

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64084; File No. SR-FINRA-2011-012)

March 16, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to TRACE Reporting of Asset-Backed Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 3, 2011, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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 the FINRA Rule 6700 Series and FINRA Rule 7730:

(1) in FINRA Rule 6710, to incorporate minor amendments to clarify, simplify or conform the defined terms, “TRACE-Eligible Security,” “Reportable TRACE Transaction,” “Agency Debt Security,” “Asset-Backed Security” and “TRACE System Hours”; to add a defined term, “Securitizer”; and, to delete the defined terms “Sponsor” and “Issuing Entity”;

(2) in FINRA Rule 6730, (A) to revise, renumber and conform the text of parallel reporting provisions in FINRA Rule 6730(a); (B) to incorporate minor amendments regarding the duration and expiration of the pilot program (“Pilot Program”) for reporting Asset-Backed Securities transactions; (C) to consolidate reporting requirements for Asset-Backed Securities transactions that are executed other than during TRACE System Hours; (D) to simplify how

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

settlement is reported for Asset-Backed Securities transactions; (E) to add alternative reporting requirements for Asset-Backed Securities transactions that are collateralized mortgage obligation (“CMO”) or real estate mortgage investment conduit (“REMIC”) transactions that occur prior to the issuance of the CMO or REMIC (“pre-issuance CMOs/REMICs”); and (F) to incorporate other minor technical, conforming or clarifying amendments to the Rule;

(3) in FINRA Rule 6760, to incorporate requirements that apply to Securitizers of Asset-Backed Securities, alternative notification requirements for pre-issuance CMOs/REMICs and minor technical, conforming or clarifying changes; and

(4) in FINRA Rule 7730, to add the Financial Information eXchange (“FIX”) as a method to report transactions to TRACE, establish a system-related FIX fee, and incorporate a minor technical amendment.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA, on the Commission’s website at <http://www.sec.gov>, and at the Commission’s Public Reference Room.

The proposed amendments set forth in Exhibit 5 are shown as changes to the FINRA Rule 6700 Series and FINRA Rule 7730 as amended by SR-FINRA-2009-065 (“TRACE ABS filing”), which was approved by the SEC on February 22, 2010.<sup>3</sup> The TRACE ABS filing is anticipated to become effective on May 16, 2011.<sup>4</sup> The proposed rule change amends or supplements the TRACE reporting and other requirements that will apply to Asset-Backed

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<sup>3</sup> See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010) (Order Approving File No. SR-FINRA-2009-065) (“TRACE ABS filing”) and Regulatory Notice 10-23 (April 2010).

<sup>4</sup> See Securities Exchange Act Release No. 63223 (November 1, 2010), 75 FR 68654 (November 8, 2010) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2010-054 to Extend the Implementation Period for SR-FINRA-2009-065); Regulatory Notice 10-55 (October 2010) (establishing May 16, 2011 as the effective date).

Securities transactions, with certain exceptions regarding minor conforming and other technical proposed amendments.

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.

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

1. Purpose

On February 22, 2010, the SEC approved the TRACE ABS filing, which amends the FINRA Rule 6700 Series to define Asset-Backed Securities as TRACE-Eligible Securities and to require members to report transactions in such securities to TRACE, and, concomitantly, FINRA Rule 7730, to establish reporting fees for transactions in such securities. The rule amendments in the TRACE ABS filing currently are anticipated to become effective on May 16, 2011.<sup>5</sup> In the proposed rule change, FINRA proposes additional amendments to the FINRA Rule 6700 Series and FINRA Rule 7730 to prepare for the reporting of Asset-Backed Securities transactions to TRACE.

