

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60726; File No. SR-FINRA-2009-010)

September 28, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as modified by Amendment No. 2 Thereto, Expanding TRACE to Include Agency Debt Securities and Primary Market Transactions

I. Introduction

On March 18, 2009, the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to expand TRACE to include Agency Debt Securities and primary market transactions. On April 8, 2009, FINRA filed Amendment No. 1 to the proposal.³ The proposed rule change, as amended, was published for comment in the Federal Register on April 16, 2009.⁴ The Commission received eight comment letters in response to the proposed rule change.⁵ On August 26, 2009, FINRA responded to the comment letters⁶ and filed Amendment No. 2 to the propose rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 was a partial amendment that: (1) revised the description of the proposal to accurately reflect the proposed rule text; (2) amended the definition of “TRACE-Eligible Security” to remove a parenthetical that was inadvertently included in the original proposal; and (3) made minor technical edits to the purposed rule text.

⁴ Securities Exchange Act Release No. 59733 (April 8, 2009), 74 FR 17709 (“Notice”).

⁵ See infra note 12.

⁶ See letter from Sharon Zackula, Associate Vice President and Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated August 26, 2009 (“FINRA Response”).

change.⁷ The Commission is publishing this notice and order to solicit comments on Amendment No. 2 and to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposal

Currently, FINRA utilizes the Trade Reporting and Compliance Engine (“TRACE”) to collect and disseminate information on secondary over-the-counter transactions in corporate debt securities. FINRA has proposed to extend TRACE to include most primary market transactions as well as transactions in debt securities that are issued or guaranteed by a government-sponsored enterprise or U.S. government agency (“Agency Debt Securities”). Specifically, the proposed rule change would:

(1) in Rule 6710, amend the defined terms (a) “TRACE-Eligible Security” to include Agency Debt Securities; (b) “Reportable TRACE Transaction” to include primary market transactions; and (c) “Investment Grade” and “Non-Investment Grade” to classify unrated Agency Debt Securities as investment grade securities for purposes of the dissemination provisions of the TRACE rules;

(2) amend Rule 6710(a), to require members to provide FINRA certain information regarding debt securities that are not assigned CUSIPs, but otherwise meet TRACE eligibility standards;

(3) in Rule 6710, delete the definition of “Money Market Instrument” embedded in the term “TRACE-Eligible Security” and add it as a separately defined term in new proposed Rule 6710(o);

⁷ See infra Section III.

(4) in Rule 6710, add the defined terms, “Agency,” “Agency Debt Security,” “Asset-Backed Security,” “Government-Sponsored Enterprise,” “Money Market Instrument,” “U.S. Treasury Security,” “List or Fixed Offering Price Transaction,” and “Takedown Transaction;”

(5) in Rule 6710, make certain technical changes to a number of the defined terms;

(6) in Rule 6730, establish reporting requirements for primary market transactions that are List or Fixed Offering Price Transactions⁸ or Takedown Transactions;⁹

(7) in Rule 6750, provide that transaction information for List or Fixed Offering Price Transactions and Takedown Transactions will not be disseminated. FINRA has represented that it will study the reported data for these primary market transactions for a period of time after reporting begins and, at a later date, determine if dissemination of the information is appropriate and, if appropriate, develop a dissemination strategy;

(8) in Rule 6760, amend the requirements for members to provide FINRA with notice of and information about new issuances of TRACE-Eligible Securities to facilitate timely reporting of such securities in both primary and secondary market transactions;

(9) establish new Rule 6770, which would provide FINRA emergency authority, to be exercised in consultation with the Commission, that would permit FINRA to suspend the

⁸ The term “List or Fixed Offering Price Transaction” means a primary market sale transaction sold on the first day of trading of a new issue: (i) by a sole underwriting, syndicate manager, syndicate member or selling group member at the published or stated list or fixed offering price, or (ii) in the case of a primary market sale transaction effected pursuant to Securities Act Rule 144A, by an initial purchaser, syndicate manager, syndicate member or selling group member at the published or stated fixed offering price. See proposed FINRA Rule 6710(q).

