

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66577; File No. SR-FINRA-2012-020)

March 12, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Post-Trade Transparency for Agency Pass-Through Mortgage-Backed Securities Traded TBA

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on March 1, 2012, 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 and II 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 Trade Reporting and Compliance Engine (“TRACE”) dissemination protocols regarding the reporting and dissemination of transactions in TRACE-Eligible Securities that are Agency Pass-Through Mortgage-Backed Securities that are traded to be announced (“TBA”) (“TBA transactions”); to amend FINRA Rule 7730 regarding TRACE fees to provide for data fees for TBA transaction data; and to amend the FINRA Rule 6700 Series and FINRA Rule 7730 to delete references to a pilot program that expired on November 18, 2011, and to incorporate other minor administrative, technical or clarifying changes.<sup>3</sup>

---

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

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

<sup>3</sup> The terms TRACE-Eligible Security, Agency Pass-Through Mortgage-Backed Security and TBA are defined in, respectively, Rule 6710(a), Rule 6710(v) and Rule 6710(u).

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.

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

FINRA proposes amendments to the TRACE rules and dissemination protocols to provide greater transparency in TBA transactions. First, FINRA proposes to amend Rule 6730, to establish distinct requirements for reporting TBA transactions for which good delivery may be made ("TBA transactions GD") and for reporting TBA transactions in products that are not traded for good delivery ("TBA transactions NGD"), and, in two stages, to reduce the time frames to report each type of TBA transaction and to make a related amendment to Rule 6710(u), the definition of "TBA," to incorporate the concepts "for good delivery" and "not for good delivery." Second, FINRA proposes to amend Rule 6750 to provide for the dissemination of TBA transactions and to establish, as part of TRACE dissemination protocols, a \$25 million dissemination cap for TBA transactions GD and a \$10 million dissemination cap for TBA

transactions NGD. Third, FINRA proposes to amend Rule 7730 to establish fees for current market data for TBA transactions and aged TBA transaction data.<sup>4</sup> Finally, FINRA proposes to amend Rule 6730 to delete references to a pilot program that expired on November 18, 2011, and Rule 6730 and Rule 7730 to incorporate other minor administrative, technical or clarifying changes as described in greater detail below.

### TBA Transactions

As provided in Rule 6710(u), TBA means

“to be announced” and refers to a transaction in an Agency Pass-Through Mortgage-Backed Security . . . where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number).<sup>5</sup>

---

<sup>4</sup> The term Historic TRACE Data is defined in Rule 7730(f)(4) and refers to aged TRACE transaction data, which will include TBA transaction data.

<sup>5</sup> As defined in Rule 6710(v), an Agency Pass-Through Mortgage-Backed Security means a mortgage-backed security issued by an Agency or a Government-Sponsored Enterprise, for which the timely payment of principal and interest is guaranteed by an Agency or a Government-Sponsored Enterprise, representing ownership interests in a pool or pools of residential mortgage loans with the security structured to “pass through” the principal and interest payments made by the mortgagees to the owners of the pool(s) on a pro rata basis.

The terms Agency and Government-Sponsored Enterprise (“GSE”) are defined in, respectively, Rule 6710(k) and Rule 6710(n).

In a TBA transaction, the parties agree on a price for delivering a given volume of Agency Pass-Through Mortgage-Backed Securities at a specified future date. The distinguishing feature of a TBA transaction is that the actual identity of the securities to be delivered at settlement is not specified on the date of execution (“Trade Date”). Instead, the parties to the trade agree on only five general parameters of the securities to be delivered: issuer, mortgage type, maturity, coupon, and month of settlement.

TBA transactions are “for good delivery” (“GD”) or “not for good delivery” (“NGD”). The GD and NGD distinctions and classifications are based on market standards and conventions that identify which mortgage pools (or combinations of mortgage pools) satisfy “good delivery” requirements, which were developed to facilitate the securitization of common mortgage products, and to enhance and maintain the liquidity in the TBA market for such mortgage-backed securities. The conventions and standards for TBA transactions GD are set forth in the “Uniform Practices for the Clearance and Settlement of Mortgage-Related Securities and Other Related Securities,” and particularly in Chapter 8 (“Standard Requirements for Delivery on Settlements of Fannie Mae, Freddie Mac and Ginnie Mae Securities”) (“Good Delivery Guidelines”).<sup>6</sup> For a TBA transaction to be GD, it must conform to certain GSE or Ginnie Mae program requirements regarding the mortgage loans and also meet certain other requirements, such as those regarding variance in the actual principal amount delivered compared to the principal amount of the trade, the number of pools that may be delivered at settlement, minimum original face amount of a pool, and final maturity guidelines regarding the maturity of the mortgage loans underlying the

---

<sup>6</sup> “Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities” (“Uniform Practices Guidelines”) is published by the Securities Industry and Financial Markets Association (“SIFMA”).

security, among others.<sup>7</sup> Products traded TBA but that are not eligible according to the Good Delivery Guidelines are considered “not for good delivery.”

