

Required fields are shown with yellow backgrounds and asterisks.

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| Page 1 of * 94  | SECURITIES AND EXCHANGE COMMISSION<br>WASHINGTON, D.C. 20549<br>Form 19b-4      |   | File No.* SR - 2016 - * 027  | Amendment No. (req. for Amendments *)  |
| Filing by Financial Industry Regulatory Authority<br>Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934   |   |   |  |  |
| Initial *<br><input checked="" type="checkbox"/>  | Amendment *<br><input type="checkbox"/>   | Withdrawal<br><input type="checkbox"/>  | Section 19(b)(2) *<br><input checked="" type="checkbox"/>  | Section 19(b)(3)(A) *<br><input type="checkbox"/>  |
|   |   |   | Section 19(b)(3)(B) *<br><input type="checkbox"/>  |  |
|   |   |   | Rule   |  |
| Pilot<br><input type="checkbox"/>   | Extension of Time Period<br>for Commission Action *<br><input type="checkbox"/> | Date Expires *<br><input type="text"/>  | <input type="checkbox"/> 19b-4(f)(1)<br><input type="checkbox"/> 19b-4(f)(2)<br><input type="checkbox"/> 19b-4(f)(3) | <input type="checkbox"/> 19b-4(f)(4)<br><input type="checkbox"/> 19b-4(f)(5)<br><input type="checkbox"/> 19b-4(f)(6) |
| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010   |   |   | Security-Based Swap Submission pursuant<br>to the Securities Exchange Act of 1934                                    |  |
| Section 806(e)(1) *<br><input type="checkbox"/>   |   | Section 806(e)(2) *<br><input type="checkbox"/>   |  | Section 3C(b)(2) *<br><input type="checkbox"/>   |
| Exhibit 2 Sent As Paper Document<br><input type="checkbox"/>  |   | Exhibit 3 Sent As Paper Document<br><input type="checkbox"/>                              |  |  |
| <b>Description</b>  |   |   |  |  |
| Provide a brief description of the action (limit 250 characters, required when Initial is checked *).   |   |   |  |  |
| <input type="text" value="Proposed Rule Change Relating to the Reporting of U.S. Treasury Securities to the Trade Reporting and Compliance Engine"/>  |   |   |  |  |
| <b>Contact Information</b>  |   |   |  |  |
| Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.          |   |   |  |  |
| First Name * <input type="text" value="Brant"/>   |   | Last Name * <input type="text" value="Brown"/>  |  |  |
| Title * <input type="text" value="Associate General Counsel"/>  |   |   |  |  |
| E-mail * <input type="text" value="brant.brown@finra.org"/>   |   |   |  |  |
| Telephone * <input type="text" value="(202) 728-6927"/>   |   | Fax <input type="text" value="(202) 728-8264"/>   |  |  |
| <b>Signature</b>  |   |   |  |  |
| Pursuant to the requirements of the Securities Exchange Act of 1934,  |   |   |  |  |
| has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  |   |   |  |  |
| (Title *)   |   |   |  |  |
| Date  | <input type="text" value="07/18/2016"/>   | <input type="text" value="Senior Vice President and Director of Capital Markets Policy"/> |  |  |
| By  | <input type="text" value="Stephanie Dumont"/>                                   | <input type="text" value="Stephanie Dumont,"/>  |  |  |
| (Name *)  |   |   |  |  |
| NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed. |   |   |  |  |

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to expand the Trade Reporting and Compliance Engine (“TRACE”) reporting rules to include most secondary market transactions in marketable U.S. Treasury securities. Under the proposed rule change, transaction information in these securities would not be disseminated to the public.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

At its meeting on July 15, 2016, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

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 implementation date will be no later than 365 days following Commission approval.<sup>2</sup> FINRA understands that providing sufficient lead-time between the publication of technical specifications and the

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

<sup>2</sup> FINRA anticipates staggering the implementation dates so that the general reporting requirement is implemented before members are required to include the trade modifiers described below. Specific implementation dates will be announced in the Regulatory Notice.

implementation date is critical to firms' ability to meet the announced implementation date; FINRA will work to publish technical specifications as soon as possible after SEC approval of the proposed rule change.