⁹ The term “Takedown Transaction” means a primary market sale transaction sold on the first day of trading of a new issue: (i) by a sole underwriter or syndicate manager to a syndicate or selling group member at a discount from the published or stated list or fixed offering price, or (ii) in the case of a primary market sale transaction effected pursuant to Securities Act Rule 144A, by an initial purchaser or syndicate manager to a syndicate or selling group member at a discount from the published or stated fixed offering price. See proposed FINRA Rule 6710(r).

reporting and/or dissemination of certain transactions in TRACE-Eligible Securities, or the reporting of certain data elements that are otherwise required under Rule 6730 and/or the dissemination of certain data elements as market conditions warrant and for such period of time as FINRA deemed necessary;¹⁰

(10) in Rule 7730, establish reporting and market data fees for Agency Debt Securities and primary market transactions generally at the same rates in effect for corporate bonds;¹¹ and

(11) amend various rules in the FINRA Rule 6700 and 7730 series to reflect minor technical, stylistic, or confirming changes.

In its filing with the Commission, FINRA acknowledged that its proposal to extend TRACE reporting to include Agency Debt Securities may result in certain trading desks having to report transactions to TRACE for the first time. Consequently, FINRA represented that it would continue to work with members and third-party vendors to ensure effective and efficient implementation. FINRA further stated that it 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. According to FINRA, the effective date will be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

¹⁰ See Amendment No. 2, infra Section III.

¹¹ Under the proposal, for fee purposes, FINRA will distinguish TRACE transaction data as two data sets: one comprised of corporate bond transaction information and the other comprised of Agency Debt Security transaction information. The fee schedule set forth in FINRA Rule 7730 would apply to Agency Debt Securities and primary market transactions. Additionally, FINRA has proposed to amend the fees for “Web Browser Access,” which would vary depending on factors such as the number of users and whether the user(s) would have access to one or both data sets.

III. Summary of Comments and Amendment No. 2

The Commission received eight comments on the proposed rule change.¹² Four commenters expressed strong support for the proposal.¹³ Two other commenters were not opposed to FINRA's proposal, but raised concerns regarding operation and implementation.¹⁴

Two commenters indicated support for more transparency in the fixed income markets, but opposed the proposed rule change.¹⁵ Both commenters believed that the market in Agency Debt Securities is highly liquid and questioned the need for expanding TRACE to cover it.¹⁶

One of the commenters stated that any expansion of TRACE to include Agency Debt Securities

¹² See letter from Robert F. Anderson, Senior Managing Director, Fixed Income Trading, dated April 17, 2009 ("Anderson Letter"); letter from Beth N. Lowson, The Nelson Law Firm, LLC, dated May 5, 2009 ("Nelson Letter"); letter from Manisha Kimmel, Executive Director, Financial Information Forum, dated May 7, 2009 ("FIF Letter"); letter from Heather Traeger, Associate Counsel, Investment Company Institute, dated May 7, 2009 ("ICI Letter"); letter from Joseph W. Sack, Managing Director, Asset Management Group, Securities Industry and Financial Markets Association, dated May 7, 2009 ("AMG-SIFMA Letter"); letter from Sean C. Davy, Managing Director and Robert Toomey, Managing Director, and Associate General Counsel, Capital Markets Group of Securities Industry and Financial Markets Association, dated May 7, 2009 ("CMG-SIFMA Letter"); letter from Michael Decker and Mike Nicholas, Co-Chief Executive Officers, Regional Bond Dealers Association, dated May 7, 2009 ("RBDA Letter"); letter from Don Winton, Crews & Associates, Inc., dated May 22, 2009 (Crews Letter") (collectively, the "Comment Letters").