As discussed in greater detail below, in FINRA Rule 6710, FINRA proposes minor amendments to five defined terms, an additional defined term, "Securitizer," and the deletion of two defined terms that are no longer necessary. In FINRA Rule 6730, FINRA proposes to: (A)

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<sup>5</sup> See supra note 4.

revise, renumber and conform the text of parallel reporting provisions in FINRA Rule 6730(a); (B) incorporate minor amendments regarding the duration and expiration of the Pilot Program for reporting Asset-Backed Securities transactions; (C) consolidate reporting requirements for transactions in Asset-Backed Securities that are executed other than during TRACE System Hours; (D) simplify how settlement is reported for Asset-Backed Securities transactions; and (E) add alternative reporting requirements for Asset-Backed Securities transactions that are pre-issuance CMO/REMIC transactions. FINRA also proposes to add new FINRA Rule 6730(a)(6) to clarify a member's obligation to provide information to FINRA Operations regarding a TRACE-Eligible Security when such security is not in the TRACE system, and to incorporate other minor technical or clarifying amendments to FINRA Rule 6730. In FINRA Rule 6760, FINRA proposes to incorporate requirements that apply to Securitizers of Asset-Backed Securities, alternative notification requirements for pre-issuance CMOs/REMICs, and minor technical, conforming or clarifying changes, and in FINRA Rule 7730, to add FIX as a method to report transactions to TRACE, establish a system-related fee for transactions reported to TRACE via FIX and make a technical amendment.

#### FINRA Rule 6710

FINRA proposes minor amendments to five defined terms in FINRA Rule 6710, a new defined term, and the deletion of two defined terms that are no longer necessary, as set forth below.

TRACE-Eligible Security. FINRA proposes minor technical amendments to the defined term "TRACE-Eligible Security" in FINRA Rule 6710(a), such as deleting unnecessary numbering.

Asset-Backed Security. FINRA proposes to amend the defined term “Asset-Backed Security” in FINRA Rule 6710(m) to incorporate, in pertinent part, Section 3(a)(77) of the Act,<sup>6</sup> a definition of asset-backed security added to the Act as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”).<sup>7</sup> As amended, FINRA Rule 6710(m) would provide:

“Asset-Backed Security” means a security collateralized by any type of financial asset, such as a loan, a lease, a mortgage, or a secured or unsecured receivable, and includes but is not limited to an asset-backed security as defined in Section 3(a)(77)(A) of the Exchange Act, a synthetic asset-backed security and any residual tranche or interest of any security

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<sup>6</sup> 15 U.S.C. 78c(a)(77).

<sup>7</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010). “Asset-Backed Security” was added to the Act under Section 941(a) of Title IX of the Dodd-Frank Act. Under Section 3(a)(77)(A) of the Act, the term asset-backed security:

Means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including –

- (i) A collateralized mortgage obligation;
- (ii) A collateralized debt obligation;
- (iii) A collateralized bond obligation;
- (iv) A collateralized debt obligation of asset-backed securities;
- (v) A collateralized debt obligation of collateralized debt obligations; and
- (vi) A security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and . . .

The definition of “asset-backed security” in Section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77)) “is broader than the definition of ‘asset-backed security’ in Regulation AB and includes securities typically offered and sold in private transactions.” See Securities Act Release No. 9150 (October 13, 2010), 75 FR 64182, 64183 (October 19, 2010) (File No. S7-26-10: Issuer Review of Assets in Offerings of Asset-Backed Securities); and SEC Regulation AB, Item 1101(c) (17 CFR 229.1101(c)).

specified above, which tranche or interest is a debt security for purposes of Rule 6710(a) and the Rule 6700 Series.

The proposed amendment to the term “Asset-Backed Security” clarifies, but does not broaden, the term.

Securitizer. The Dodd-Frank Act also added a definition of “securitizer” in Section 15G(a)(3) of the Act,<sup>8</sup> which FINRA proposes to incorporate in FINRA Rule 6710 as paragraph (s). In FINRA Rule 6710(s), “Securitizer” would have the same meaning it has in Section 15G(a)(3) of the Act.<sup>9</sup>

Reportable TRACE Transaction; Agency Debt Security. FINRA proposes to use the term “Securitizer,” which is broad and includes sponsors and issuers, among others,<sup>10</sup> in lieu of the defined terms “Sponsor” and “Issuing Entity,” in “Reportable TRACE Transaction” in

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<sup>8</sup> Section 941(b) of Title IX of the Dodd-Frank Act added the definition of “securitizer” to the Act as Section 15G(a)(3) (15 U.S.C. 78o-11(a)(3)).

