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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70345; File No. SR-FINRA-2013-029)

September 6, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Dissemination of Transactions in TRACE-Eligible Securities that are Effected Pursuant to Securities Act Rule 144A

I. Introduction

On July 17, 2013, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change relating to dissemination of transactions in TRACE-Eligible Securities³ that are effected pursuant to Rule 144A⁴ under the Securities Act of 1933 (“Securities Act”).⁵ The proposed rule change was published for comment in the Federal Register on July 25, 2013.⁶ The Commission received two comments on the proposal.⁷ This order approves the proposed rule change.

II. Description of the Proposal

Historically, FINRA has utilized the Trade Reporting and Compliance Engine (“TRACE”) to collect from its members and publicly disseminate information on secondary

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “TRACE-Eligible Security” is defined in FINRA Rule 6710(a).

⁴ 17 CFR 230.144A.

⁵ 15 U.S.C. 77a *et seq.*

⁶ See Securities Exchange Act Release No. 70009 (July 19, 2013), 78 FR 44997 (“Notice”).

⁷ See letters to Elizabeth M. Murphy, Secretary, Commission, from: Dorothy Donohue, Deputy General Counsel – Securities Regulation, Investment Company Institute, dated August 15, 2013 (“ICI Letter”); and Ari Gabinet, Executive Vice President and General Counsel, OFI Global Asset Management, dated August 15, 2013 (“OFI Letter”).

over-the-counter transactions in corporate debt securities and Agency Debt Securities⁸ and certain primary market transactions. For certain other asset types, FINRA has utilized TRACE to collect transaction information but has not reported such information publicly.⁹ Information regarding transactions in TRACE-Eligible Securities that are effected pursuant to Rule 144A under the Securities Act (“Rule 144A transactions”) falls into this category, as it is currently collected through TRACE but not disseminated publicly.

As FINRA notes, Section 201 of the Jumpstart Our Business Startups Act (the “JOBS Act”)¹⁰ directed the Commission to eliminate the long-standing prohibition against general solicitation and general advertising in offerings of securities pursuant to Securities Act Rule 144A and in certain other private placements.¹¹ According to FINRA, up to this point Rule 144A transactions reported to TRACE have not been disseminated in part to avoid concerns about soliciting persons other than qualified institutional buyers (“QIBs”) for such transactions.¹² As a result, price information regarding Rule 144A transactions has been limited, which has made it difficult for market participants to assess the quality of executions of Rule 144A

⁸ The term “Agency Debt Security” is defined in FINRA Rule 6710(l).

⁹ Recently, however, FINRA has expanded TRACE’s functionality to include public dissemination of transaction information for certain Asset-Backed Securities, which information FINRA previously collected but did not disseminate. See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010) (approving SR-FINRA-2009-065); see also Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (approving SR-FINRA-2012-020); Securities Exchange Act Release No. 68084 (October 23, 2012), 77 FR 65436 (October 26, 2012) (approving SR-FINRA-2012-042). The term “Asset-Backed Security” is defined in FINRA Rule 6710(m).

¹⁰ Public Law 112-106, 126 Stat. 306.

¹¹ See Notice, 78 FR at 44998.

¹² See id.

securities or to compare them to executions of similar publicly traded securities of the same issuer or similarly-rated issuers.

FINRA now has proposed to provide for public dissemination of Rule 144A transactions and to make certain related changes to its rules, as described below.

Dissemination of Rule 144A Transaction Information

Currently, FINRA Rule 6750(b)(1) states that FINRA will not disseminate information on a transaction in a TRACE-Eligible Security that is effected pursuant to Rule 144A. FINRA has proposed to remove that language from FINRA Rule 6750(b)(1) and amend FINRA Rule 6750(a) to include Rule 144A transactions among the transactions for which FINRA disseminates information immediately upon receipt of the transaction report, provided that the asset type involved in the Rule 144A transaction is currently subject to dissemination under FINRA Rule 6750.¹³ Consequently, only Rule 144A transactions in corporate bonds will be newly disseminated as a result of the proposed rule change. The proposed rule change will not otherwise expand TRACE dissemination at this time.¹⁴

Dissemination Caps

Currently, there are dissemination caps in place for disseminated TRACE data, such that the actual size of a transaction over a certain par value is not displayed. FINRA has proposed that Rule 144A transactions be disseminated subject to the same dissemination caps that are

¹³ Equity securities transactions effected pursuant to Rule 144A are not reported to TRACE and are not the subject of FINRA's proposal.

