

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78219; File No. SR-FINRA-2016-024)

July 1, 2016

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 7730 (Trade Reporting and Compliance Engine (TRACE))

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 28, 2016, 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 FINRA Rule 7730 to create a new Academic Corporate Bond TRACE Data product that would be available to institutions of higher education.

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

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

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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA Rule 7730 sets forth the TRACE data products offered by FINRA. FINRA's data product offerings include both real-time as well as historic data for most TRACE-eligible securities. FINRA is proposing to create a new Academic Corporate Bond TRACE Data product, which would be made available solely to institutions of higher education and would include masked dealer identifiers.

FINRA periodically receives requests from academics for access to TRACE data. FINRA's existing Historic TRACE Data product provides transaction-level data on an 18-month delayed basis for all transactions that have been reported to TRACE in the classes of TRACE-eligible securities that currently are disseminated.<sup>3</sup> While Historic TRACE Data is used by academic researchers today, it does not include any identifying information regarding the dealer reporting each transaction. Thus, where a researcher wishes to track the behavior of an individual dealer or group of dealers — even anonymously — the existing Historic TRACE Data product would not allow for this type of observation. As a result, academics have requested that FINRA make available an enhanced version of Historic TRACE Data that would include dealer identification.

In response to these requests from academics, the proposed rule change would create a

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<sup>3</sup> FINRA adopted the Historic TRACE Data rule and related fees in 2010. See Securities Exchange Act Release No. 61012 (November 16, 2009), 74 FR 61189 (November 23, 2009) (Order Approving File No. SR-FINRA-2007-006). See also Regulatory Notice 10-14 (March 2010).

new Academic Corporate Bond TRACE Data product that would include transaction-level data on corporate bonds (except a transaction that is a List or Fixed Offering Price Transaction<sup>4</sup> or a Takedown Transaction<sup>5</sup>),<sup>6</sup> including Rule 144A transactions in corporate bonds, with masked dealer identifiers. Masked dealer identifiers may be useful to academics in a variety of ways — for example, to enable researchers to track activity by individual dealers or group of dealers and observe their behaviors, and may facilitate the ability of academic researchers to study the impact of various events on measures such as intermediation costs, dealer participation and liquidity. Academic Corporate Bond TRACE Data would be made available only to academics (i.e., requests originating from an institution of higher education).<sup>7</sup>

While FINRA understands that masked dealer identifiers may be very useful to academics in connection with their research activities, we also appreciate that firms may be concerned regarding the potential for reverse engineering. To address this issue, in addition to

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<sup>4</sup> Rule 6710(q) generally defines “List or Fixed Offering Price Transaction” as a primary market sale transaction sold on the first day of trading of a security excluding a Securitized Product other than an Asset-Backed Security as defined in Rule 6710(cc): (i) by a sole underwriter, 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.

<sup>5</sup> Rule 6710(r) generally defines “Takedown Transaction” as a primary market sale transaction sold on the first day of trading of a security excluding a Securitized Product other than an Asset-Backed Security: (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.

<sup>6</sup> The existing Historic TRACE Data also does not include List or Fixed Offering Price or Takedown Transactions.

<sup>7</sup> In addition, FINRA intends to establish a fee for the Academic Corporate Bond TRACE Data product prior to the effective date of the proposed rule change. The fee will be established pursuant to a separate rule filing.

uniquely masking dealer identities for each academic institution, FINRA proposes to take mitigating steps, including to limit transactions included in the Academic Corporate Bond TRACE Data product to transactions that are at least 36 months old. In addition, FINRA would impose certain requirements on subscribers regarding the terms of use of the data. In the written agreement with subscribers to Academic Corporate Bond TRACE Data, among other things, FINRA will: (1) explicitly require subscribers to agree that they will not attempt to reverse engineer the identity of any market participant; (2) prohibit the redistribution of data in the Academic Corporate Bond TRACE Data product; (3) require users to disclose each intended use of the data (including a description of each study being performed and the names of each individual who will have access to the data for the study); (4) require users to ensure that any data presented in work product be sufficiently aggregated so as to prevent reverse engineering of any dealer or transaction; and (5) require that the data be returned or destroyed if the agreement is terminated.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval. The effective date will be no later than 270 days following publication of the Regulatory Notice announcing Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</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.

