

the exact par value on all transactions with a par value of \$5 million or less, and to include an indicator of “MM+” in place of the exact par value on transactions where the par value is greater than \$5 million.⁶ The exact par value of transactions having a par value greater than \$5 million would be disseminated from RTRS five business days later.⁷

According to the MSRB, a foundational principle of RTRS is that all market participants have equal access to transaction information. In a recent report on municipal securities market structure, the Government Accountability Office (“GAO”) observed that certain market participants are able to determine, through their relationships with dealers, the par amount of large transactions for which the par value is masked in RTRS subscription services and on EMMA.⁸ According to the MSRB, the GAO’s observation undermines the purpose of masking the exact par value, as well as the foundational principle of RTRS, since the equality of access to transaction information is lost for the five business day period that certain institutional customers have access to the exact par value while the rest of the marketplace must await the unmasking of such information by RTRS five business days after the trade was reported.⁹ Additionally, while commenters opposed the MSRB’s original proposal to eliminate the practice of masking large trade sizes entirely,¹⁰ commenters stated that raising the par value threshold for masking large trade sizes to \$5 million would provide additional transparency to the municipal securities market without adversely impacting liquidity.¹¹

⁶ Instead of changing the indicator to “5MM+,” the MSRB plans to include an indicator of “MM+” so that the par value threshold can be changed in the future without requiring subscribers to make system changes to accommodate a new indicator. *See id.* at 56245 n.6.

⁷ *See id.* at 56244.

⁸ *See* U.S. Government Accountability Office, *Municipal Securities: Overview of Market Structure, Pricing, and Regulation*, GAO–12–265, January 17, 2012.

⁹ *See* Notice, *supra* note 3, at 56245.

¹⁰ The MSRB has indicated it plans to continue to evaluate whether this threshold can be raised further, or completely eliminated, with a view towards bringing full transparency of exact par values to the municipal securities market in real-time. The MSRB plans to evaluate any impacts on liquidity from the near-term increase of the trade size mask threshold to \$5 million to assist it in determining whether any future changes to this threshold are merited or could result in unanticipated consequences. *See id.*

¹¹ *See supra* note 4. *See also* Notice, *supra* note 3, at 56245.

III. Discussion and Commission’s Findings

The Commission has carefully considered the proposed rule change, as well as the comment letters received and the MSRB’s response, and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB.¹² In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB’s rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.¹³

The Commission recently urged the MSRB promptly to pursue enhancements to its EMMA Web site so that retail investors have better access to pricing and other municipal securities information, noting that retail investors continue to have access to substantially less pricing information than institutional investors and dealers.¹⁴ The MSRB believes that raising the par value masking threshold to par values over \$5 million is an appropriate first step to take in the short term as it would greatly reduce the number of trades subject to the par value mask.¹⁵ The Commission believes the proposed rule change is reasonably designed to remove impediments to and perfect the mechanism of a free and open market in municipal securities by increasing the number of transactions disseminated from RTRS in real-time that include the exact par value of such transactions, thereby providing more transparency to market participants, including retail

¹² In approving the proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78o–4(b)(2)(C).

¹⁴ *See* Report on the Municipal Securities Market, July 31, 2012, available at <http://www.sec.gov/news/studies/2012/munireport073112.pdf>.

¹⁵ According to the MSRB, based on 2011 trade data, 342,906 trades were subject to the over \$1 million trade size mask, while 97,124 trades had par values over \$5 million. *See* Notice, *supra* note 3, at 56245.

investors, about transactions disseminated from RTRS.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB and, in particular, Section 15B(b)(2)(C)¹⁶ of the Exchange Act. The proposal will become effective on November 5, 2012.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR–MSRB–2012–07) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O’Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68075; File No. SR–FINRA–2012–046]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Definition of “Money Market Instrument” in FINRA Rule 6710(o)

October 22, 2012.

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 11, 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. 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.

¹ 15 U.S.C. 78o–4(b)(2)(C).

² 15 U.S.C. 78s(b)(2).

³ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to exclude additional short-term discount notes from the definition of TRACE-Eligible Security in FINRA Rule 6710(a) by amending the definition of "Money Market Instrument" in FINRA Rule 6710(o) of the Trade Reporting and Compliance Engine (TRACE) rules.

The text of the proposed rule change is available on FINRA's Web site 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 to amend the definition of "Money Market Instrument" in FINRA Rule 6710(o) for purposes of the TRACE rules. The proposed amendment would modify the definition of Money Market Instrument to include discount notes that are issued by an Agency or a Government-Sponsored Enterprise (hereinafter, referred to as agency discount notes)⁴ and have a maturity of one calendar year and one day or less from the date of issuance (i.e., not later than 366 days from the date of issuance, or if a leap year, not later than 367 days from the date of issuance), which would exclude such short-term instruments from the definition of TRACE-Eligible Security.