3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

(i) Background

The market in U.S. Treasury securities—or “Treasuries”<sup>3</sup>—is the deepest and most liquid government securities market in the world.<sup>4</sup> Treasuries are traded by broker-dealers as well as commercial bank dealers and principal trading firms (“PTFs”) that are not registered as broker-dealers with the SEC or members of FINRA. There is not

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<sup>3</sup> When used throughout this filing, the term “Treasuries” includes all debt securities issued by the U.S. Department of the Treasury, and the term “U.S. Treasury Securities” reflects the definition of that term in the TRACE Rules, which comprises a narrower group of Treasuries. See Rule 6710(p). The term “Treasuries” does not include Treasury futures, and as discussed below, the proposed rule change would not apply to transactions in Treasury futures.

<sup>4</sup> Treasuries—such as bills, notes, and bonds—are debt obligations of the U.S. government. Because these debt obligations are backed by the “full faith and credit” of the government, and thus by its ability to raise tax revenues and print currency, Treasuries are generally considered the safest of all investments. As of April 30, 2016, there was approximately \$13.4 trillion outstanding of interest-bearing marketable U.S. Treasury debt. See U.S. Department of the Treasury, Bureau of the Fiscal Service, Monthly Statement of the Public Debt, April 30, 2016, available at <http://www.treasurydirect.gov/govt/reports/pd/mspd/2016/opds042016.prn>. According to data compiled by the Securities Industry and Financial Markets Association (“SIFMA”), average daily trading volumes by primary dealers in June 2016 was estimated at slightly over \$512.5 billion. See U.S. Treasury Trading Volume, available at <http://www.sifma.org/research/statistics.aspx>.

currently a complete public repository or audit trail for information on transactions in Treasuries.<sup>5</sup>

On October 15, 2014, the market for Treasuries (as well as for Treasury futures and other closely-related financial markets) experienced an unusually high level of volatility and a rapid round-trip in prices. In response to the unexplained volatility, an existing interagency working group (“IAWG”) led by the U.S. Department of the Treasury (“Treasury Dept.”) analyzed both the conditions that contributed to the events of October 15 and the structure of the U.S. Treasury market more generally.<sup>6</sup> A detailed joint staff report (“JSR”), was issued on July 13, 2015, that included a set of preliminary findings on the October 15 volatility, described the current state of the U.S. Treasury market, and proposed a series of four “next steps” in understanding the evolution of the U.S. Treasury market.<sup>7</sup> Included among these “next steps” was an assessment of the data available to regulators and to the public regarding the cash market for Treasuries.<sup>8</sup>

Following publication of the JSR, on January 19, 2016, the Treasury Dept. published a Request for Information (“RFI”) seeking public comment on structural

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<sup>5</sup> See Joint Staff Report: The U.S. Treasury Market on October 15, 2014, at 9 (July 13, 2015) (“JSR”), available at <https://www.sec.gov/reportspubs/special-studies/treasury-market-volatility-10-14-2014-joint-report.pdf>. (“Several agencies under a range of authorities are responsible for regulating various components of the Treasury market and its participants.”). Transactions in Treasury futures are ultimately reported to the Commodity Futures Trading Commission (“CFTC”), which has jurisdiction over futures. See id. at 10-12.

<sup>6</sup> The IAWG consists of representatives of the Treasury Dept., the Federal Reserve Board of Governors, the Federal Reserve Bank of New York, the SEC, and the CFTC.

<sup>7</sup> See JSR, supra note 5, at 7.