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<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

Pursuant to the proposal, FINRA will make available to institutions of higher education an enhanced historic TRACE data product that will include transaction-level data on corporate bonds on a 36-month delayed basis with masked identifying information regarding the dealer reporting each transaction. Academic Corporate Bond TRACE Data would be made available only to institutions of higher education. FINRA believes that the additional granularity provided by this new data product will enable researchers to track the behavior of individual dealers or group of dealers and observe their behaviors, and may facilitate the ability of academic researchers to study the impact of various events on measures such as intermediation costs, dealer participation and liquidity, thereby enhancing understanding of the market for corporate bonds and the behavior of its participants. Thus, FINRA believes that the proposed rule change is in the public interest and consistent with the Act.

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.

FINRA's existing Historic TRACE Data product provides transaction-level data on an 18-month delayed basis for all transactions that have been reported to TRACE in the classes of TRACE-eligible securities that currently are disseminated. As detailed above, FINRA is proposing to create a new Academic Corporate Bond TRACE Data product, which would be made available solely to institutions of higher education with a 36-month delay and would include masked dealer identifiers associated with individual reported transactions, which is not available in the existing Historic TRACE Data product.

The proposed rule change would expand the benefits of FINRA's TRACE initiatives by providing additional transparency on corporate bond trading for academic research purposes.

The analysis that can be conducted using masked dealer identifiers associated with individual reported transactions could incorporate estimates of anonymized dealer positions and hence potentially enhance the ability for researchers to analyze and understand dealer networks and liquidity provision in the corporate bond market.

The proposal to create a new Academic Corporate Bond TRACE Data product would not impose any additional reporting requirements or costs on firms and, as a result, would have no direct impact on firms. However, FINRA considered the potential for indirect costs regarding possible information leakage due to the inclusion of masked dealer identifiers in the data. To investigate whether the dissemination of masked dealer identifiers pose a risk for reverse engineering of the data to reveal the identity of individual firms, FINRA analyzed 15,533,134 corporate bond secondary market trades (that occurred between February 6, 2012 and February 5, 2016) in 21,164 unique corporate bonds that were issued between February 6, 2012 and February 7, 2015.<sup>9</sup>

The analysis below attempts to answer the question of whether primary underwriter information can be reliably linked to the largest seller in a given CUSIP and potentially unmask the true identity of the firm.<sup>10</sup>

Figure 1a plots the number of distinct corporate bond CUSIPs that are traded within the first  $n$  days after issuance ( $n = 0, 1, 2 \dots 30$ ) and the percentage of CUSIPs where the largest

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<sup>9</sup> The analysis is conducted from the perspective of the sell-side in a transaction. Historic TRACE Data and the proposed Academic Corporate Bond TRACE Data product do not include List or Fixed Offering Price Transactions or Takedown Transactions. Therefore, these transactions are excluded from our sample.

<sup>10</sup> Primary underwriter information is not a data field in TRACE, but is publicly available from various academic and commercial databases at the CUSIP level. “Largest seller” is defined as the Market Participant Identifier (“MPID”) with the highest number of transactions over a given number of days.

seller in the secondary market also is the primary underwriter for that issue.<sup>11</sup> 11,825 distinct corporate bond CUSIPs are traded in the secondary market on the day of issuance ( $n = 0$ ) and the largest seller also is the primary underwriter for approximately 6% of those CUSIPs. Within the first 30 days of trading ( $n = 30$ ), the number of CUSIPs traded increase to 15,595, and the percentage of CUSIPs where the largest seller also is the primary underwriter increases to 11%. Effectively, if one assigned the masked dealer identifier associated with the most sale transactions in the 30-day window to the primary underwriter, the assignment would be correct for about one in ten CUSIPs.