¹⁴ See Notice, 78 FR at 44999 n.24. As mentioned above, transactions in Agency Debt Securities and certain Asset-Backed Securities are currently disseminated. But there would be no additional transactions in such securities disseminated as a result of the proposal because Rule 144A is not used to effect transactions in such securities. There are also certain Asset-Backed Security transactions that are not currently subject to dissemination, which would preclude them from dissemination under the proposal at this time.

currently in effect for a non-Rule 144A transaction in the applicable security.¹⁵ Accordingly, the dissemination caps currently in effect for non-Rule 144A corporate bond transactions – \$5 million (“\$5MM”) for Investment Grade corporate bonds and \$1 million (“\$1MM”) for Non-Investment Grade corporate bonds¹⁶ – would apply to the Rule 144A corporate bond transactions disseminated as result of this proposal. As a result, the size of a Rule 144A Investment Grade corporate bond transaction in excess of \$5MM would be displayed as “\$5MM+” and the size of a Rule 144A Non-Investment Grade corporate bond transaction in excess of \$1MM would be displayed as “\$1MM+.”

Market Data

FINRA has proposed to amend Rule 7730(c) to establish a real-time market data set for Rule 144A transactions (“Rule 144A Data Set”) – similar to the data sets for corporate bonds, Agency Debt Securities, and Asset-Backed Securities – which would consist of information disseminated immediately upon receipt of a transaction report for a Rule 144A transaction. FINRA also has proposed to amend Rule 7730(d) to establish a historic data set for Rule 144A transactions (“Historic Rule 144A Data Set”), also similar to the existing historic data sets for corporate bonds, Agency Debt Securities, and Asset-Backed Securities.¹⁷

Relatedly, FINRA would amend the definition of “Historic TRACE Data” in Rule 7730(f)(4) to reference the three existing data sets and the proposed Historic Rule 144A Data Set

¹⁵ See Notice, 78 FR at 44999.

¹⁶ The terms “Investment Grade” and “Non-Investment Grade” are defined in FINRA Rules 6710(h) and 6710(i), respectively.

¹⁷ The Historic Rule 144A Data Set would include Rule 144A transactions in securities subject to dissemination, effected as of or after July 1, 2002, and, among other things, would include uncapped volume information. However, like all other Historic TRACE Data, Rule 144A transaction data included in the Historic Rule 144A Data Set would be released subject to a delay of approximately 18 months from the date of the transaction. See Notice, 78 FR at 44999.

and to clarify that the Historic Rule 144A Data Set would include all historic Rule 144A transactions reported to TRACE, except transactions involving a type of TRACE-Eligible Security that is not subject to real-time dissemination under FINRA Rule 6750. FINRA would further amend Rule 7730(f)(4) to define the existing historic data sets for corporate bonds, Agency Debt Securities, and Asset-Backed Securities, and to clarify, as applicable, that they do not contain historic Rule 144A transactions.

In addition, FINRA has proposed minor revisions to the TRACE fee table in the beginning of Rule 7730, and also to Rules 7730(c) and 7730(d), to clarify that the fees set forth therein apply only to the existing real-time and historic data sets for corporate bonds, Agency Debt Securities, and Asset-Backed Securities. FINRA has stated that it plans to file a separate proposal to address market data fees for the Rule 144A Data Set and the Historic Rule 144A Data Set.¹⁸ FINRA also has proposed to make a minor, technical revision to Rule 7730(d) to clarify that the 2012 Historic ABS Data Set includes the 2011 Historic ABS Data Set.

Effective Date of Proposed Rule Change

FINRA has stated that it would 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 be no later than 270 days following publication of that Regulatory Notice.

III. Comment Summary

The Commission received two comment letters on the proposal.¹⁹ Both commenters supported the proposal. One commenter stated that “[t]he Rule 144A market has, over time, become a more mature and liquid market with no corresponding enhancement in its

¹⁸ See Notice, 78 FR at 45000 n.29.

¹⁹ See supra note 7.

transparency,” and that requiring information regarding Rule 144A transactions to be disseminated to the same extent as comparable non-Rule 144A transactions “will provide enhanced transparency in a manner that addresses the potential negative impact that such dissemination could have on liquidity.”²⁰ The other commenter asserted that dissemination of Rule 144A transactions would be in keeping with TRACE’s goal of improving transparency in the corporate debt market.²¹ This commenter also stated that the proposed rule change would enhance pre-trade price discovery, foster more competitive pricing within the Rule 144A market, and significantly improve the ability of market participants to conduct analyses of Rule 144A transactions and assess the quality of their executions.²²

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.²³ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,²⁴ which requires, among other things, that FINRA’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission notes that the only two entities that submitted comments supported the proposal.