Currently, a Money Market Instrument is defined in FINRA Rule 6710(o) as "a debt security that at issuance has a maturity of one year or less." Such products are excluded from the definition of TRACE-Eligible Security in FINRA Rule 6710(a) and thus are not subject to TRACE reporting

and dissemination. FINRA interprets a Money Market Instrument to include an instrument with a 365 day term (or in a leap year, a 366 day term). For example, a debt security that is issued on September 15, 2012 and matures on September 14, 2013, is a Money Market Instrument (and thus *not* subject to TRACE reporting and dissemination). In contrast, an instrument that is issued on September 15, 2012 and matures on September 15, 2013 is not a Money Market Instrument (and thus *is* a TRACE-Eligible Security subject to TRACE reporting and dissemination).⁵

FINRA proposes to modify the definition of Money Market Instrument in FINRA Rule 6710(o) to include a significant number of agency discount notes. Consistent with a market convention that pre-dates TRACE, such agency discount notes are frequently issued and routinely mature 366 days (or, in a leap year, 367 days) from the date of issuance. Although these instruments are technically included in the universe of TRACE-Eligible Securities today, FINRA believes that such instruments should be treated as Money Market Instruments, which is consistent with the trading of such instruments, and not subject to TRACE reporting and dissemination. Accordingly, FINRA proposes to amend FINRA Rule 6710(o) to define "Money Market Instrument" as a "debt security that at issuance has a maturity of one calendar year or less, or, if a discount note issued by an Agency, as defined in FINRA Rule 6710(k), or a Government-Sponsored Enterprise, as defined in FINRA Rule 6710(n), a maturity of one calendar year and one day or less."

FINRA believes that the proposed amendment is appropriate and would give effect to FINRA's intention to exclude money market instruments generally from TRACE. In addition, the proposed amendment would reduce any market confusion regarding the appropriate treatment of these short-term instruments. Moreover, excluding agency discount notes from TRACE reporting and dissemination should not adversely impact price transparency, as the agency discount notes are in demand and generally trade actively at narrow spreads.

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, such that

FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ 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. FINRA believes that the proposed rule change to modify the definition of Money Market Instrument to include agency discount notes having a term of one calendar year and one day or less will protect investors and the public interest by reducing market confusion and possible misreporting and enhance market transparency by clarifying the short-term instruments that are to be reported to TRACE.

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.

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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

FINRA has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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.

⁴ The terms "Agency" and "Government-Sponsored Enterprise" are defined in FINRA Rules 6710(k) and 6710(n), respectively.

⁵ One year or less is one calendar year (adjusted accordingly during a leap year), with the date of issuance counted as the first day.

investors and the public interest because such action should help minimize any market confusion regarding the TRACE-eligibility of agency discount notes. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.⁹

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.

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 email to rule-comments@sec.gov. Please include File Number SR-FINRA-2012-046 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-2012-046. This file number should be included on the subject line if email 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 Web site (<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 Web site 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-2012-046 and should be submitted on or before November 16, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68084; File No. SR-FINRA-2012-042]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change Relating to Post-Trade Transparency for Agency Pass-Through Mortgage-Backed Securities Traded in Specified Pool Transactions and SBA-Backed Asset-Backed Securities Transactions

October 23, 2012.

I. Introduction

On August 29, 2012, 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 post-trade transparency for Agency Pass-Through Mortgage-Backed Securities ("MBS") traded in Specified Pool Transactions ("SPT" and, together with MBS, "MBS SPT") and Asset-Backed Securities backed by loans guaranteed as to principal and interest by the Small Business Administration ("SBA-Backed ABS") and traded either SPT ("SBA-Backed ABS SPT") or To Be Announced ("TBA" and, together with SBA-Backed

ABS, "SBA-Backed ABS TBA").³ The proposed rule change was published for comment in the **Federal Register** on September 13, 2012.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

FINRA utilizes the Trade Reporting and Compliance Engine ("TRACE") to collect from its members and publicly disseminate information on secondary over-the-counter transactions in corporate debt securities and Agency Debt Securities and certain primary market transactions. FINRA also utilizes TRACE to collect information on transactions in Asset-Backed Securities but, until recently, FINRA did not disseminate such information publicly.⁵ Earlier this year, however, FINRA amended its rules to reduce the reporting timeframe for and to provide for public dissemination of information regarding transactions in Agency Pass-Through Mortgage-Backed Securities traded TBA ("MBS TBA"), a type of Asset-Backed Security.⁶ FINRA has now proposed to reduce the reporting timeframe for and to provide for public dissemination of information regarding transactions in additional types of Asset-Backed Securities, namely, MBS SPT and SBA-Backed ABS transactions, and to make certain other changes.

Reduction of Reporting Period

FINRA has proposed to amend its Rule 6730 to reduce the period for reporting MBS SPT and SBA-Backed ABS transactions to TRACE. The reduction would occur in two stages. First, for a pilot program of approximately 180 days, FINRA will reduce the reporting period from no later than the close of the TRACE system on the date of execution to no later than two hours from the Time of Execution.⁷ Second, after approximately 180 days, the pilot program will expire and the reporting period will be reduced from no later than two hours from the

³ The terms "Asset-Backed Security," "TBA," "Agency Pass-Through Mortgage-Backed Security" and "Specified Pool Transaction" are defined in FINRA Rules 6710(m), (u), (v) and (x), respectively.

⁴ See Securities Exchange Act Release No. 67798 (September 7, 2012), 77 FR 56686 ("Notice").

⁵ See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010) (approving SR-FINRA-2009-065).

⁶ See Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (approving SR-FINRA-2012-020) ("FINRA-2012-020 Approval").

⁷ However, there are exceptions for transactions that are executed within two hours of the close of the TRACE system and for transactions executed when TRACE is closed.

⁹ 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).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.