<sup>8</sup> See JSR, supra note 5, at 6-7, 45-49.

changes in the U.S. Treasury market and their implications for market functioning.<sup>9</sup> One of the RFI's stated intents was to develop a holistic view of trading and risk management practices in the U.S. Treasury market, particularly in light of the evolution of the market resulting from technological advances over the past two decades, including the associated growth of high-speed electronic trading. The RFI noted that, given this evolution, "access to timely and comprehensive data across related markets is increasingly important," and the Treasury Dept. is therefore "interested in the most efficient and effective ways for the official sector to obtain additional market data and in ways to more effectively monitor diverse but related markets."<sup>10</sup> The RFI stated that the Treasury Dept. was also interested in "the potential benefits and costs of additional transparency with respect to Treasury market trading activity and trading venue policies and practices."<sup>11</sup>

The RFI included four sections, each of which expanded upon one of the four "next steps" identified in the JSR, and each section included numerous questions for public consideration, ranging from broad high-level questions to detailed and specific questions on discrete issues. Section I requested comment on the evolution of the U.S. Treasury market, the primary drivers of that evolution, and implications for market functioning and liquidity. Section II asked for information on risk management practices and market conduct across the U.S. Treasury market and on implications for operational

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<sup>9</sup> The RFI, which was written in consultation with the staffs of all of the agencies involved in the JSR, was published in the Federal Register on January 22, 2016. See Notice Seeking Public Comment on the Evolution of the Treasury Market Structure, 81 FR 3928 (January 22, 2016) ("RFI Notice").

<sup>10</sup> RFI Notice, supra note 9, at 3929.

<sup>11</sup> RFI Notice, supra note 9, at 3929.

risks and risks to market functioning and integrity. Section III requested comment on official sector access to data regarding the cash market for Treasuries. Section IV focused on whether dissemination of U.S. Treasury market transaction data to the public would be beneficial.

The comment period on the RFI closed on April 22, 2016, and 52 comment letters were submitted. As discussed below, approximately 30 of the letters addressed reporting to the official sector or public dissemination. Following receipt and review of the comment letters, on May 16, 2016, the Treasury Dept. and the SEC announced that “they are working together to explore efficient and effective means of collecting U.S. Treasury cash market transaction information[, and that as] part of those efforts, the agencies are requesting that [FINRA] consider a proposal to require its member brokers and dealers to report Treasury cash market transactions to a centralized repository.”<sup>12</sup> The Treasury Dept. noted that it “will continue working with other agencies and authorities to develop a plan for collecting similar data from institutions who actively trade U.S. Treasury securities but are not FINRA members.” The proposed rule change is FINRA’s proposal to require reporting by its members of transactions in U.S. Treasury Securities.

(ii) Proposed Rule Change

As described below, the proposed rule change would require all FINRA members involved in transactions in U.S. Treasury Securities, as defined in the TRACE rules, to report most transactions in those securities to TRACE.

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<sup>12</sup> Press Release, U.S. Department of the Treasury, Statement on Trade Reporting in the U.S. Treasury Market (May 16, 2016), [available at https://www.treasury.gov/press-center/press-releases/Pages/jl0457.aspx](https://www.treasury.gov/press-center/press-releases/Pages/jl0457.aspx) (“Treasury Press Release”). See also Press Release, U.S. Securities and Exchange Commission, Statement on Trade Reporting in the U.S. Treasury Market (May 16, 2016), [available at https://www.sec.gov/news/pressrelease/2016-90.html](https://www.sec.gov/news/pressrelease/2016-90.html).

(A) Scope of Securities

The TRACE reporting rules apply to “Reportable TRACE Transactions,” as defined in Rule 6710(c), involving “TRACE-Eligible Securities,” as defined in Rule 6710(a). Any “U.S. Treasury Security,” as defined in Rule 6710(p), is currently excluded from the definition of TRACE-Eligible Security; consequently, no trading activity by FINRA members in U.S. Treasury Securities is required to be reported to TRACE. Rule 6710(p) defines “U.S. Treasury Security” as “a security issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities.”