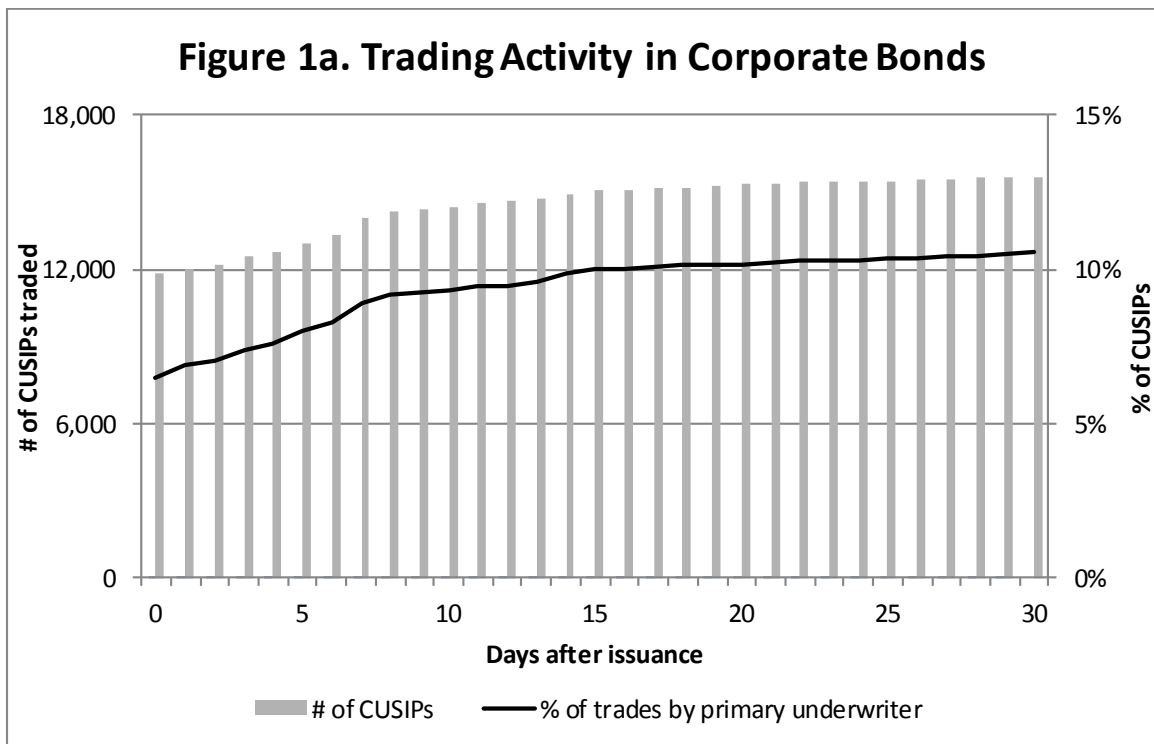
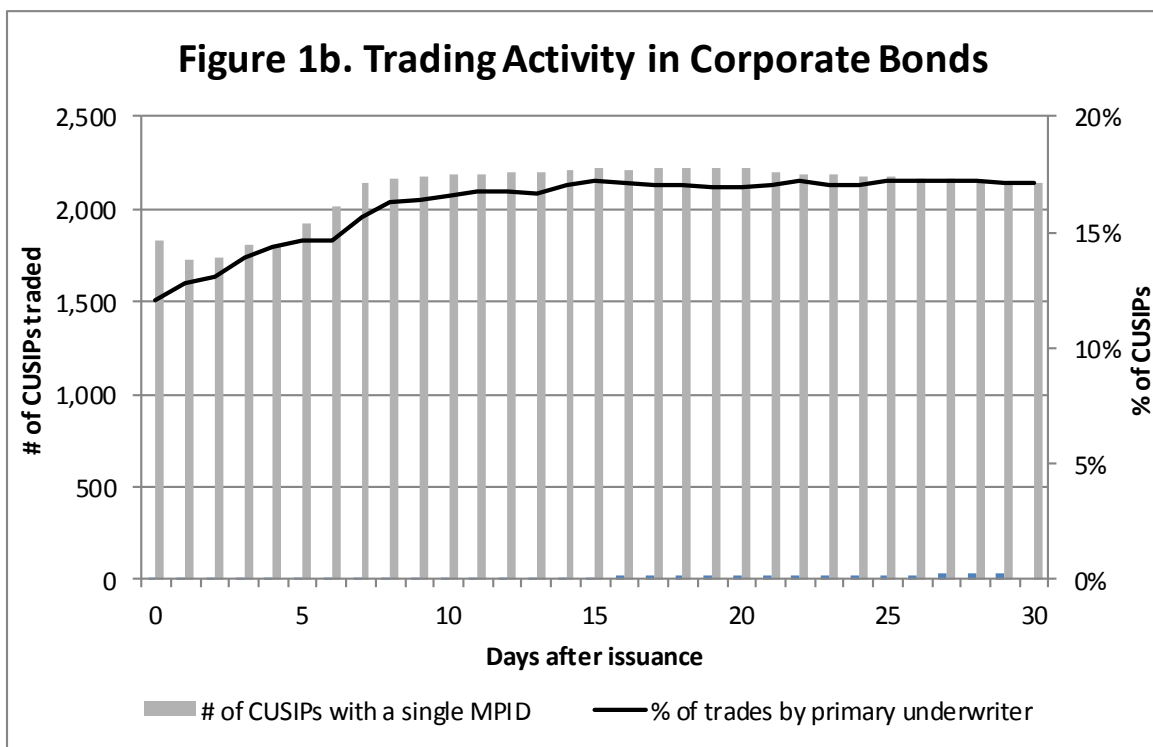


Figure 1a suggests that largest seller information in a specific corporate bond can accurately be linked to the primary underwriter, unmasking the identity of the trading firm for approximately 10% of the CUSIPs. Alternatively, a researcher could limit its sample to those

<sup>11</sup> For example, for  $n = 2$ , the measure would determine the number of unique CUSIPs where the underwriter had been the largest seller of the security for the previous three days.