¹³ See Anderson Letter (supporting FINRA's overall goal of improving bond market transparency); Nelson Letter (supporting the proposal because it provides for increased price transparency in the market by broadening the range of securities trades that must be reported and disseminated); AMG-SIFMA Letter (arguing that real-time prices would be helpful to large asset management firms with respect to trading activities, portfolio management, and valuation activities); ICI Letter (citing the benefits to investors in bonds and noting that transparency helps to improve price discovery and ensure the integrity of the debt markets).

¹⁴ See Crews Letter; FIF Letter.

¹⁵ See CMG-SIFMA Letter; RBDA Letter.

¹⁶ See CMG-SIFMA Letter, at 1-2; RBDA Letter, at 2.

or primary market transactions would impose significant costs on firms that engage in such transactions.¹⁷

FINRA responded that, although multiple vendors provide data on Agency Debt Securities, there is no centralized public dissemination of information regarding transactions in Agency Debt Securities. FINRA noted that the pre-trade information available is generally indicative, while post-trade information – whether via a subscriber service or at a publicly accessible Web site – is not available at all. FINRA concluded that “[t]he expansion of TRACE will create consolidated post-trade transparency in Agency Debt Securities, and the dissemination of transaction information will assist in price discovery and valuation processes for all market participants and provide retail investors access to price information current not readily available to non-professionals.”¹⁸

Three commenters requested that the distinction between primary and secondary transactions be clarified for reporting purposes.¹⁹ In its original filing, FINRA proposed that member use one of three indicators when reporting transactions to distinguish between primary and secondary transactions, and to further distinguish List or Fixed Offering Price Transactions and Takedown Transactions from other primary market transactions. In response, FINRA revised Rule 6730(d)(4)(D) to eliminate the proposed indicators for secondary market and primary market transactions that are not List or Fixed Offering Price Transactions or Takedown Transactions. The rule would retain the requirement that members use the remaining proposed indicator when reporting primary market transactions that are List or Fixed Offering Price

¹⁷ See CMG-SIFMA Letter, at 1.

¹⁸ FINRA Response, at 3.

¹⁹ See CMG-SIFMA Letter, at 5; RBDA Letter, at 3; FIF Letter, at 3.

Transactions and Takedown transactions.²⁰ One commenter suggested that that the definition of List or Fixed Offering Price Transaction and Takedown Transaction be amended for reporting purposes to include primary market transactions that are executed after the day of pricing, but would otherwise qualify as a List or Fixed Offering Price Transaction or Takedown Transaction. FINRA responded that it did not believe that the definition should be amended but, rather proposed to amend the deadline for reporting all List or Fixed Offering Price Transactions or Takedown Transactions to no later than T+1 during TRACE system hours. By extending the reporting period to T+1, FINRA would eliminate the distinction between a transaction executed in connection with an offering priced before 5:00 p.m. ET and a transaction executed as part of an offering priced on the same day but after 5:00 p.m. ET when the TRACE system is closed. FINRA believes this change will address operational concerns without negatively impacting regulatory surveillance or market transparency.²¹

One commenter also raised a compliance concern with regard to reverse inquiries.²² The commenter argued that complying with the proposed requirement to notify FINRA about new issues “prior to the commencement of primary market transactions” would be impossible in the case of a reverse inquiry, because the new issue materializes and the primary market transaction takes place precisely upon the agreement of the issuer to sell bonds at the terms proposed by the investor. Accordingly, the commenter recommended that FINRA amend Rule 6760 so that underwriting broker-dealers would be required to notify FINRA within 15 minutes of

²⁰ See FINRA Response, at 5.

²¹ See id.