FINRA is proposing to amend the TRACE rules to require the reporting of transactions in all Treasuries with the exception of savings bonds.<sup>13</sup> To effectuate this requirement, the proposed rule change amends the definition of “TRACE-Eligible Security” to include U.S. Treasury Securities and amends the definition of “U.S. Treasury Security” to exclude savings bonds. The term “U.S. Treasury Securities” will therefore include all marketable Treasuries, including Treasury bills, notes, and bonds, as well as separate principal and interest components of a U.S. Treasury Security that have been separated pursuant to the Separate Trading of Registered Interest and Principal of

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<sup>13</sup> Unlike other Treasuries, savings bonds issued by the Treasury Dept. are generally non-transferable and are therefore not marketable securities purchased and sold in the secondary market. See, e.g., 31 CFR 353.15 (providing that Series EE and Series HH “[s]avings bonds are not transferable and are payable only to the owners named on the bonds, except as specifically provided in these regulations and then only in the manner and to the extent so provided”); see also 31 CFR 360.15 (establishing the same transfer provisions for Series I savings bonds).



Securities (STRIPS) program operated by the Treasury Dept.<sup>14</sup> Because Money Market Instruments are excluded from the definition of TRACE-Eligible Security, the proposed rule change also amends the definition of “Money Market Instrument” to exclude U.S. Treasury Securities, including U.S. Treasury bills, which have maturities of one year or less, and therefore any U.S. Treasury Security, including U.S. Treasury bills, would be TRACE reportable under the proposed rule change.<sup>15</sup>

(B) Reportable Transactions

In general, any transaction in a TRACE-Eligible Security is a “Reportable TRACE Transaction” unless the transaction is subject to an exemption.<sup>16</sup> Consequently,

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<sup>14</sup> The STRIPS program is a program operated by the Treasury Dept. under which eligible securities are authorized to be separated into principal and interest components and transferred separately. See 31 CFR 356.2; see generally 31 CFR 356.31 (providing details on how the STRIPS program works).

<sup>15</sup> See 31 CFR 356.5(a). Rule 6710(o) defines a “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 paragraph (k), or a Government-Sponsored Enterprise, as defined in paragraph (n), a maturity of one calendar year and one day or less.”

<sup>16</sup> For purposes of the trade reporting rules, FINRA considers a “trade” or a “transaction” to entail a change of beneficial ownership between parties. See, e.g., Securities Exchange Act Release No. 74482 (March 11, 2015), 80 FR 13940, 13941 (March 17, 2015) (Order Approving SR-FINRA-2014-050) (noting that, in the context of TRACE reporting, “[b]ecause the transaction between the member and its non-member affiliate represents a change in beneficial ownership between different legal entities, it is a reportable transaction and is publicly disseminated under the current rule”); Trade Reporting Frequently Asked Questions, Q100.4, available at <http://www.finra.org/industry/trade-reporting-faq#100> (defining “trade” and “transaction” for purposes of the equity trade reporting rules as a change in beneficial ownership). For this reason, although trading a principal or interest component of a U.S. Treasury Security that has been separated under the STRIPS program would constitute a Reportable TRACE Transaction, the act of separating or reconstituting the components of a U.S. Treasury Security under the STRIPS program would not constitute a Reportable TRACE Transaction. FINRA is proposing to adopt Supplementary Material .05 to Rule 6730 to clarify the reporting obligations in this scenario.

unless specifically exempted, the proposed rule change would define all transactions in U.S. Treasury Securities as “Reportable TRACE Transactions,” and therefore subject to TRACE reporting requirements. As is currently the case with all TRACE reporting obligations, any member that is a “Party to a Transaction” in a TRACE-Eligible Security is required to report the transaction; thus, a reportable transaction in U.S. Treasury Securities between two FINRA members must be reported by both members.<sup>17</sup>