²⁰ ICI Letter at 2.

²¹ See OFI Letter at 2.

²² See id.

²³ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁴ 15 U.S.C. 78q-3(b)(6).

In approving the original TRACE rules, the Commission stated that price transparency plays a fundamental role in promoting the fairness and efficiency of U.S. capital markets.²⁵ To further the goal of increasing price transparency in the debt markets in general and the market for Rule 144A securities in particular, the Commission now believes that it is reasonable and consistent with the Act for FINRA to extend post-trade price transparency to Rule 144A transactions. Real-time dissemination of last-sale information could aid dealers in deriving better quotations, because they would know the prices at which other market participants had recently transacted in the same or similar instruments. This information could aid all market participants in evaluating current quotations, because they could inquire why dealer quotations might differ from the prices of recently executed transactions. Furthermore, post-trade transparency affords market participants a means of testing whether dealer quotations before the last sale were close to the price at which the last sale was executed. In this manner, post-trade transparency can promote price competition between dealers and more efficient price discovery, and ultimately lower transaction costs in the market for Rule 144A securities.

Although the market for Rule 144A securities remains restricted to QIBs, the Commission believes that non-QIB market participants could still benefit from post-trade transparency in the Rule 144A market. Certain Rule 144A securities are issued by the same entity as, or are otherwise similar to, corporate debt securities not issued pursuant to Rule 144A, which securities may be purchased and sold by non-QIBs. Some academic research suggests that post-trade transparency in one market can have “spillover benefits” in a related market.²⁶

²⁵ See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131, 8136 (January 29, 2001) (approving SR-NASD-99-65) (“2001 TRACE Order”).

²⁶ See Henrik Bessembinder, William Maxwell, and Kumar Venkataraman, “Market Transparency, Liquidity Externalities, and Institutional Trading Costs in Corporate Bonds” (2005), available at

In addition, the Commission believes that the proposed dissemination caps are reasonable and consistent with the Act. The caps to be employed for Rule 144A debt securities will be the same as those for other corporate debt securities, which were previously approved by the Commission.²⁷ The Commission notes that, in its Regulatory Notice 12-39, FINRA requested comment on the existing dissemination caps for transactions in corporate bonds, Agency Debt Securities, and Asset-Backed Securities, although FINRA determined not to propose changes to any of the current dissemination caps at this time. The Commission expects FINRA to periodically re-evaluate whether the dissemination caps, including the caps for Rule 144A transactions being approved today, continue to be appropriate.

The Commission further believes that establishing real-time and historic market data products for Rule 144A securities in the manner described in the proposal is reasonable and consistent with the Act. The new data sets are similar to the data sets for corporate bonds, Agency Debt Securities, and Asset-Backed Securities, which products have previously been approved by the Commission.²⁸ The Commission notes FINRA's representation that it will

<http://home.business.utah.edu/hank.bessembinder/publications/bondtransparency.pdf> (presenting a model implying and finding empirical evidence in TRACE data for what the authors term a “liquidity externality,” i.e., improved market quality in certain securities that were not yet TRACE-eligible, when related securities had become subject to TRACE post-trade transparency).

²⁷ See 2001 TRACE Order, 66 FR at 8132.

²⁸ See *id.* (approving real-time dissemination of reported corporate bond transactions as part of approval of original TRACE rules); see also Securities Exchange Act Release No. 60726 (September 28, 2009), 74 FR 50991 (October 2, 2009) (approving SR-FINRA-2009-010, which expanded TRACE to include real-time dissemination of Agency-Debt Security transactions and most primary market transactions, and to create separate corporate bond and Agency-Debt Security market data sets); Securities Exchange Act Release No. 61012 (November 16, 2009), 74 FR 61189 (November 23, 2009) (approving SR-FINRA-2007-006, which established the historic TRACE market data sets for corporate bond and Agency-Debt Security transactions); Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (approving SR-FINRA-2012-020, which established real-time and historic market data sets for certain

submit a separate rule filing to address the market data fees for the Rule 144A Data Set and the Historic Rule 144A Data Set. Finally, the Commission believes that the minor revisions to certain of FINRA's market data rules are consistent with the Act.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-FINRA-2013-029) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Kevin M. O'Neill
Deputy Secretary

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Asset-Backed Securities traded "To Be Announced"); Securities Exchange Act Release No. 68084 (October 23, 2012), 77 FR 65436 (October 26, 2012) (approving SR-FINRA-2012-042, which established real-time and historic market data sets for certain other Asset-Backed Securities).

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).