The vast majority of loans eligible for inclusion in TBA-delivered pools traded GD are known as standard loans. They are 15- and 30-year fixed-rate single-family loans with certain general characteristics set forth in the Good Delivery Guidelines.<sup>8</sup> Other loans that are eligible for good delivery upon meeting specific criteria set forth in the Good Delivery Guidelines include Fannie Mae 11<sup>th</sup> District Cost of Funds Index (“COFI”) adjusted rate mortgages (“ARMs”) and Ginnie Mae ARMs. Also, TBA identification numbers assigned by the CUSIP Service Bureau distinguish the issuers and the various pool types, among other things, providing another means of identifying a transaction as a TBA transaction GD or a TBA transaction NGD.<sup>9</sup>

---

<sup>7</sup> Pooled mortgage loans that are traded GD include, but are not limited to, those conforming to the Fannie Mae and Freddie Mac “Single Family” programs (*i.e.*, single family mortgages identified by coupon ranges and maturities), and certain other products conforming to Fannie Mae, Freddie Mac or GNMA programs (*e.g.*, the Gold Single Family, Balloon, Gold Balloon and Jumbo programs). Most newly issued Agency Pass-Through Mortgage-Backed Securities are eligible to be sold as TBA transactions GD. Examples of mortgage products not eligible for good delivery to settle a TBA transaction include, but are not limited to, interest only mortgages, project/construction loans, and certain non-conforming mortgages on single family residences.

<sup>8</sup> See Good Delivery Guidelines, Section 11 (“General Characteristics of Standard Loans for 15 and 30yr Fixed-Rate Single-Family TBA-eligible Pools,” listing 14 general characteristics of standard 15-year or 30-year loans (*e.g.*, fixed rate, first lien, and level payment).)

<sup>9</sup> CUSIP means Committee on Uniform Security Identification Procedures. A CUSIP consists of nine characters. Positions 1 and 2 denote the product type (for example, 01 refers to single family loans, 06 refers to balloon loans, and 16 refers to ARMs), and Position 3 identifies the Agency or GSE (F denotes Fannie Mae, R denotes Freddie Mac, N denotes GNMA I and H denotes GNMA II). Positions 4 through 8 are used to identify coupon, maturity in years and settlement month, and Position 9 is a check digit (*i.e.*, a mathematical formula that checks the accuracy of the previous 8 digits).

Together, the securitization process and the TBA market transform what is a fundamentally heterogeneous universe of individual mortgages and mortgage pools (with myriad credit and prepayment characteristics) into groups of fungible – and therefore liquid – fixed-income instruments.<sup>10</sup>

#### Reduction of TBA Transaction Reporting Period

Currently, Asset-Backed Securities transactions (except certain pre-issuance transactions in collateralized mortgage obligations (“CMOs”) and real estate mortgage investment conduits (“REMICs”)) that are executed on a business day through 5:00:00 p.m. Eastern Time must be reported to TRACE on the Trade Date during TRACE System Hours, as provided in Rule 6730(a)(3)(A)(ii).<sup>11</sup> In contrast, secondary market transactions in all other TRACE-Eligible Securities must be reported within 15 minutes of the Time of Execution.<sup>12</sup> With certain exceptions, transaction information on such TRACE-Eligible Securities is disseminated as soon

---

<sup>10</sup> James Vichery and Joshua Wright, TBA Trading and Liquidity in the Agency MBS Market, Federal Reserve Bank of New York Staff Reports, no. 468 (August 2010), available at [http://www.newyorkfed.org/research/staff\\_reports/sr468.pdf](http://www.newyorkfed.org/research/staff_reports/sr468.pdf).

<sup>11</sup> In general, Asset-Backed Securities must be reported to TRACE under Rules 6730(a)(3)(A) and (B). Rule 6730(a)(3)(B)(i) addresses reporting requirements for Asset-Backed Securities transactions executed after 5:00:00 p.m. Eastern Time on a business day, and Rule 6730(a)(3)(B)(ii) addresses reporting requirements for Asset-Backed Securities transactions executed after TRACE System Hours, or on a weekend or a holiday, or other day on which the TRACE system is not open at any time during that day. However, for certain pre-issuance transactions in CMOs and REMICs, the applicable reporting provisions are set forth in Rule 6730(a)(3)(C), and Rules 6730(a)(3)(A) and (B) do not apply. The terms Asset-Backed Security and TRACE System Hours are defined in, respectively, Rule 6710(m) and Rule 6710(t).

<sup>12</sup> The term Time of Execution is defined in Rule 6710(d).

as the transaction is reported, and the 15-minute reporting requirement results in meaningful price transparency for market participants trading such securities.<sup>13</sup>

In connection with proposing that TBA transactions be disseminated, FINRA proposes to reduce the reporting time frames for TBA transactions GD to provide market participants meaningful and timely price information about the more liquid and active TBA market segment. The proposed rule change also will reduce the reporting period for the less liquid and active TBA transactions NGD, but to a lesser extent, as discussed in greater detail below. In addition, FINRA proposes to reduce the reporting time frames proposed for TBA transactions GD and TBA transactions NGD in two stages to permit industry participants to adjust policies and procedures and to make required technological changes.