²² See RBDA Letter, at 2-3. In a reverse inquiry, investors or dealers determine an amount and type of bond that they wish to purchase and approach the issuer with a request to buy debt securities with those features at a particular price. If the issuer agrees, the bonds are issued and purchased.

commencement of primary market trading after the underwriting of the new issue, in the instances where it is not possible to do so prior to the commencement of primary market transactions.²³

In response, FINRA proposed to amend Rule 6760 so that if a member is involved in an intraday offering that is priced and commences between 9:30 a.m. and 4:00 p.m. ET, the member would be permitted to provide FINRA Operations the required information available prior to the execution of the first transaction in the distribution or offering. All other information required under the rule would have to be provided within 15 minutes of the time of execution of the first transaction in such distribution or offering.²⁴

Two commenters stated that firms should be permitted to rely on the TRACE Issue Master to determine if a security is TRACE-eligible.²⁵ FINRA responded that it has often stated that a firm's obligation under Rule 6730 is to report transactions in securities that meet the definition of TRACE-Eligible Security. FINRA further stated that if a firm has a reporting obligation under Rule 6730 in a security that is a TRACE-Eligible Security but is not included in the TRACE Issue Master, the firm must notify FINRA immediately and provide the CUSIP and other information necessary for FINRA to update the TRACE Issue Master, allowing the firm to report its transaction to TRACE promptly and comply with its obligations under FINRA Rule 6730.²⁶ Additionally, one commenter objected to including securities without a CUSIP as TRACE-eligible due to increased costs and potential reporting errors, and questioned whether

²³ See RBDA Letter, at 3.

²⁴ See FINRA Response, at 5.

²⁵ See CMG-SIFMA Letter, at 4; FIF Letter, at 1.

²⁶ See FINRA Response, at 5.

incorporating such securities into TRACE would contribute to meaningful price discovery.²⁷

FINRA responded that only a small number of securities trade without a CUSIP and that, where a security is not identified by a CUSIP, FINRA would work with members to ensure effective and efficient reporting.²⁸

With regard to the expansion of TRACE to include primary market transactions, one commenter noted that such expansion would impose operational and compliance issues and require firms to engage in extensive and costly systems development.²⁹ Consequently, the commenter urged FINRA to provide up to 18 months from the publication date of the technical specifications to accommodate necessary technical systems changes.³⁰ The commenter further recommended a phased-in compliance implementation process, whereby the expanded reporting requirements for transactions in Agency Debt Securities be implemented first, followed by reporting in primary market transactions for corporate bonds and primary market transactions for Agency Debt Securities, respectively.³¹ Another commenter stated that 12 months would be needed for systems development and testing before the requirement for TRACE reporting of Agency Debt Securities and primary market transactions is enforced.³²

In response, FINRA recognized that implementation of the proposal may create short-term operational issues and require a number of permanent modifications to reporting and other

²⁷ See FIF Letter, at 2-3.

²⁸ See FINRA Response, at 6.

²⁹ See CMG-SIFMA Letter, at 4.

³⁰ See id., at 6-7.

³¹ See id., at 6.

³² See FIF Letter, at 3-4.

technology systems. FINRA stated that it will work with members to address issues and provide them sufficient notice to modify their reporting systems.³³

One commenter raised the concern that such expansion may cause competitive disparities between FINRA member firms, which are subject to TRACE reporting, and bank government securities dealers, which are not.³⁴ Further, the commenter asserted that bank dealers would have an advantage over FINRA members in competing for the business of institutional investors that wish to keep their trading activity confidential.³⁵ In response, FINRA noted the statutory requirement that a proposed rule not impose any burden on competition not necessary or appropriate in furtherance of the Act and stated its belief that it is axiomatic that increasing transparency in a securities trading market appropriately furthers the purposes of the Act. Consequently, FINRA believes such comments are without merit.³⁶

Two commenters requested that TRACE fees related to Agency Debt Securities be reduced to the extent that such fees are not necessary to cover FINRA's expenses in connection with the collection and dissemination of TRACE data.³⁷ Another commenter argued that charging a separate fee for the use of Agency Debt Securities data is unwarranted, and urged the Commission to require FINRA to offer data on corporate debt securities and Agency Debt Securities as a single data set, priced no higher than the current rate for corporate bond data.³⁸ FINRA responded that it will undertake review of the fee structure for Agency Debt Securities

³³ See FINRA Response, at 6.

