually negotiated.

The Commission also believes that the criteria for defining the scope of portfolio trades for which the modifier must be used, as set forth in new paragraph (d)(4)(H) of Rule 6730, are reasonably designed to facilitate implementation of the proposed rule change.

No issues were raised by commenters that would preclude Commission approval of this proposed rule change. Although one commenter stated that “the incremental benefit to transparency of this flag is somewhat limited,”¹⁵ another commenter broadly supported the proposal for a portfolio trade modifier to increase transparency.¹⁶ Commenters also requested certain clarifications to the proposal, which FINRA provided in Amendment No. 1.¹⁷ One commenter noted the changes between the FINRA proposal and the FIMSAC recommendation but did not raise an objection to those changes.¹⁸ Finally, issues raised by commenters pertaining to the proposed requirements relating to delayed Treasury spot trades are moot in light of Amendment No. 1.

¹⁵ SIFMA Letter at 1.

¹⁶ See T. Rowe Price Letter at 1.

¹⁷ For example, one commenter sought guidance on the meaning of “single aggregate price” for the entire basket as used in proposed Rule 6730(d)(4)(H)(iii). See SIFMA Letter at 2-3. FINRA responded that, where the parties to a trade aggregate individual prices obtained from a pricing list or service without further negotiation, it would not be considered within the scope of the rule. Another commenter asked whether the TRACE system will validate whether the counterparties to a trade consistently identify a trade as being part of a portfolio trade. See FIF Letter at 3. FINRA stated that the portfolio trade modifier will not be part of the TRACE system’s matching logic.

¹⁸ See SIFMA Letter at 2 (supporting the change to base the definition on the number of issues rather than the number of issuers and stating, with regard to lowering the numerical threshold from 30 to ten issues: “We do not have a consensus view on the number, however, we would point out that as the number of securities in the basket gets lower, our members believe it is less likely that any individual security traded would be off market”).

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 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-2021-030 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-2021-030. 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-2021-030, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. In Amendment No. 1, FINRA removed all provisions relating to delayed Treasury spot trades. In doing so, FINRA noted that it would “continue to consider whether any potential alternative to the proposed approach may better meet FINRA’s regulatory objectives in this area.” The parts of the proposed rule change relating to the modifier for corporate bond transactions that are part of a larger portfolio trade remain identical to those noticed for comment, to which commenters had opportunity to respond and have in fact responded. Therefore, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁹ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

¹⁹ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-FINRA-2021-030), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier
Assistant Secretary

²⁰ Id.

²¹ 17 CFR 200.30-3(a)(12).