TBA Transactions For Good Delivery. Proposed Rule 6730(a)(3)(D) sets forth the requirements to report TBA transactions GD. First, for a pilot program of approximately 180 days duration, the reporting period for TBA transactions GD would be reduced from no later than the close of the TRACE system on Trade Date to no later than 45 minutes from the Time of Execution (“TBA GD Pilot Program”), as set forth in proposed Rule 6730(a)(3)(D)(i).<sup>14</sup> Minor

---

<sup>13</sup> Currently, transaction information on all types of securities that are TRACE-Eligible Securities, except Asset-Backed Securities, is disseminated as provided in Rule 6750(a). However, FINRA does not disseminate information on a transaction in a TRACE-Eligible Security that is (1) effected pursuant to Securities Act Rule 144A (17 CFR 239.144A) under Rule 6750(b)(1); (2) a transfer of proprietary securities positions where the transfer (A) is effected in connection with a merger or direct or indirect acquisition and (B) is not in furtherance of a trading or investment strategy under Rule 6750(b)(2); or (3) a List or Fixed Offering Price Transaction or a Takedown Transaction under Rule 6750(b)(3). The terms List or Fixed Offering Price Transaction and Takedown Transaction are defined in, respectively, Rule 6710(q) and Rule 6710(r).

<sup>14</sup> To accommodate member requests that rule changes requiring technology changes occur on a Friday, if possible, the proposed TBA GD Pilot Program and a similar pilot program for TBA transactions NGD will expire on a Friday (i.e., on the 180<sup>th</sup> day, if a Friday, or,

exceptions to the general requirements are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d.<sup>15</sup> Second, after approximately 180 days, the TBA GD Pilot Program would expire and the reporting period would be reduced from no later than 45 minutes from the Time of Execution to no later than 15 minutes from the Time of Execution, as set forth in proposed Rule 6730(a)(3)(D)(ii). Again, FINRA proposes to include certain limited exceptions to the reporting time frames for TBA transactions executed shortly before the TRACE system closes and when the TRACE system is closed.<sup>16</sup>

TBA Transactions Not For Good Delivery. The proposed reporting requirements that would apply to TBA transactions NGD are set forth in proposed Rule 6730(a)(3)(E). FINRA has

---

if the 180<sup>th</sup> day is not a Friday, on the Friday next occurring that the TRACE system is open).

<sup>15</sup> Minor exceptions to the general requirement to report TBA transactions GD no later than 45 minutes from the Time of Execution are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d. Under proposed Rule 6730(a)(3)(D)(i)a., transactions executed on a business day at or after 12:00:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 45 minutes after the TRACE system opens. Under proposed Rule 6730(a)(3)(D)(i)c., transactions executed on a business day less than 45 minutes before 6:30:00 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 45 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated “as/of” and include the date of execution. Under proposed Rule 6730(a)(3)(D)(i)d., transactions executed on a business day at or after 6:30:00 p.m. Eastern Time through 11:59:59 p.m. Eastern Time or 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 (determined using Eastern Time) must be reported the next business day (T + 1), no later than 45 minutes after the TRACE system opens, designated “as/of” and include the date of execution.

<sup>16</sup> After the TBA GD Pilot Program expires, proposed Rule 6730(a)(3)(D)(ii), which incorporates by reference Rule 6730(a)(1), requires generally that TBA transactions be reported no later than 15 minutes from the Time of Execution, with certain minor exceptions for transactions executed near the end of the TRACE System Hours, before and after TRACE System Hours, and on weekends and certain federal and religious holidays. See, e.g., Rule 6730(a)(1)(C) and Rule 6730(a)(1)(D). The exceptions are the same as those that apply to members reporting transactions in corporate bonds and Agency Debt Securities to TRACE.

been informed that TBA transactions NGD are in certain cases less automated and more operationally challenging, wherefore FINRA proposes a longer reporting time frame than for TBA transactions GD. First, for a pilot program of approximately 180 days duration, the reporting period for TBA transactions NGD would be reduced from no later than the close of the TRACE system on Trade Date to no later than 120 minutes from the Time of Execution (“TBA NGD Pilot Program”), as set forth in proposed Rule 6730(a)(3)(E)(i). Minor exceptions to the general requirements would be set forth in proposed Rule 6730(a)(3)(E)(i)a., c. and d.<sup>17</sup> Second, after approximately 180 days, the TBA NGD Pilot Program would expire and the reporting period would be reduced from no later than 120 minutes from the Time of Execution to no later than 60 minutes from the Time of Execution, as set forth in proposed Rule 6730(a)(3)(E)(ii). The provision also would include certain limited exceptions for TBA transactions executed shortly before the TRACE system closes and when the TRACE system is closed.<sup>18</sup> After the 60-