³⁴ See CMG-SIFMA Letter, at 3.

³⁵ See id.

³⁶ See FINRA Response, at 7.

³⁷ See CMG-SIFMA Letter, at 4.

³⁸ See RBDA Letter, at 4.

after implementation of the proposal, when FINRA can accurately assess the trading volume and demand for Agency Debt Securities data.³⁹

Four commenters raised concerns about trade modifications in TRACE.⁴⁰ The commenters suggested that firms acting in good faith should be able to modify, cancel, or correct trade reports without incurring fees or penalties and that the TRACE platform be enhanced to allow modifications to trades submitted, rather than full re-submissions, which could help eliminate duplicative reporting.⁴¹ In response, FINRA asserted that modifications of trade reports are not relevant to the proposed rule change, but that FINRA reviews operational issues raised by firms on an ongoing basis and will take the issue under consideration.⁴² FINRA also declined to address other commenters' concerns that were outside the scope of the proposal, including commenter recommendations regarding dissemination protocols.⁴³

In Amendment No. 2, FINRA proposed limited amendments to various proposed reporting, dissemination, and notification provisions in the Rule 6700 series, and to Rule 7730. FINRA further proposed to add new Rule 6770 to provide emergency authority to FINRA, in consultation with the Commission, to suspend reporting and/or dissemination of certain transactions in TRACE-Eligible Securities.

FINRA maintains that the proposed amendments to the Rule 6700 series address many of the substantive issues raised by commenters.⁴⁴ The proposed amendments would extend the

³⁹ See FINRA Response, at 7.

⁴⁰ See CMG-SIFMA Letter, at 5; RBDA Letter, at 4-5; Crews Letter, at 1-2; FIF Letter, at 2.

⁴¹ See CMG-SIFMA Letter, at 5.

⁴² See FINRA Response, at 6.

⁴³ See, e.g., FINRA Response, at 3.

⁴⁴ See FINRA Response, at 8.

period to report primary market transactions that are List or Fixed Offering Price Transactions or Takedown Transactions to the close of the TRACE system on T+1, and simplify the reporting of all transactions by eliminating two of three proposed indicators. In addition, the proposed amendments would modify Rule 6760, providing greater flexibility to underwriters (or other persons designated in the rule) that are required to provide FINRA Operations notice and are engaged in an offering that is priced and commences between 9:30 a.m. and 4:00 p.m. ET. In conjunction with this change, a member would be required to indicate in its notice to FINRA Operations the time that the new issue is priced and, if different, the time that primary transactions in the new issue commence. FINRA also has proposed certain other minor changes, including non-substantive, clarifying, or formatting changes to the Rule 6700 Series and Rule 7730.

Rule 6730

FINRA originally proposed that primary market transactions that are List or Fixed Offering Price Transactions or Takedown Transactions be reported by the end of the day on the day such securities were priced, if the pricing occurred by 5:00 p.m. In Amendment No. 2, FINRA is revising two provisions of Rule 6730 regarding the reporting of such transactions to address certain concerns raised by the commenters. Specifically, FINRA has proposed to extend the reporting period by a full day, requiring members to report List or Fixed Offering Price Transactions and Takedown Transactions not later than T+1 during TRACE system hours, with limited exceptions for transactions that occur on weekends or holidays. For List or Fixed Offering Price Transactions or Takedown Transactions that are priced on a Saturday, Sunday, or a federal or religious holiday on which the TRACE system is closed, Rule 6730(a)(5) as revised

by Amendment No. 2 would require a member to report the transaction the next business day at any time during TRACE system hours.