<sup>9</sup> 15 U.S.C. 78o-11(a)(3). Section 15G(a)(3) of the Act provides that a securitizer is “(A) an issuer of an asset-backed security; or (B) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer; and . . .”

<sup>10</sup> The Commission has stated that “[W]ith respect to registered transactions and the definitions of transaction parties in Regulation AB, sponsors and depositors both fall within the statutory definition of securitizer.” Securities Exchange Act Release No. 63029 (October 4, 2010), 75 FR 62718, 62720 (October 13, 2010) (File No. S7-24-10: Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Proposed Rule). In addition, the term “securitizer” “is not specifically limited to entities that undertake transactions that are registered under the Securities Act or conducted in reliance upon any particular exemption. Consequently, . . . [securitizer] is intended to apply to any entity or person that issues or organizes an . . . [asset-backed security] as specified in Section 15G(a)(3) of the Exchange Act.” *Id.* The SEC noted that entities included in the definition of securitizer included Government-Sponsored Enterprises (GSEs) such as Fannie Mae, Freddie Mac, and municipal entities. *Id.*

FINRA Rule 6710(c) and “Agency Debt Security” in FINRA Rule 6710(l), and any other provisions in the FINRA Rule 6700 Series where Sponsor and/or Issuing Entity were used.<sup>11</sup>

TRACE System Hours. FINRA proposes to conform the time referenced in the defined term “TRACE System Hours” to times stated in the FINRA Rule 6700 Series generally (to include seconds) and also to relocate the defined term from FINRA Rule 6710(bb) to FINRA Rule 6710(t). FINRA Rule 6710(bb) would be deleted.

Sponsor; Issuing Entity. FINRA proposes to delete the defined terms “Sponsor” in FINRA Rule 6710(s) and “Issuing Entity” in FINRA Rule 6710(t), which are no longer necessary with the inclusion of the defined term Securitizer.

#### FINRA Rule 6730

As noted above, FINRA proposes certain amendments to FINRA Rule 6730 regarding the reporting of Asset-Backed Securities transactions to TRACE, and certain technical amendments, including restructuring and renumbering FINRA Rule 6730(a) and FINRA Rule 6730(a)(1) through (a)(8), to align parallel or similar reporting provisions. The proposed restructuring also includes minor technical amendments to conform the text of parallel or similar reporting provisions.<sup>12</sup>

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<sup>11</sup> In FINRA Rule 6710(c) and FINRA Rule 6710(l), FINRA substitutes the single term, “Securitizer” for “Sponsor” and “Issuing Entity.” See also minor proposed amendments to Rule 6760, discussed infra.

<sup>12</sup> As TRACE has expanded, FINRA Rule 6730 has been amended several times to incorporate additional reporting requirements. Before March 1, 2010, all TRACE-Eligible Securities transactions were subject to a single reporting standard (and three exceptions relating to transactions executed when the TRACE System was not open) (see FINRA Rule 6730(a)(1) and FINRA Rule 6730(a)(2) through (a)(4)). On March 1, 2010, a second set of requirements for reporting List or Fixed Offering Price Transactions and Takedown Transactions became effective (T+1 reporting requirement for most transactions) (see FINRA Rule 6730(a)(5)). See Securities Exchange Act Release No. 60726 (September 28, 2009), 74 FR 50991(October 2, 2009) (Order Approving File No. SR-FINRA-2009-010). See also Regulatory Notice 09-57 (September 2009).

FINRA Rule 6730(a); Proposed Renumbered FINRA Rule 6730(a)(1): Generally Applicable Reporting Requirements. FINRA Rule 6730(a) provides that TRACE-Eligible Securities transactions must be reported within 15 minutes. FINRA Rule 6730(a)(1) through (3) set forth reporting requirements for transactions executed, respectively, on a business day during, after, and before TRACE System Hours, and FINRA Rule 6730(a)(4) states such requirements for transactions executed on a weekend or a holiday.