---

<sup>17</sup> Minor exceptions to the general requirement to report TBA transactions NGD no later than 120 minutes from the Time of Execution are set forth in proposed Rule 6730(a)(3)(E)(i)a., c. and d. Under proposed Rule 6730(a)(3)(E)(i)a., transactions executed on a business day at or after 12:00:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 120 minutes after the TRACE system opens. Under proposed Rule 6730(a)(3)(E)(i)c., transactions executed on a business day less than 120 minutes before 6:30:00 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 120 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated “as/of” and include the date of execution. Under proposed Rule 6730(a)(3)(E)(i)d., transactions executed on a business day at or after 6:30:00 p.m. Eastern Time through 11:59:59 p.m. Eastern Time or 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 (determined using Eastern Time) must be reported the next business day (T + 1), no later than 120 minutes after the TRACE system opens, designated “as/of” and include the date of execution.

<sup>18</sup> After the TBA NGD Pilot Program expires, there are minor exceptions to the 60-minute reporting time frame set forth in proposed Rule 6730(a)(3)(E)(ii) for TBA transactions NGD executed near the end of the TRACE System Hours, before and after TRACE System Hours, and on weekends and certain federal and religious holidays. See proposed

minute reporting requirement is implemented, FINRA will continue to review the reporting of TBA transactions NGD and may recommend further reductions in the reporting period.

TBA Definition. In connection with establishing separate reporting requirements, and as discussed infra, separate dissemination caps for TBA transactions GD and TBA transactions NGD, FINRA proposes to amend the definition of “TBA” in Rule 6710(u) to incorporate the concepts that TBA transactions may be traded GD or NGD. FINRA also incorporates minor, technical changes to the defined term. As amended, Rule 6710(u) would provide as follows:

“To Be Announced” (“TBA”) means a transaction in an Agency Pass-Through Mortgage-Backed Security as defined in paragraph (v) where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number), and includes TBA transactions “for good delivery” (“GD”) and TBA transactions “not for good delivery” (“NGD”).

---

Rule 6730(a)(3)(E)(ii)a., c. and d. The exceptions are structured similarly to the exceptions to 15-minute reporting that FINRA proposes to apply to TBA transactions GD.

Guidance previously published regarding reporting transactions in Asset-Backed Securities as soon as practicable, rather than queuing such reports until the end of the reporting time period, applies to members’ reporting obligations under the time frames proposed herein. See Trade Reporting Notice, dated May 10, 2011.

## Dissemination of TBA Transaction Data

Although members began reporting transactions in Asset-Backed Securities to TRACE on May 16, 2011, FINRA currently does not disseminate publicly any of the Asset-Backed Securities transaction data reported to TRACE. Specifically, Rule 6750(b)(4) provides that transaction information on TRACE-Eligible Securities that are Asset-Backed Securities will not be disseminated.

However, when FINRA proposed the dissemination restrictions in Rule 6750(b)(4) regarding Asset-Backed Securities, FINRA represented that it would study the Asset-Backed Securities data after transaction reporting began. In the Commission's order approving the proposed rule change to define Asset-Backed Securities as TRACE-Eligible Securities and require reporting of Asset-Backed Securities transactions, the Commission noted FINRA's intent to study Asset-Backed Securities dissemination issues prior to making any proposal to disseminate some or all of such information, and the Commission's historical support of efforts to improve post-trade transparency in the fixed income markets:

FINRA believes that information on Asset-Backed Securities transactions should be collected and analyzed before making any decision regarding the utility of such information for transparency purposes or the consequences of dissemination on this market.

FINRA has stated that, after a period of study, it would file a proposed rule change if it determined that its study of the trading data provides a reasonable basis to seek dissemination of transaction information on Asset-Backed Securities. The

Commission has historically been supportive of efforts to improve post-trade transparency in the fixed income markets and encourages FINRA to carry out that study.<sup>19</sup>

Since reporting began on May 16, 2011, FINRA has reviewed Asset-Backed Securities transaction data. The reported Asset-Backed Securities transaction data, as well as input from market participants as FINRA prepared to expand TRACE to include Asset-Backed Securities, suggests that real-time disseminated TRACE transaction data should be expanded to include transaction information on TBA transactions.

First, at the launch of Asset-Backed Securities reporting, certain market participants noted that TBA transactions trade in a very liquid market and suggested that FINRA consider transparency in such transactions. Second, as FINRA reviewed and continues to review the data reported for Asset-Backed Securities, including TBA transactions, and studies the total volume of TBA transactions, the concentration of trading in such securities, and the pricing disparity among various types of Agency Pass-Through Mortgage-Backed Securities traded TBA to understand their liquidity and fungibility, the data supports FINRA's proposal to disseminate TBA transactions GD and TBA transactions NGD to increase transparency in this market.

