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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85112; File No. SR-FINRA-2019-002]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Provide Temporary Relief to Permit Member Alternative Trading Systems (ATSs) and ATS Subscribers Additional Flexibility in Transitioning to Disaggregated Reporting for Certain Transactions in U.S. Treasury Securities

February 12, 2019

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 January 28, 2019, 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 permit member alternative trading systems (ATSs) and ATS subscribers additional flexibility in transitioning to disaggregated reporting by April 12, 2019 for certain transactions in U.S. Treasury Securities.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

Beginning on July 10, 2017, amendments to FINRA Rule 6730 took effect that required members to report transactions in U.S. Treasury Securities⁴ to TRACE.⁵ In advance of the effective date, FINRA engaged in extensive discussions with members regarding U.S. Treasury Security reporting and, as part of those conversations, understood that certain member ATSs and their member subscribers would not be ready to report accurately U.S. Treasury Securities to

⁴ Rule 6710(p) defines a "U.S. Treasury Security" as "a security, other than a savings bond, issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities." The term "U.S. Treasury Security" also includes separate principal and interest components of a U.S. Treasury Security that has been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities ("STRIPS") program operated by the U.S. Department of Treasury. See Rule 6710(p).

⁵ See Securities Exchange Act Release No. 79116 (October 18, 2016), 81 FR 73167 (October 24, 2016) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2016-027). See also Regulatory Notice 16-39 (October 2016).

TRACE in circumstances where trades are executed in matching sessions known as “trading” or “workup” sessions. A trading session generally is a discrete or timed order-matching event during which one or more additional subscribers can interact with the original order on the opposite side of the market or add to the initial order on the same side of the market.⁶ In the context of trading sessions, FINRA understood that ATSs typically provided each subscriber a trade message at the end of the session that aggregated each subscriber’s activity during the session (including, for example, an aggregate size and average price). FINRA also understood that these aggregated trade messages were used systematically for TRACE reporting both by the ATS and its member subscribers. As a result, ATSs and ATS subscribers would be required to make systems changes to comply with Rule 6730, which requires all members to report trades individually.

In light of these concerns regarding readiness prior to the effective date of the U.S. Treasury Security reporting requirement, FINRA filed a proposed rule change to, on a temporary basis, provide an exception to permit ATSs and ATS subscribers to aggregate transactions that occurred during a trading session.⁷ Specifically, FINRA adopted Supplementary Material .06 (Temporary Exception for Aggregate Transaction Reporting of U.S. Treasury Securities Executed in ATS Trading Sessions) to permit members to report aggregate transaction information reflecting the aggregate size and average price of such transactions, and to permit trade reports to use a Time of Execution⁸ communicated by the ATS to each Party to a

⁶ For detailed descriptions of trading sessions and trade reporting in the context of trading sessions, see Securities Exchange Act Release No. 81018 (June 26, 2017), 82 FR 29956 (June 30, 2017) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2017-023) (“Original Filing”).

⁷ See Original Filing.

⁸ Rule 6710(d) provides, among other things, that the “Time of Execution” for a transaction in a TRACE-Eligible Security means the time when the Parties to a

Transaction⁹ (the “Aggregation Exception”). The Aggregation Exception was intended to provide members with additional time to complete the systems changes necessary to accurately report each individual transaction in a U.S. Treasury Security executed in a trading session, as required by Rule 6730, and was scheduled to sunset on July 10, 2018.

On April 16, 2018, prior to the expiration of the relief provided by the Aggregation Exception and in response to continued readiness concerns expressed by members regarding the substantial systems changes necessary to disaggregate transaction reporting for trades executed in ATS trading sessions, FINRA extended the Aggregation Exception for an additional nine months, until April 12, 2019.¹⁰ As stated in the Extension Filing, FINRA understood from discussions with multiple member ATSs that are active in the market for U.S. Treasury Securities that the systems changes necessary to comply with Rule 6730 required substantial development and testing to complete and that, further, the systems changes required by subscriber members also are significant and could not be completed by July 10, 2018. FINRA also noted that, while we understood that member ATSs had begun the development work necessary to report individual execution information, additional time was necessary (including to develop an additional data feed to deliver execution level information to subscribers and vendors), and that member subscribers required additional time to update their systems to consume the new execution information to be provided by the ATSs and to systematically

Transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade.

⁹ Rule 6710(e) defines “Party to a Transaction” as an introducing broker-dealer, if any, an executing broker-dealer, or a customer. “Customer” includes a broker-dealer that is not a FINRA member.

¹⁰ See Securities Exchange Act Release No. 83098 (April 24, 2018), 83 FR 18866 (April 30, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-014) (“Extension Filing”).

incorporate this information in their TRACE reporting to FINRA. The Extension Filing provided that the Aggregation Exception would continue until April 12, 2019. In the Extension Filing, FINRA also stated that necessary testing of new required functionality should commence well in advance of the extended deadline of April 12, 2019, but at a minimum, no later than January 12, 2019.