To restructure FINRA Rule 6730(a) to align parallel or similar reporting provisions, FINRA first proposes minor technical amendments to FINRA Rule 6730(a),<sup>13</sup> and to reorganize the reporting requirements of general applicability (i.e., applicable to corporate debt and Agency Debt Securities)<sup>14</sup> that are set forth in FINRA Rule 6730(a)(1) through (a)(4). Amended FINRA Rule 6730(a)(1) would be titled, “Reporting Requirements” and provide: “Except as otherwise specifically provided in paragraph (a)(2) and paragraph (a)(3), transactions in TRACE-Eligible Securities must be reported as provided in this paragraph (a)(1).” FINRA Rule 6730(a)(1) through FINRA Rule 6730(a)(4) would be renumbered as subparagraphs of FINRA Rule 6730(a)(1) and include minor technical and conforming amendments to conform the rule text to similar or parallel provisions in FINRA Rule 6730(a).<sup>15</sup>

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<sup>13</sup> The current general requirements set forth in FINRA Rule 6730(a) -- requiring all Parties to a Transaction to report the transaction and for reports to be made within 15 minutes of the Time of Execution (except as otherwise provided) -- would be retained. FINRA proposes to delete the statement that, “Specific trade reporting obligations during a 24-hour cycle are set forth below.”

<sup>14</sup> The reporting requirements in proposed renumbered FINRA Rule 6730(a)(1) and subparagraphs (A) through (D) also would apply to primary market transactions that do not qualify for T + 1 reporting, consistent with current FINRA Rule 6730(a)(1) through (4).

<sup>15</sup> FINRA Rule 6730(a)(1) – (4) would be renumbered as Rule 6730(a)(1)(A) – (D), respectively.

Proposed Renumbered FINRA Rule 6730(a)(2) - List or Fixed Offering Price

Transactions and Takedown Transactions. FINRA Rule 6730(a)(5), containing reporting requirements for List or Fixed Offering Price Transactions and Takedown Transactions, would be renumbered as FINRA Rule 6730(a)(2), and titled “Reporting Requirements – List or Fixed Offering Price Transactions and Takedown Transactions.” FINRA also proposes minor technical and conforming amendments to conform the rule text to similar or parallel provisions in FINRA Rule 6730(a).<sup>16</sup>

Proposed Renumbered FINRA Rule 6730(a)(3) - Asset-Backed Securities. FINRA Rule 6730(a)(6), containing reporting requirements for Asset-Backed Securities, would be renumbered as proposed FINRA Rule 6730(a)(3), and titled “Reporting Requirements – Asset-Backed Securities Transactions.”<sup>17</sup> FINRA also proposes minor technical and conforming amendments to conform the rule text of renumbered FINRA Rule 6730(a)(3) to similar or parallel provisions in FINRA Rule 6730(a). Finally, current FINRA Rule 6730(a)(7) and current FINRA Rule 6730(a)(8) would be renumbered, respectively, as FINRA Rule 6740(a)(4) and FINRA Rule 6730(a)(5).

Pilot Program. FINRA Rule 6730(a)(6)(A)(ii) (proposed renumbered FINRA Rule 6730(a)(3)(A)(i)) provides for a six-month Pilot Program for reporting transactions in Asset-Backed Securities, which extends the period for a member to timely report such transactions to

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<sup>16</sup> The rule text would be set forth in two subparagraphs, proposed FINRA Rule 6730(a)(2)(A) and proposed FINRA Rule 6730(a)(2)(B).

<sup>17</sup> FINRA Rule 6730(a)(6) would be renumbered as follows: FINRA Rule 6730(a)(6)(A)(i) would be renumbered as FINRA Rule 6730(a)(3)(A)(ii); FINRA Rule 6730(a)(6)(A)(ii) (the Pilot Program) would be renumbered as FINRA Rule 6730(a)(3)(A)(i); and FINRA Rule 6730(a)(6)(B) and FINRA Rule 6730(a)(6)(B)(i) – (ii) would be renumbered as FINRA Rule 6730(a)(3)(B) and FINRA Rule 6730(a)(3)(B)(i) – (ii), respectively. As discussed *infra*, FINRA proposes to consolidate FINRA Rule 6730(a)(6)(B)(ii) and FINRA Rule 6730(a)(6)(B)(iii) in renumbered FINRA Rule 6730(a)(3)(B)(ii), and delete FINRA Rule 6730(a)(6)(B)(iii).

no later than the next business day (T + 1) at any time during TRACE System Hours.<sup>18</sup> The Pilot Program provides additional time for members to prepare and submit accurate transaction reports for Asset-Backed Securities on a temporary basis.