The market activity reported and reviewed reveals that the TBA market is generally active and liquid. In addition, the degree of fungibility is high, with substantial trading concentrated among a relatively small universe of securities as identified by a unique CUSIP number (hereinafter, "CUSIP" means the specific security identified by the unique CUSIP number). The TBA market has an average daily volume of \$248 billion traded in close to 8,000

---

<sup>19</sup> See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262, 9265 (March 1, 2010) (Order Approving File No. SR-FINRA-2009-065).

average daily trades,<sup>20</sup> and the average daily volume of all TBA transactions is approximately ten times the average daily volume of the entire corporate bond market.<sup>21</sup> The vast majority of TBA transactions occur in TBA GD, accounting for 99.36 percent of all TBA transactions (correspondingly, TBA transactions NGD account for 0.64 percent of all TBA transactions). The correlation among the prices of various TBA CUSIPs is high, and the price of one TBA transaction may be derived using available prices for TBA transactions for a different issuer, a different coupon rate, maturity, or a combination thereof.<sup>22</sup>

#### FINRA Rule 6750

Rule 6750(b)(4) currently provides that transactions in Asset-Backed Securities are not subject to dissemination. FINRA proposes to amend the rule to disseminate information on TBA transactions GD and TBA transactions NGD, which would occur immediately upon receipt of a transaction report.<sup>23</sup> Thus, information would be disseminated on TBA transactions GD within 45 minutes, or, after the expiration of the TBA GD Pilot Program, within 15 minutes of the Time

---

<sup>20</sup> The information is based upon FINRA’s review of all TBA transactions reported to TRACE from May 16, 2011 through October 28, 2011.

<sup>21</sup> The information is based upon FINRA’s review of transactions in all TRACE-Eligible Securities, other than Agency Debt Securities, reported to TRACE from May 16, 2011 through October 28, 2011.

<sup>22</sup> From a review of all TBA transactions reported to TRACE from May 16, 2011 through July 31, 2011, the data shows that TBA transactions (with different issuers, different coupon rates, and different maturities) were priced consistently, relative to each other.

<sup>23</sup> Rule 6750(b) would be amended to provide that FINRA will not disseminate information on a transaction in a TRACE-Eligible Security that is

(4) an Asset-Backed Security, except an Agency Pass-Through Mortgage-Backed Security traded to be announced (“TBA”) (“TBA transaction”).

of Execution, and, on TBA transactions NGD, within 120 minutes, or, after the expiration of the TBA NGD Pilot Program, within 60 minutes of the Time of Execution.<sup>24</sup>

### Dissemination Caps

Currently, there are two TRACE dissemination protocols in place, referred to as dissemination caps, under which the actual size of a transaction over a certain par value is not displayed in disseminated TRACE transaction data. For TRACE-Eligible Securities that are rated Investment Grade, the dissemination cap is \$5 million (“\$5MM”), and the size of transactions in excess of \$5MM is displayed as “\$5MM+.” For TRACE-Eligible Securities that are rated Non-Investment Grade, the dissemination cap is \$1 million (“\$1MM”), and the size of a transaction in excess of \$1MM is displayed as “\$1MM+.”<sup>25</sup>

FINRA has analyzed the distribution of TBA transactions GD and TBA transactions NGD to determine an appropriate cap for these transactions. FINRA proposes to set a dissemination cap for a TBA transaction GD initially at \$25 million. Accordingly, the size of a TBA transaction GD greater than \$25 million would be displayed in disseminated data as “\$25MM+.” At this level, approximately 20 percent of trades in TBA transactions NG [sic] representing approximately 84 percent of total volume traded would be disseminated subject to the cap.<sup>26</sup> For a TBA transaction NGD, FINRA proposes to set a \$10 million dissemination cap

---

<sup>24</sup> FINRA continues to review Asset-Backed Security transaction information in other sectors of the Asset-Backed Securities market and, at a later date, may propose that transactions in other Asset-Backed Securities be disseminated.

<sup>25</sup> The terms Investment Grade and Non-Investment Grade are defined in, respectively, Rule 6710(h) and Rule 6710(i).

<sup>26</sup> In contrast, the existing caps for corporate Investment Grade bonds limit the display of actual size for approximately 1.6 percent of trades representing approximately 48 percent of total par value traded, and, for Agency Debt Securities, approximately six percent of trades representing approximately 74 percent of total par value traded. The information

initially, with size displayed in disseminated data as “\$10MM+,” if the size of the TBA transaction NGD exceeded \$10 million. At this level, approximately 42 percent of TBA transactions NGD representing approximately 85 percent of total volume traded would be disseminated subject to the cap.