CUSIPs that are traded in the secondary market by a single masked dealer identifier within the first  $n$  days of trading and assume that this seller is the primary underwriter.

For example, in Figure 1b below, on the day of issuance ( $n = 0$ ), there are 1,835 distinct corporate bonds that are traded by a single MPID, of which 222 (approximately 12%) are sold by the primary underwriter. If one looked at the first 30 days of secondary market trading ( $n = 30$ ), there would be 2,138 distinct CUSIPs in our sample with a single MPID trading the issue and 17% of those MPIDs would be associated with the primary underwriter.



Hence, these findings confirm that primary underwriter information alone is not sufficient to discover the true identity of the trading firm where the only other information used in the analysis is the information to be contained in the Academic Corporate Bond TRACE Data product.

However, FINRA acknowledges the potential for reverse engineering of masked dealer identifiers to determine the true identities of individual firms, and has taken a number of



measures, as discussed above, to reduce this risk and mitigate any potential impacts.<sup>12</sup> FINRA believes that the potential additional research that may be facilitated by the availability of this new data product will enhance understanding of the market for TRACE-eligible securities and trending behavior and, therefore, should create a benefit for market participants.

FINRA may consider expanding TRACE data product offerings in the future to make transaction-level information with masked dealer identifiers available to academics for other types of TRACE-eligible securities. However, FINRA believes that starting with corporate bonds is an appropriate first step because most data requests received from academics have related to corporate bond data, and because corporate bonds generally are traded by a greater number of dealers and, therefore, do not present the same likelihood for accurate reverse engineering by academics.

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

The proposed rule change was published for comment in Regulatory Notice 15-26.<sup>13</sup>

FINRA received four comments in response to the Regulatory Notice.<sup>14</sup> A copy of the

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<sup>12</sup> For example, other publicly-available information exists that may contribute to the potential for successful reverse engineering of dealer identities. One such dataset that can be obtained by academics is sold by the National Association of Insurance Commissioners (NAIC) and contains detailed information about insurance company bond transactions, including the CUSIP of the bond traded, the identities of insurance companies and the dealers between whom each trade is completed, the date of the transaction, the amount traded, and the price of the transaction. Please see description of the data in a recent paper by O’Hara et al. (2015) at [http://papers.ssrn.com/sol3/Papers.cfm?abstract\\_id=2680480](http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2680480).

<sup>13</sup> Regulatory Notice 15-26 (July 2015).

<sup>14</sup> See Letter from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, to Marcia E. Asquith, Corporate Secretary, FINRA, dated August 24, 2015 (“BDA”), letter from Luis Palacios, Director of Research Services, The Wharton School, to Marcia E. Asquith, Corporate Secretary, FINRA, dated September 10, 2015 (“Wharton”), letter from David L. Cohen, Managing Director & Associate General Counsel, and Sean Davy, Managing Director, Securities Industry and Financial Markets Association, to Marcia E.

Regulatory Notice is attached as Exhibit 2a. A list of the commenters and copies of the comment letters received in response to the Regulatory Notice are attached as Exhibits 2b and 2c, respectively.

SIFMA generally supports the proposal but recommends specific modifications to further guard against information leakage. Specifically, SIFMA's suggestions include that TRACE data should be delayed a minimum of four years prior to being included in the academic data product; that transactions be grouped by dealer rather than masked on an individual basis (excluding information on List or Fixed Offering Price Transactions and Takedown Transactions);<sup>15</sup> and that the subscription agreement include restrictions around who at an academic institution is authorized to access the data. BDA also raised concerns regarding information leakage, and believes that the proposal does not adequately balance the risk to dealers with the benefits of academic research.

FINRA has considered concerns regarding information leakage due to masked dealer identifiers and the specific comments received. In response to comments, FINRA has modified the proposal in two significant ways. First, FINRA has modified the proposal to extend the data delay period to 36 months rather than the 24-month delay proposed in Regulatory Notice 15-26. In addition, FINRA is limiting the data to be included in the scope of the current proposal to transactions in corporate bonds, including Rule 144A transactions in corporate bonds. In Regulatory Notice 15-26, FINRA proposed to include all of the data sets currently included in

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Asquith, Corporate Secretary, FINRA, dated September 11, 2015 ("SIFMA"), and letter from Carrie Devorah, Founder, The Center for Copyrights Integrity, to Marcia E. Asquith, Corporate Secretary, FINRA, dated September 14, 2015 ("CCI").