Since the effectiveness of the Extension Filing, FINRA has continued to engage in conversations with member ATSs and ATS subscribers to remind them of the April 12, 2019 date and to remain updated on industry efforts towards readiness. In this context, FINRA has become aware of scenarios where members, as part of their transition efforts, are reporting on a partially disaggregated basis. For example, some members have made systems changes to phase out work-up sessions and are reporting many of the trades executed on the ATS on an individual basis, but are not yet able to transition fully to disaggregated trade reporting (for example, continue to aggregate reporting in instances where a single ATS subscriber matches against multiple ATS subscriber counterparties in a trade). FINRA believes this type of interim approach is beneficial, provides improved audit trail information and is an effective way to transition to disaggregated reporting, but notes that it does not fall squarely within the scope of the relief provided by Rule 6730.06 because the trading no longer is occurring in the context of a trading session. However, FINRA believes this type of partial disaggregation should be a permissible transitional approach (until April 12, 2019) and demonstrates positive efforts by ATSs and their member subscribers to meet the April 12, 2019 date.

In recognition of the fact that ATSs may take a variety of approaches towards full disaggregation of TRACE trade reports for transactions in U.S. Treasury Securities, FINRA is filing the instant rule change to provide member ATSs and ATS subscribers with an appropriate

degree of flexibility as they transition. Specifically, member ATSs and affected member subscribers temporarily are permitted to submit reports to TRACE that reflect the aggregate size of two or more orders or transactions executed on an ATS that is transitioning away or recently transitioned from matching orders in trading sessions, consistent with the trade messages generated by the ATS and used for TRACE reporting by the ATS and its subscribers, until April 12, 2019. Thus, for example, where an ATS sends confirmation messages that aggregate the quantity of trades when a single ATS subscriber matches against multiple counterparties, the ATS and its subscribers may continue to use the aggregated confirmation message (with the size, price and Time of Execution used by the ATS's system for that message) until April 12, 2019. However, FINRA stresses that ATSs and their subscribers relying on this relief during the transition period (which must end by April 12, 2019) may not submit reports to TRACE that are less granular or accurate than that provided to date pursuant to the Rule 6730.06 relief (i.e., interim reporting must be incrementally better).¹¹ The purpose of this relief is temporarily to permit a degree of aggregation in cases where the ATS no longer formally uses workup sessions, not to permit a degradation in the accuracy of the information reported to TRACE. As a condition of this relief, ATSs must provide to FINRA upon request individual transaction information for each trade in a U.S. Treasury Security. Finally, FINRA reminds member ATSs and subscribers that their TRACE trade reporting must be fully disaggregated by April 12, 2019.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day

¹¹ The relief provided by the instant filing is only available in connection with trades on an ATS where the ATS has recently relied on Rule 6730.06 in connection with the aggregation of transactions in U.S. Treasury Securities executed in trading sessions, and is not available to members for TRACE reporting in any other context.

operative delay, the operative date of the proposed rule change will be the date of filing and it will sunset on April 12, 2019.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹² 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. The proposed rule change is designed to provide members an appropriate degree of flexibility in TRACE reporting for U.S. Treasury Securities on a temporary basis as they work towards fully disaggregated reporting by April 12, 2019. FINRA notes that reports received pursuant to this relief may not be less granular or accurate than that provided to date in reliance on the relief provided by Rule 6730.06. Therefore, the instant proposal does not degrade the quality of the information reported to TRACE. In addition, FINRA notes that transparency will not be impacted by the proposed temporary relief because transaction information in U.S. Treasury Securities currently is not subject to public dissemination.

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 the proposed rule change is appropriate to provide members with flexibility as they make the technological changes necessary to comply with Rule 6730 and such accommodation will be limited in duration. Moreover, FINRA retains the right to require a

¹² 15 U.S.C. 78o-3(b)(6).

member ATS availing itself of this relief to provide individual transaction information for each trade in a U.S. Treasury Security upon request.

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

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 provide members a reasonable degree of flexibility in TRACE reporting for U.S. Treasury Securities on a temporary basis until fully disaggregated reporting is required by April 12, 2019. The proposed rule change will permit a degree of aggregation of reported trade information in cases where an ATS no longer formally uses workup sessions in the trading of U.S. Treasury Securities, but the proposal will not permit degradation of the accuracy of the information reported to TRACE. In other words, an ATS that is required to

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 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. The Commission has waived the five-day pre-filing notice requirement in this case.

report transactions in U.S. Treasury Securities may not, under this proposed rule change, submit reports to TRACE that are less granular or accurate than that provided to date pursuant to the Rule 6730.06 relief. In addition, the Commission notes that transparency in the U.S. Treasury market will not be impacted by the proposal because transaction information in U.S. Treasury Securities is not disseminated publicly. For these reasons, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.¹⁵

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 Commission shall institute proceedings to determine whether the proposed rule change 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-2019-002 on the subject line.

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

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2019-002. 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-2019-002 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.¹⁶

Eduardo Aleman,
Deputy Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).