The \$25 million dissemination cap for TBA transactions GD and the \$10 million dissemination cap for multiple types of less liquid and active TBA transactions are more conservative than the \$50 million dissemination cap FINRA initially considered.<sup>27</sup> FINRA believes that the more conservative caps will allow the marketplace time to adjust to the new levels of transparency. In setting these dissemination caps, FINRA took into account the liquidity and trading activity differences within each segments [sic] of TBA GD and TBA NGD. FINRA notes that most TBA transactions are for good delivery, and even with setting a dissemination cap at \$25 million for such transactions, and a \$10 million cap for a smaller and generally somewhat less liquid segment of the TBA market, price transparency in the TBA market will improve significantly.

As dissemination of TBA transactions GD and TBA transactions NGD is implemented, FINRA will continue to review the volume of and liquidity in TBA transactions GD and TBA transactions NGD, and may recommend that the dissemination caps be set at higher levels to provide additional transparency to market participants.

---

is based on a review of all TBA transactions, and transactions in Investment Grade corporate bonds and Agency Debt Securities reported to TRACE from May 16, 2011 through January 4, 2012. The term Agency Debt Security is defined in Rule 6710(1).

<sup>27</sup> See Item II.C. for a discussion of SR-FINRA-2011-069.

## Data and Fees

FINRA proposes to amend Rule 7730 to make available the real-time disseminated TBA transaction data and the Historic TRACE Data for TBA transactions, and to establish the fees for such TBA transaction data. First, FINRA proposes to amend Rule 7730(c) to establish the Asset-Backed Security data set (“ABS Data Set”) as the third Real-Time TRACE market data set. The ABS Data Set will be limited to information disseminated immediately upon receipt of a transaction report for either a TBA transaction GD or a TBA transaction NGD. The market data fee rates currently in effect for similar Real-Time TRACE market data sets (i.e., for the Corporate Bond Data Set and the Agency Data Set) in Rule 7730(c) would be extended to the ABS Data Set.

Second, FINRA proposes to amend Rule 7730(d) to establish a third historic data product for TBA transactions (“Historic ABS Data Set”) similar to the data sets for corporate bonds (“Historic Corporate Bond Data Set”) and Agency Debt Securities (“Historic Agency Data Set”) referenced in the rule. FINRA also proposes to establish fees for the Historic ABS Data Set at the same rates currently in effect in Rule 7730(d) for the Historic Corporate Bond Data Set and the Historic Agency Data Set. The Historic ABS Data Set would include all TBA transactions effected as of or after May 16, 2011, and, among other things, would include uncapped volume information. However, like all other Historic TRACE Data, TBA transaction data included in the Historic ABS Data Set would be released subject to a delay of approximately 18 months from the date of the transaction.<sup>28</sup>

---

<sup>28</sup> Reporting of Asset-Backed Securities transactions began on May 16, 2011. Given the 18-month delayed release of Historic TRACE Data, Historic ABS Data would become available for the first time in early 2013.

## Other Rule Changes

FINRA proposes to delete references to a pilot program that expired on November 18, 2011 in Rule 6730, and to incorporate other minor administrative, technical or clarifying changes in Rule 6730 and Rule 7730, as discussed below.

FINRA Rule 6730. FINRA proposes to add the sentence “Transactions in Asset-Backed Securities must be reported as provided in this paragraph (a)(3).” as the introductory sentence to Rule 6730(a)(3), and “General Reporting Requirements” as the caption for Rule 6730(a)(3)(A). FINRA also proposes to add the phrase, “Except as provided in paragraphs (a)(3)(C), (a)(3)(D) and (a)(3)(E),” as introductory text to Rule 6730(a)(3)(A), to indicate that Asset-Backed Securities must be reported as provided in subparagraph (A) of Rule 6730(a)(3), with the exceptions to the general requirements set forth in subparagraphs (C), (D) and (E) of Rule 6730(a)(3).

FINRA proposes to consolidate and otherwise amend Rule 6730(a)(3)(A) and (B) as follows: (a) to delete Rule 6730(a)(3)(A)(i), the pilot program for Asset-Backed Securities transaction reporting that expired on November 18, 2011 (“ABS Pilot Program”); (b) to delete a clause referencing the ABS Pilot Program and Rule 6730(a)(3)(C), and to delete “(ii)” and renumber the retained text as Rule 6730(a)(3)(A)(i); and (c) to delete the text in Rule 6730(a)(3)(B), except subparagraphs (i) and (ii) of Rule 6730(a)(3)(B), and renumber Rule 6730(a)(3)(B)(i) and (ii) as Rule 6730(a)(3)(A)(ii) and (iii).

FINRA proposes to amend Rule 6730(a)(3)(C) as follows: (a) to add a caption, “Collateralized Mortgage Obligation and Real Estate Mortgage Investment Conduit Transactions;” (b) to delete the provisions relating to the ABS Pilot Program (i.e., Rule

6730(a)(3)(C)(i), including subparagraphs a. and b.); (c) to add an introductory clause providing: “Transactions in Asset-Backed Securities that are collateralized mortgage obligations (“CMOs”) or real estate mortgage investment conduits (“REMICS”) that are executed before the issuance of the security must be reported the earlier of:”; (d) to retain in Rule 6730(a)(3)(C)(ii) subparagraphs a. and b. and the final sentence of Rule 6730(a)(3)(C)(ii), and renumber subparagraphs a. and b. as subparagraphs (i) and (ii) of Rule 6730(a)(3)(C); and (e) to delete, in Rule 6730(a)(3)(C)(ii), “(ii)” and the phrase “After the expiration of the Pilot Program in paragraph (a)(3)(A)(i), such transactions must be reported the earlier of:.”