FINRA proposes a technical amendment to the Pilot Program (proposed renumbered FINRA Rule 6730(a)(3)(A)(i)) providing that the Pilot Program shall expire 180 days (instead of six months) following the commencement of the reporting of Asset-Backed Securities transactions, provided that if the 180<sup>th</sup> day is not a Friday, the Pilot Program will expire on the Friday next occurring (that the TRACE system is open) after the 180th day. FINRA proposes that the Pilot Program expire on a Friday in response to comments requesting that members and vendors be given additional time to incorporate the system changes that must be implemented at the termination of the Pilot Program.<sup>19</sup>

Asset-Backed Securities Transactions Executed on Non-Business Day. Currently, trades that are executed on a weekend, holiday or other day when the TRACE system is closed must be reported the next business day (T + 1), designated “as/of,” and are subject to two unique requirements. First, the date of execution reported to TRACE is not the actual date of execution; instead, a member reports the date of execution as the same day (T + 1) that the report must be timely submitted. In addition, the execution time reported must be “12:01:00 a.m. Eastern Time” (“00:01:00”), instead of the actual Time of Execution.<sup>20</sup> These adaptations were incorporated

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<sup>18</sup> After the Pilot Program expires, transactions in Asset-Backed Securities must be reported on the date of trade during TRACE System Hours, with certain exceptions. See FINRA Rule 6730(a)(6)(A)(i) (proposed renumbered FINRA Rule 6730(a)(3)(A)(ii)).

<sup>19</sup> As discussed *infra*, the Pilot Program is also incorporated in the proposed reporting requirements applicable to transactions in pre-issuance CMOs/REMICs (see proposed FINRA Rule 6730(a)(3)(C)). The expiration of the Pilot Program will also necessitate modifications of systems and procedures in place to report such transactions.

<sup>20</sup> Also, when the reporting method used includes a “special price memo” field, the member must enter the actual date of execution and Time of Execution in the field.

when TRACE began because the TRACE system does not recognize any day on which the TRACE system is closed as a valid date of execution, and the two unique requirements permit FINRA to distinguish such non-business day transactions from all other reported transactions.<sup>21</sup>

FINRA has improved the TRACE system, which, for transactions in Asset-Backed Securities, will recognize any calendar day, including days on which the TRACE system is not open, as a valid date of execution. Accordingly, FINRA proposes to streamline FINRA Rule 6730(a)(6) (proposed renumbered FINRA Rule 6730(a)(3)) regarding Asset-Backed Securities Transactions, combining the requirements of FINRA Rule 6730(a)(6)(B)(ii) and FINRA Rule 6730(a)(6)(B)(iii) in proposed renumbered FINRA Rule 6730(a)(3)(B)(ii) because, with this system enhancement, the standards for reporting under both provisions are the same, and separate provisions are no longer necessary.<sup>22</sup> FINRA Rule 6730(a)(6)(B)(iii) would be deleted.

Settlement. FINRA Rule 6730(d)(4)(B)(ii) currently requires a member to report two items regarding the terms of settlement of an Asset-Backed Securities transaction: (1) the actual date of settlement; and (2) an indicator that the transaction will settle “regular way” (i.e., T + 3 or in conformity with the uniform practices established as “good delivery” for the specific Asset-Backed Security), or one indicating that the transaction will not be settled “regular way.”

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<sup>21</sup> See, e.g., FINRA Rule 6730(a)(4) (proposed renumbered FINRA Rule 6730(a)(1)(D)), FINRA Rule 6730(a)(5) (proposed renumbered FINRA Rule 6730(a)(2)(B)), and FINRA Rule 6730(a)(6)(B)(iii).

