

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81931; File No. SR-FINRA-2017-032)

October 24, 2017

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Make Permanent an Exception to TRACE Reporting for Certain Bond Transactions Effected on the New York Stock Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 20, 2017, 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. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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 Rule 6730 to make permanent an exemption from TRACE reporting transactions in TRACE-Eligible Securities that are executed on a facility of the New York Stock Exchange (“NYSE”), subject to specified conditions.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 6730(e) (Reporting Requirements for Certain Transactions and Transfers of Securities) exempts members from reporting to the Trade Reporting and Compliance Engine (“TRACE”) transactions in TRACE-Eligible Securities⁴ that are executed on a facility of the New York Stock Exchange (“NYSE”) in accordance with specified NYSE rules and that are reported to NYSE and disseminated publicly, provided that a data sharing agreement between

⁴ Rule 6710 (Definitions) provides that a “TRACE-Eligible Security” is a debt security that is United States (“U.S.”) dollar-denominated and is: (1) issued by a U.S. or foreign private issuer, and, if a “restricted security” as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; (2) issued or guaranteed by an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n); or (3) a U.S. Treasury Security as defined in paragraph (p). “TRACE-Eligible Security” does not include a debt security that is issued by a foreign sovereign or a Money Market Instrument as defined in paragraph (o).

FINRA and NYSE related to transactions covered by Rule 6730 remains in effect.⁵ This exemption currently operates as a pilot program and is scheduled to expire on October 27, 2017.⁶

FINRA is proposing to make the exemption in Rule 6730(e)(4) permanent. Thus, pursuant to the proposed rule change, members would not be required to report to TRACE transactions in TRACE-Eligible Securities that are executed on a NYSE facility in accordance with NYSE Rules 1400, 1401 and 86, where such transactions are disseminated publicly by

⁵ Rule 6730(e)(2) exempts members from TRACE reporting transactions in TRACE-Eligible Securities that are listed on a national securities exchange when certain conditions are met. Rule 6730(e)(4), in contrast, exempts transactions in TRACE-Eligible Securities that are not listed on an exchange, but that are executed on a facility of NYSE when certain conditions are met.

⁶ See Securities Exchange Act Release No. 54768 (November 16, 2006), 71 FR 67673 (November 22, 2006) (Order Approving File No. SR-NASD-2006-110) (pilot program in FINRA Rule 6730(e)(4), then NASD Rule 6230(e)(4), subject to the execution of a data sharing agreement addressing relevant transactions, became effective on January 9, 2007); Securities Exchange Act Release No. 59216 (January 8, 2009), 74 FR 2147 (January 14, 2009) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2008-065) (pilot program extended to January 7, 2011); Securities Exchange Act Release No. 63673 (January 7, 2011), 76 FR 2739 (January 14, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2011-002) (pilot program extended to July 8, 2011); Securities Exchange Act Release No. 64665 (June 14, 2011), 76 FR 35933 (June 20, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2011-025) (pilot program extended to January 27, 2012); Securities Exchange Act Release No. 66018 (December 21, 2011), 76 FR 81549 (December 28, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2011-072) (pilot program extended to October 26, 2012); Securities Exchange Act Release No. 68076 (October 22, 2012), 77 FR 65431 (October 26, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2012-047) (pilot program extended to October 25, 2013); Securities Exchange Act Release No. 70288 (August 29, 2013), 78 FR 54694 (September 5, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2013-038) (pilot program extended to October 23, 2015); and Securities Exchange Act Release No. 76121 (October 9, 2015) 80 FR 62578 (October 16, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-037) (pilot program extended to October 27, 2017).

NYSE, so long as a data sharing agreement is in effect between FINRA and NYSE related to transactions covered by Rule 6730.⁷

FINRA is proposing to make the exemption available on a permanent basis as the pilot has been operating without incident since its inception in 2007. Providing this exemption on a permanent basis would solidify in the FINRA rule a measure to avoid trade reporting to FINRA with regard to transactions in these securities that are disseminated publicly by NYSE. FINRA notes that the exemption under Rule 6730(e)(4) continues to be conditional on a data sharing agreement being in effect between FINRA and NYSE related to transactions covered by Rule 6730.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change on the date of filing and prior to the expiration of the current pilot.

2. Statutory Basis

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

⁷ FINRA is proposing to delete existing language conditioning the exemption on transactions being “reported to NYSE in accordance with NYSE’s applicable trade reporting rules.” FINRA understands that, because NYSE immediately and automatically publicly disseminates transactions, NYSE does not have any rules requiring members to also trade report transactions in TRACE-Eligible Securities executed in accordance with NYSE Rules 1400, 1401 and 86.

⁸ 15 U.S.C. 78o-3(b)(6).

FINRA believes that providing the exemption on a permanent basis protects investors and the public because it continues to ensure that transactions are required to be publicly disseminated, and therefore transparency will be maintained for these transactions. The continued condition that a data sharing agreement remain in effect between NYSE and FINRA for transactions covered by the Rule 6730(e)(4) exemption allows FINRA to conduct surveillance in TRACE-Eligible Securities. In addition, providing the exemption on a permanent basis enhances regulatory efficiency and, with regard to covered transactions, permits members to avoid trade reporting to FINRA and the increased costs that may be incurred as a result of such requirement.

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 believes that providing the exemption on a permanent basis does not result in any burden on competition since it treats all similarly-situated members the same. Specifically, with regard to covered transactions, the proposal allows members to avoid trade reporting to FINRA and the increased costs that may be incurred as a result of such requirement.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such action will allow the existing TRACE exemption to remain available without interruption. If the pilot program were to expire on October 27, 2017, FINRA members would immediately become subject to duplicative reporting obligations with respect to transactions in TRACE-eligible debt securities effected on NYSE. In addition, the Commission notes that the pilot has been operating since 2007 without any issues being raised in the various comment periods to extend the pilot. For these reasons, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.¹¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

¹¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings to determine whether the proposed rule should be approved or 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. Please include File Number SR-FINRA-2017-032 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-2017-032. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2017-032, 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.¹²

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Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).