FINRA Rule 7730. In Rule 7730, FINRA proposes to add, in paragraphs (d)(1)(A)(ii) and (d)(1)(B)(ii) regarding Historic TRACE Data, a sentence to clarify that the 2011 Historic Agency Data Set also will include the 2010 Historic Agency Data Set, and the 2013 Historic ABS Data Set also will include the 2012 Historic ABS Data Set.<sup>29</sup> FINRA also proposes minor technical amendments to Rule 7730(c) and (d) to reflect that the number of Data Sets and Historic Data Sets will increase from two to three, and other minor technical amendments to Rule 7730(b)(1) and Rule 7730(c) and (d).

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 will be no earlier than August 1, 2012 and no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

---

<sup>29</sup> FINRA proposes not to add the clarification to the fee chart in Rule 7730. Also, FINRA proposes to delete a similar statement— “The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set.”—in two sections of the fee chart in Rule 7730 summarizing Historic TRACE Data fees. Also, FINRA proposes to delete “BTDS” in two sections of the fee chart in Rule 7730 summarizing market data fees.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>30</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, and Section 15A(b)(5) of the Act,<sup>31</sup> 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 rule change to increase fixed income market transparency is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, generally to protect investors and the public because transparency in TBA transactions will enhance the ability of investors and other market participants to identify and negotiate fair and competitive prices for Agency Pass-Through Mortgage-Backed Securities, and because the dissemination of price and other TBA transaction information publicly will promote just and equitable principles of trade among participants in the more transparent market, and will aid in the prevention of fraudulent and manipulative acts and practices in the TBA market.

### 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.

---

<sup>30</sup> 15 U.S.C. 78o-3(b)(6).

<sup>31</sup> 15 U.S.C. 78o-3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

On November 22, 2011, FINRA filed with the SEC SR-FINRA-2011-069 ("November 2011 Filing"), a proposed rule change to amend the Rule 6700 Series and TRACE dissemination protocols regarding the reporting and dissemination of TBA transactions. Specifically, FINRA proposed to disseminate TBA transactions immediately upon FINRA's receipt of a TBA transaction report, and to establish a \$50 million dissemination cap such that when transactions over \$50 million were disseminated, the size displayed for such transactions would be capped at \$50 million and displayed as "\$50MM+." In connection with proposing to disseminate TBA transactions, FINRA proposed to reduce the period to report TBA transactions to 15 minutes, in two stages. First, for a pilot period of approximately 180 days, FINRA proposed to require members to report TBA transactions no later than 45 minutes from the Time of Execution, and after the pilot period expired, to report no later than 15 minutes from the Time of Execution. FINRA proposed to announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval, and that the effective date would be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.<sup>32</sup> A copy of the Form 19b-4 and original Exhibit 5 of the November 2011 Filing is attached as Exhibit 2a.

---

<sup>32</sup> FINRA also proposed to amend Rule 7730 regarding TRACE fees to provide for data fees for TBA transaction data, Rule 6730 to delete references to a pilot program that expired on November 18, 2011, and Rule 6730 and Rule 7730 to incorporate other minor administrative, technical or clarifying changes.

On December 8, 2011, the November 2011 Filing was published for comment in the Federal Register.<sup>33</sup> A copy of the Federal Register release is attached as Exhibit 2b.

The SEC received one comment letter in response,<sup>34</sup> a copy of which is attached as Exhibit 2c.

The commenter raised concerns regarding: (1) the proposed \$50 million dissemination cap and its potential impact on various segments of the TBA market; (2) the proposed reporting time frames; and (3) the implementation time frame for the proposed rule change.

FINRA withdrew the November 2011 Filing on March 1, 2012, prior to filing a response to comments. Accordingly, the comments to the November 2011 Filing and FINRA's responses are discussed below.

#### Dissemination Cap

The commenter states that the TBA market is a collection of distinct trading markets for distinct trading products, with material differences in liquidity. For example, the commenter stated that in products such as ARMs, mortgages with 40-year maturities, and project loans, the volume issued is very low in comparison to standard 30-year fixed rate mortgages that trade for good delivery, and consequently, liquidity in TBA transactions backed by such products is lower. In addition, the commenter states that a volume cap of \$50 million is generally too high for even the most liquid segments of the TBA market, and recommends that FINRA adopt a \$25 million dissemination cap (or a lesser cap) for the most liquid TBA products (pools to be comprised of standard, 30-year, fixed rate mortgages for good delivery), a \$10 million dissemination cap for

---

<sup>33</sup> See Securities Exchange Act Release No. 65877 (December 2, 2011), 76 FR 76777 (December 8, 2011) (Notice of Filing of File No. SR-FINRA-2011-069). The comment period closed on December 29, 2011.