<sup>22</sup> Proposed renumbered FINRA Rule 6730(a)(3)(B)(ii) would provide that any transaction in an Asset-Backed Security that is executed on a Saturday, Sunday, a federal or religious holiday or other day on which the TRACE system is not open, or executed on a business day at or after 6:30:00 p.m. Eastern Time through 11:59:59 p.m. Eastern Time must be reported not later than the next business day during TRACE System Hours, designated “as/of” and include the date of execution.

FINRA proposes to retain the requirement to report the actual date of settlement and delete the requirement to report the indicator, which will simplify the reporting of settlement in connection with Asset-Backed Securities transactions.

Pre-Issuance CMO/REMIC Transactions. FINRA proposes to supplement the rules requiring members to report Asset-Backed Securities in FINRA Rule 6730(a)(6) (proposed renumbered FINRA Rule 6730(a)(3)) to include alternative reporting requirements for pre-issuance CMO/REMIC transactions. Proposed FINRA Rule 6730(a)(3)(C)(i) provides that a pre-issuance CMO/REMIC transaction must be reported, during the Pilot Program, the earlier of: (i) the business day following the business day that the security is assigned a CUSIP, a similar numeric identifier or a FINRA symbol during TRACE System Hours, or (ii) the business day following the date of issuance of the security during TRACE System Hours. As provided in proposed FINRA Rule 6730(a)(3)(C)(ii), after the Pilot Program expires, such pre-issuance CMO/REMIC transactions must be reported the earlier of (i) the business day that the security is assigned a CUSIP, a similar numeric identifier or a FINRA symbol during TRACE System Hours (unless such identifier is assigned after 1:00:00 p.m. Eastern Time, and in such case, such transactions must be reported no later than the next business day during TRACE System Hours), or (ii) the date of issuance of the security during TRACE System Hours.<sup>23</sup>

The alternative reporting requirements in proposed FINRA Rule 6730(a)(3)(C) differ from current TRACE reporting requirements and those that will apply generally to Asset-Backed Securities transactions in that, for pre-issuance CMO/REMIC transactions, the reporting period begins (or is triggered) on the date of issuance of the security (or, if earlier, the date the security

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<sup>23</sup> Under proposed FINRA Rule 6730(a)(3)(C)(i) and proposed FINRA Rule 6730(a)(3)(C)(ii), any transaction that is reported other than on the date of execution must be designated “as/of” and include the date of execution.

is assigned an appropriate identifier), instead of the date and time of the member's execution of the transaction. FINRA proposes this alternative approach because although pre-issuance CMO/REMIC transactions occur frequently, in many cases, a CUSIP or other identifier is not yet assigned or is difficult to assign (or cannot be assigned), because certain aspects of the collateral and structure of the CMO or REMIC are not finalized at the time of such transactions, and will not be finalized until shortly before the CMO or REMIC is actually issued. CMO and REMIC transactions that are not pre-issuance CMO/REMIC transactions – i.e., those executed on or after the date of issuance of the security -- must be reported in compliance with FINRA Rule 6730(a)(6)(A) and (B) (proposed renumbered FINRA Rules 6730(a)(3)(A) and (B)) and may not be reported under the alternative reporting provisions (proposed FINRA Rule 6730(a)(3)(C)(i) and proposed FINRA Rule 6730(a)(3)(C)(ii)).

Other FINRA Rule 6730 Amendments. FINRA proposes to amend FINRA Rule 6730 to state explicitly in new paragraph (a)(6) that when a member is a Party to a Transaction and makes a good faith determination that a transaction involves a TRACE-Eligible Security, if the TRACE-Eligible Security is not entered in the TRACE system, the member must promptly provide FINRA Operations the information required under FINRA Rule 6760(b) and thereafter report. The proposed amendment will incorporate in FINRA Rule 6730(a)(6) previous guidance regarding members' obligations to take all the steps necessary to report a transaction to TRACE, including providing notification to FINRA Operations when circumstances so require.