Second, FINRA originally proposed that members use one of three indicators when reporting transactions in TRACE-Eligible Securities in proposed amended Rule 6730(d)(4)(D). The purpose was to distinguish between primary and secondary market transactions, as primary market transactions would be reported for the first time, and to distinguish List or Fixed Offering Price Transactions and Takedown Transactions from other primary market transactions. Certain commenters raised issues regarding the use of the three proposed indicators.⁴⁵

In Amendment No. 2, FINRA has proposed to amend Rule 6730(d)(4)(D) to eliminate the proposed indicators for secondary market transactions and for primary market transactions that are not List or Fixed Offering Price Transactions or Takedown Transactions. Rule 6730(d)(4)(D) would retain the requirement that members use the remaining proposed indicator when reporting primary market transactions that are List or Fixed Offering Price Transactions and Takedown Transactions. The remaining indicator will enable FINRA to identify transaction information received for such transactions that will be disseminated, which FINRA proposed in the original rule filing. In addition, FINRA will use the indicator for surveillance purposes to determine if members are properly categorizing transactions as List or Fixed Offering Price Transactions and Takedown Transactions, and to determine if a member is selecting the indicator inappropriately to obtain the advantages of more relaxed reporting requirements or to avoid dissemination of selected reported transactions.

⁴⁵ See CMG-SIFMA Letter, at 3; RBDA Letter, at 3.

Rule 6760

In its original proposal, FINRA proposed to amend the notice and information reporting requirements in Rule 6760. Specifically, a member providing notice would be required to include “the time the new issue is priced.” Additionally, the original proposal required that information be provided “prior to the commencement of primary market transactions.” In Amendment No. 2, FINRA proposes to amend the notification requirements for new TRACE-Eligible Securities in Rule 6760 in response to comments. The most significant amendment to Rule 6760, in Rule 6760(b), provides more flexibility for underwriters (or other designated persons) that are required to give notice to FINRA Operations regarding a new TRACE-Eligible Security that is the subject of an offering that is priced and commences on the same business day between 9:30 a.m. and 4:00 p.m. ET. The proposed amendment would require the underwriter (or other designated person) to provide FINRA Operations as much of the information required under the rule that is available prior to the execution of the first transaction in the distribution or offering, and all other information required under Rule 6760 within 15 minutes of the time of execution of the first transaction in such distribution or offering.⁴⁶

FINRA also has proposed two additional amendments to the member notification requirements in Rule 6760(b). In response to comments regarding the operational difficulties of complying with TRACE requirements for securities not having a CUSIP number, FINRA proposes to amend Rule 6760(b) to permit the underwriter (or another designated person) providing the notice to submit, in lieu of a CUSIP, “a similar numeric identifier (or a TRACE symbol, which is assigned by FINRA upon request).” Also, FINRA originally proposed that an underwriter (or another designated person) notify FINRA Operations of the time that a new issue

⁴⁶ Rule 6760 does not apply to secondary offerings or distributions.

is priced. In Amendment No. 2, FINRA has proposed to add to such requirement that a member provide the time that the first transaction of the distribution or offering of the new issue is executed, if the time is different from the time of pricing of the new issue. The amended notification requirement would enable FINRA to determine if members comply with Rule 6760 to provide notification when required. FINRA believes that members' timely notification to FINRA Operations of new TRACE-Eligible Securities that are about to be offered plays a significant part of the process of continuously updating the TRACE system, and members that fail to comply with Rule 6760 impair the reporting of transactions by other members and adversely affect price transparency in the security during the most active or one of the most active trading periods in the security.

Proposed Rule 6770

In Amendment No. 2, FINRA proposed new Rule 6770, which would provide FINRA emergency authority to suspend the reporting and/or dissemination of certain transactions in TRACE-Eligible Securities, or the reporting of certain data elements that are otherwise required under Rule 6730 and/or the dissemination of certain data elements, as market conditions warrant and for such period of time as FINRA deems necessary. FINRA represented that each action that FINRA might consider under proposed Rule 6770 would be subject to review and discussion with the Commission prior to FINRA's use of such authority.⁴⁷ Although FINRA does not anticipate that such emergency authority would be used, FINRA believes it is prudent for such authority to be in place.

Other Amendments

⁴⁷ See Amendment No. 2, at 6.