<sup>34</sup> See Letter from Chris Killian, Managing Director, Securitization, Securities Industry and Financial Markets Association ("SIFMA"), to Elizabeth M. Murphy, Secretary, SEC, dated December 22, 2011.

pools of 15-year mortgages, and a \$1 million to \$5 million cap for other products traded TBA (e.g., pools of high coupon fixed rate mortgages, ARMs, project loans, jumbo loans and reverse mortgages). The commenter notes that, in making its recommendations, it does not have access to the transaction data cited by FINRA regarding trading volume.

After careful consideration of the commenter's concerns, FINRA proposes two lower dissemination caps herein. Based on FINRA's review of the TBA trading data, discussions with member firms, and the commenter's concern that liquidity may be adversely affected if the originally proposed dissemination cap is adopted, FINRA has proposed to lower the dissemination cap to \$25 million for all TBA transactions GD and to \$10 million for all TBA transactions NGD. Although the commenter recommends multiple dissemination caps based upon factors such as mortgage maturity and coupon, FINRA believes that the commenter's approach would result in investor confusion and operational complexities that are unnecessary to address the issues raised by the commenter. FINRA's proposal to adopt a two-pronged approach to the dissemination caps for products traded TBA is much less complex and, at the same time, allows FINRA to address most of the commenter's concerns regarding liquidity, providing a lower dissemination cap for those products that generally are the least liquid, without establishing multiple caps and standards. The reduction of the dissemination cap to \$25 million for TBA transactions GD, and for multiple types of less liquid TBA transactions NGD to \$10 million is a more conservative metric than initially proposed, which FINRA believes is appropriate at the onset. In setting these dissemination caps, FINRA took into account the liquidity and activity differences in coupons and maturities within each segments [sic] of TBA

transactions GD and TBA transactions NGD.<sup>35</sup> FINRA notes that even with the reduction of the dissemination cap for TBA transactions GD from \$50 million to \$25 million for such transactions, and a \$10 million cap for a small and generally somewhat less liquid segment, price transparency in the TBA market will improve significantly.

### Reporting Time Frames

The commenter states that the proposed time frames for reporting certain less liquid products, such as ARMs, project loans and reverse mortgages, within the proposed accelerated time frames will not be possible absent a cumbersome and potentially risky manual trade reporting process. The commenter notes that manual processing raises compliance, audit and workflow related concerns, and may result in additional TRACE reporting errors. For these reasons, the commenter recommends that the reporting deadline for these products remain at the close of business on the date of execution.

In response to the commenter's concerns regarding reporting transactions in instruments such as certain ARMS, project loans and reverse mortgages, FINRA proposes to modify the reporting requirements herein. Specifically, for TBA transactions NGD, FINRA proposes to extend the previously proposed time frames to report (i.e., 45 minutes from the Time of Execution, then after expiration of a pilot program, 15 minutes from the Time of Execution). In this proposed rule change, FINRA proposes to require members to report such transactions

---

<sup>35</sup> For example, at the proposed cap of \$25 million, approximately 21 percent of trades and approximately 85 percent of volume would be capped for transactions in TBA transactions GD backed by eligible 30-year mortgage loans, approximately 15 percent of trades and approximately 78 percent of volume would be capped for transactions in TBA transactions GD backed by eligible 15-year mortgage loans, and approximately 20 percent of trades and approximately 67 percent of volume would be capped for transactions in TBA transactions GD backed by other types of eligible loans having other maturities.

initially no later than two hours from the Time of Execution, then, after expiration of the proposed TBA NGD Pilot Program, no later than one hour from the Time of Execution. FINRA retains the reporting time frame initially proposed for TBA transactions GD. FINRA believes that proposing the longer reporting time frames for TBA transactions NGD will facilitate timely trade reporting, and accommodate current differences in members' systems, trade processing and other work flows. However, given that more than half of TBA transactions NGD currently are reported within one hour from the time of execution, FINRA believes that in the long term members will be able to report all TBA transactions within 15 minutes from the Time of Execution.

#### Implementation

The commenter requested that the effective date of the November 2011 Filing be no earlier than August 1, 2012, to allow members to make necessary changes to internal systems, policies and procedures. FINRA intends to take into account the operational challenges associated with the proposal in establishing the effective date of this proposed rule change and will work with members to minimize the operational burdens of implementation. FINRA also has amended the stated implementation period to provide that 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 will be no earlier than August 1, 2012 and no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

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 will:

(A) by order approve or 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-2012-020 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-2012-020. 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; 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-2012-020 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.<sup>36</sup>

Kevin M. O'Neill  
Deputy Secretary

---

<sup>36</sup> 17 CFR 200.30-3(a)(12).