FINRA also proposes minor technical amendments to FINRA Rule 6730(a) regarding reporting transactions executed on weekends, federal or religious holidays, or other days on which the TRACE system does not operate. FINRA Rule 6730(a) provisions would be amended to refer to transactions executed on "a Saturday, a Sunday, a federal or religious holiday or other

day on which the TRACE system is not open at any time during that day” (instead of transactions executed on “a Saturday, a Sunday or a federal or religious holiday on which the TRACE system is closed”).<sup>24</sup>

#### FINRA Rule 6760

FINRA Rule 6760 requires a member that is a managing underwriter in an initial offering of a TRACE-Eligible Security (or, if a managing underwriter is not appointed, members that are underwriters or initial purchasers) to notify FINRA Operations of a new TRACE-Eligible Security. For Asset-Backed Securities, a member Sponsor or a member Issuing Entity must provide notice. The notice must include certain information that clearly identifies the security, which FINRA uses to confirm information in the TRACE System or add the security to the TRACE system. Generally, the notice must be provided to FINRA Operations prior to the execution of the first transaction in the offering. FINRA proposes to amend FINRA Rule 6760 to incorporate requirements that apply to Securitizers of Asset-Backed Securities (and delete those applicable to Sponsors and Issuing Entities), to add alternative notification requirements for pre-issuance CMOs/REMICs and make other minor technical, conforming or clarifying changes.

In FINRA Rule 6760(a), FINRA Rule 6760(a)(1) would be amended such that, for Asset-Backed Securities, a member that is a Securitizer (instead of a member Sponsor or a member Issuing Entity) would be a managing underwriter for purposes of the Rule and required to provide notice under the Rule. References to Sponsors and Issuing Entities would be deleted. FINRA also proposes to amend FINRA Rule 6760(a)(2) to provide that FINRA will specify the

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<sup>24</sup> See proposed amendments to FINRA Rule 6730(a)(4) (proposed renumbered Rule 6730(a)(1)(D)), FINRA Rule 6730(a)(5) (proposed renumbered Rule 6730(a)(2)(B)), FINRA Rule 6730(a)(6)(B)(ii) (proposed renumbered Rule 6730(a)(3)(B)(ii)) and FINRA Rule 6730(a)(8) (proposed renumbered Rule 6730(a)(5)).

method of communication or media that a member must use to provide the information to FINRA Operations under FINRA Rule 6760, and to delete the requirement to provide such information by facsimile or e-mail. The proposed amendment to FINRA Rule 6760(a)(2) will provide FINRA the flexibility, as technology advances and systems change, to change quickly the method or media a member may use to comply with FINRA Rule 6760.

In FINRA Rule 6760(b), FINRA proposes that when a Securitizor provides notice regarding an Asset-Backed Security, all Securitizers (instead of the Issuing Entity and the Sponsor) must be named in the notice.<sup>25</sup> Also, FINRA proposes to transfer the requirement that a member make a good faith determination of TRACE eligibility before providing notice about a security to FINRA Operations from FINRA Rule 6760(b) to FINRA Rule 6760(a)(1), and the deadline for providing timely notice, and the exceptions thereto, from FINRA Rule 6760(b) to proposed FINRA Rule 6760(c).

Proposed FINRA Rule 6760(c) would set forth the deadline for providing notice, and the exceptions thereto. The current provisions regarding the deadline for providing notice and the exceptions would be set forth in proposed FINRA Rule 6760(c)(1). In proposed FINRA Rule 6760(c)(2), FINRA would provide alternative notice requirements for Asset-Backed Securities that are CMOs or REMICs in which pre-issuance transactions will occur. As discussed above, proposed alternative reporting requirements for pre-issuance CMO/REMIC transactions provide that reporting deadlines will be calculated by reference to the earlier of the date of issuance (or, during the Pilot Program, the following day) or date of assignment of a CUSIP or another appropriate identifier (or, during the Pilot Program, the following day) due to the delays in the

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<sup>25</sup> FINRA notes that only a Securitizor that is also a FINRA member is required to provide notice under FINRA Rule 6760(a)(1), but all Securitizers, including non-member Securitizers, must be identified in the notice under FINRA Rule 6760(b).

final structuring and issuance of such CMOs and REMICs.<sup>26</sup> For the same reasons, FINRA proposes alternative notification requirements regarding CMOs and REMICs in which pre-issuance transactions will occur. Under proposed FINRA Rule 6760(c)(2), a member that is required to provide notice to FINRA Operations of such CMOs or REMICs must do so promptly on the date of issuance or other event that establishes the reference date that determines when a reporting period begins under proposed FINRA Rule 6730(a)(3)(C)(i), which applies during the Pilot Program, or, after the expiration of the Pilot Program, under proposed FINRA Rule 6730(a)(3)(C)(ii).