<sup>15</sup> BDA also notes that the proposal does not state that the masked ID used will be changed periodically. To reduce the risk of dealer identification, BDA recommends that dealers be grouped by size in the Academic TRACE Data.

the Historic TRACE Data product.<sup>16</sup> However, because most data requests from academics relate to corporate bonds, and because trading may be more concentrated among a smaller number of dealers for other types of TRACE-eligible securities, FINRA believes it is appropriate to initially adopt the Academic TRACE Data product to include transaction information on corporate bonds only, and may reconsider the scope of the product in the future. FINRA believes that these changes to the academic data product, along with the other measures included in the proposal, such as the restricted scope of distribution limited to institutions of higher education; the safeguards included in the data agreement; and the use of masked identifiers, are sufficient in preventing and mitigating any impact associated with information leakage.

BDA and SIFMA also suggest using groupings, rather than masked individual dealer IDs, in the academic data product. FINRA has considered this alternative and continues to believe that transaction-level information masked at the individual dealer level is appropriate. FINRA believes that groupings will reduce the utility of the data for academic researchers and prevent them from accurately undertaking studies that analyze dealer behavior, or that need to control for dealer-specific factors. However, FINRA notes that masked identifiers will be made unique per subscriber. FINRA believes that, while changing the masked identifier per data request as suggested by BDA would impede research by a single subscriber, assigning unique masked identifiers per subscriber may both help guard against coordinated efforts at attempting reverse engineering dealer identities as well as assist FINRA in identifying the source of conduct that violates the FINRA subscription agreement. FINRA may consider amending or discontinuing the Academic Corporate Bond TRACE Data product, as currently proposed, if future experience

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<sup>16</sup> Historic TRACE Data is transaction-level data and includes the following data sets: the Historic Corporate Bond Data Set, the Historic Agency Data Set, the Historic Securitized Product Data Set and the Historic Rule 144A Data Set.

shows that anonymized dealer identifier are reverse engineered by academics.

BDA states that prohibiting users from attempting to reverse engineer a dealer's identity will not extend to a reader of any study. However, FINRA notes that the user agreement also will require that any data presented in work product be sufficiently aggregated so as to prevent reverse engineering of any dealer or transaction, and believes that this measure would protect against reverse engineering by readers of published works.

Wharton supports the proposed academic data product and states that the “[a]cademic community’s primary interest in having broker IDs is not related to the desire to determine the identities/names of underlying brokers, but most importantly to assess the role of brokers in bond market liquidity and price discovery process.”<sup>17</sup> Wharton also states that it has received data with masked broker identities for years from data vendors and is unaware of any cases where this availability has led to successful reverse engineering and public disclosure of broker identities.<sup>18</sup>

BDA and SIFMA raised concerns around the inclusion of primary market transaction information (for List or Fixed Offering Price Transactions and Takedown Transactions) in Academic TRACE Data. FINRA confirms that List or Fixed Offering Price Transactions and Takedown Transactions will not be included in the Academic Corporate Bond TRACE Data product.<sup>19</sup>

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<sup>17</sup> See Wharton letter.

<sup>18</sup> Wharton provides in its letter examples of vendor data that has been available with masked broker IDs. Specifically, Wharton states that “Thomson-Reuters IBES analyst forecast and recommendations database is a good example as it has been providing masked IDs for both brokerage houses as well as individual analysts since the early 80’s. Another example is Ancerno (Abel-Noser) high-frequency database of institutional trades which academic researchers have used mainly for the reason that it contains a masked institution ID (e.g., Arif, Rephael and Lee, 2015; Choi and Sias, 2012).” See Wharton letter.

<sup>19</sup> See supra note 6.

BDA, CCI<sup>20</sup> and SIFMA raised the issue of information leakage due to potential data security breaches. FINRA notes that the data usage agreement also will address security measures. For example, FINRA intends that the data agreement require the use of commercially reasonable measures to protect the data and that users administer reasonable security procedures where the data is used, accessed, processed, stored or transmitted to ensure that the data remains secure from unauthorized access.

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

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<sup>20</sup> CCI raises issues regarding the security of customer information. FINRA notes that the Academic TRACE Data would consist of security-focused transaction information, not customer information. CCI also raises other issues that are not germane to the instant proposal and that, therefore, are not addressed herein.

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2016-024 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2016-024. 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 such 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-2016-024, 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>21</sup>

Brent J. Fields  
Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).