Finally, in Amendment No. 2, FINRA proposed to incorporate non-substantive, technical, clarifying and formatting amendments in the Rule 6700 series and Rule 7730.

IV. Discussion

After carefully considering the proposal and the comments submitted, 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.⁴⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,⁴⁹ which requires, among other things, that FINRA rules must 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 does not believe that the comments raise any issue that would preclude approval of the proposal. Indeed, the Commission believes that the proposal promotes the goals of transparency, increased price discovery, and debt market integrity cited by several commenters.

In originally approving TRACE, the Commission stated that price transparency plays a fundamental role in promoting fairness and efficiency of U.S. capital markets and that market surveillance was a fundamental means of promoting fairness and confidence in those markets.⁵⁰ To further those goals, the Commission believes that it is reasonable and consistent with the Act for FINRA to expand TRACE in the manner set forth in the proposal.

Prior to TRACE's implementation, the NASD did not have routine access to comprehensive transaction information for the over-the-counter corporate bond market, even

⁴⁸ 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).

⁴⁹ 15 U.S.C. 78o-3(b)(6).

⁵⁰ See Securities Exchange Act Release No. 43873 (January 23, 2001) 66 FR 8131, 8136 (January 29, 2001).

though the NASD bore responsibility for surveilling and regulating that market. Similarly, with respect to the over-the-counter market for Agency Debt Securities and for primary market bond transactions, FINRA currently does not possess the comprehensive transaction information that would help it carry out its statutory duties to regulate the market. Expanding TRACE to include Agency Debt Securities and primary market transactions will assist FINRA in fulfilling its mandate in Section 15A(b)(6) of the Act⁵¹ 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.

Furthermore, the Commission believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,⁵² in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities. This proposal furthers this goal by increasing the amount of public information available in the over-the-counter market for debt securities. By increasing public availability of information about additional categories of debt, this proposal is reasonably designed to encourage greater participation in the market by retail and institutional investors, which should contribute to deeper markets and increased competition. Moreover, the additional transaction data reported to TRACE will allow FINRA to obtain a more complete audit trail of transactions in the market for TRACE-Eligible Securities. Although the Commission acknowledges the potential for firms covered by these new reporting requirements to incur additional compliance burdens and costs, the Commission believes that any such burdens are

⁵¹ 15 U.S.C. 78o-3(b)(6).

⁵² 15 U.S.C. 78k-1(a)(1)(C)(iii).

substantially outweighed by the overall benefits of increased transparency and access to more comprehensive trade information in the fixed income markets.

The Commission further finds that the proposed fees for: (1) reporting of Agency Debt Securities and primary market transactions, (2) receipt of market data for Agency Debt Securities and primary market transactions, and (3) subscribing to “Web Browser Access” for TRACE reporting and/or market data receipt are consistent with Section 15A(b)(5) of the Act, 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.⁵³ These fees are similar to those that currently apply to corporate debt securities.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁵⁴ for approving the proposed rule change, as modified by Amendment No. 2 thereto, prior to the 30th day after the date of publication in the Federal Register. The changes proposed in Amendment No. 2 are minor and technical in nature or designed to respond to specific concerns raised by commenters. With respect to the proposed provision that would permit FINRA to suspend TRACE reporting or dissemination in certain emergency circumstances, the Commission notes that such authority could be exercised only in consultation with the Commission. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 2, on an accelerated basis.

⁵³ 15 U.S.C. 78o-3(b)(5).

⁵⁴ 15 U.S.C. 78s(b)(2).

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 to 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-2009-010 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-2009-010. 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 Web site (<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 inspection and copying 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 will also 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 No. SR-FINRA-2009-010 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁵⁵ that the proposed rule change (SR-FINRA-2009-010), as modified by Amendments Nos.1 and 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁶

I

Florence E. Harmon
Deputy Secretary

⁵⁵ 15 U.S.C. 78s(b)(2).

⁵⁶ 17 CFR 200.30-3(a)(12).