FINRA also proposes to incorporate technical and clarifying amendments to FINRA Rule 6760, including changes related to the restructuring of FINRA Rule 6760(a) and (b) and the addition of proposed FINRA Rule 6760(c).

#### FINRA Rule 7730

FINRA Rule 7730 sets forth fees applicable to reporting transactions to TRACE and purchasing TRACE data. FINRA proposes minor amendments to two provisions. Under FINRA Rule 7730(a), members may report transactions in TRACE-Eligible Securities to TRACE using: (1) a TRACE web browser; (2) a Computer-to-Computer Interface (“CTCI”) (whether or not dedicated exclusively to TRACE); or (3) a third-party reporting intermediary, and incur system-related fees based upon the method selected. A member pays a system fee of \$25 per month, per firm to report transactions in TRACE-Eligible Securities via CTCI as provided in FINRA Rule 7730(a)(2). FINRA proposes to amend FINRA Rule 7730(a), FINRA Rule 7730(a)(2) and the fee chart in Rule 7730 to add FIX as another method for reporting transactions in TRACE-Eligible Securities. FINRA proposes that the FIX line, like CTCI, would

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<sup>26</sup> See proposed FINRA Rule 6730(a)(3)(C)(i) and proposed FINRA Rule 6730(a)(3)(C)(ii).

not be required to be dedicated exclusively to TRACE, and the system-related fee for reporting via FIX, like CTCI, would be \$25 per month, per firm. FINRA also proposes minor, conforming, non-substantive amendments to FINRA Rule 7730(a).

In addition, FINRA proposes to correct a technical error regarding reporting fees in FINRA Rule 7730(b)(1) and the fee chart. FINRA Rule 7730(b)(1) and the fee chart set forth three tiers of reporting fees. Currently, both provide that the middle tier reporting fee applies to trades “between \$200,001 and \$999,999 par value” (which are charged a reporting fee of \$0.000002375 times the par value of the transaction (i.e., \$0.002375/\$1000)). FINRA proposes to correct the middle tier reporting fee to correctly state that such middle tier reporting fee is applicable to “trades over \$200,000 and up to and including \$999,999.99 par value.”

Finally, FINRA has received questions regarding the Factor that will be used to calculate a reporting fee for a transaction in an Asset-Backed Security that will be assessed based on the Remaining Principal Balance of the security. The Remaining Principal Balance will be calculated using the Factor submitted by the member, if the member is required to report a Factor under FINRA Rule 6730(d)(2), and, in fact, does report such Factor, or if no Factor is reported, using the Factor that FINRA has adopted and incorporated in the TRACE system, which will be the Factor that FINRA has identified as the most current Factor publicly available for such Asset-Backed Security at the Time of Execution. Also, FINRA will not recalculate reporting fee amounts due to FINRA for Asset-Backed Securities transactions after FINRA has identified the appropriate Factor for the specified Asset-Backed Security and calculated the fee based on such Factor.

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

of the proposed rule change will be the date that the proposed rule changes in the TRACE ABS filing become effective, which is currently anticipated to be May 16, 2011.<sup>27</sup>

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>28</sup> 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. FINRA believes that the proposed rule change will facilitate more timely and accurate reporting of transactions in Asset-Backed Securities to TRACE, and enhance FINRA's surveillance of the debt market in connection with Asset-Backed Securities transactions for the protection of investors and in furtherance of the public interest.

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 Act.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall: (a) by order approve or

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<sup>27</sup> See supra note 4.

<sup>28</sup> 15 U.S.C. 78q-3(b)(6).

disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2011-012 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-2011-012. 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 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-2011-012 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>29</sup> 17 CFR 200.30-3(a)(12).