Rule 6730(e) currently includes six exemptions from the TRACE trade reporting requirements for certain types of transactions. The proposed rule change amends Rule 6730(e) to exempt from the reporting requirement purchases by a member from the Treasury Dept. as part of an auction. All U.S. Treasury Securities reportable to TRACE are offered to the public by the Treasury Dept. through an auction process.<sup>18</sup> When-issued trading in these securities, however, which would be reportable under the proposed rule change, can begin before the auction takes place after the Treasury Dept. announces an auction.<sup>19</sup>

The proposed rule change includes three new definitions for “Auction,” “Auction Transaction,” and “When-Issued Transaction” to address members’ reporting obligations

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<sup>17</sup> See Rule 6730(a), (b)(1). The term “Party to a Transaction” is defined in Rule 6710(e) as “an introducing broker, if any, an executing broker-dealer, or a customer.” For purposes of the definition, the term “customer” includes a broker-dealer that is not a FINRA member. See Rule 6710(e).

<sup>18</sup> The regulations governing the sale and issuance of these Treasuries, as well as the auction process, are set forth in Part 356 of Title 31 of the Code of Federal Regulations.

<sup>19</sup> See Kenneth D. Garbade and Jeffrey F. Ingber, The Treasury Auction Process: Objectives, Structure, and Recent Adaptations, 11 Current Issues in Econ. & Fin., Feb. 2005, at 2, available at [https://www.newyorkfed.org/research/current\\_issues/ci11-2.html](https://www.newyorkfed.org/research/current_issues/ci11-2.html).

involving when-issued trading activity and purchases directly from the Treasury Dept. as part of an auction. The proposed rule change amends Rule 6730(e) to exempt an “Auction Transaction,” defined as the purchase of a U.S. Treasury Security in an Auction,<sup>20</sup> from the TRACE reporting requirements. FINRA is proposing to exempt Auction Transactions from the reporting requirements because this transaction data is already maintained by the Treasury Dept. as part of the auction process and is readily accessible to regulators; therefore, reporting these transactions to TRACE would be duplicative and provide limited additional benefit to regulators. When-issued transactions, however, are not currently reported to the Treasury Dept., and the proposed rule change would require members to report “When-Issued Transactions,” defined as “a transaction in a U.S. Treasury Security that is executed before the Auction for the security.”

The proposed rule change also amends the list of exempted transactions in Rule 6730(e) to codify a long-standing interpretation for all TRACE-Eligible Securities that repurchase and reverse repurchase transactions are not reportable to TRACE.<sup>21</sup> Although repurchase and reverse repurchase transactions are structured as purchases and sales, the transfer of securities effectuated as part of these transactions is not made as the result of an investment decision but, rather, is more akin to serving as collateral pledged as part of a secured financing. Consequently, repurchase and reverse repurchase transactions are

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<sup>20</sup> The proposed rule change defines an “Auction” as “the bidding process by which the U.S. Department of the Treasury sells marketable securities to the public pursuant to Part 356 of Title 31 of the Code of Federal Regulations.” See 31 CFR 356.2.

<sup>21</sup> See Reporting of Corporate and Agencies Debt Frequently Asked Questions, Question 4.6, available at <http://www.finra.org/industry/faq-reporting-corporate-and-agencies-debt-frequently-asked-questions-faq>.

economically equivalent to financings, and the pricing components of these transactions are typically not the market value of the securities. For these reasons, historically, FINRA has taken the position that repurchase and reverse repurchase transactions should not be reported to TRACE and is proposing to codify this exemption as part of the proposed rule change.

The proposed rule change would require Reportable TRACE Transactions in U.S. Treasury Securities generally to be reported on the same day as the transaction on an end-of-day basis. Because FINRA is not currently proposing to disseminate any trade-level information to the public regarding transactions in U.S. Treasury Securities, the proposed rule change generally imposes a same-day reporting requirement as opposed to a more immediate requirement, such as 15 minutes. Under the proposed amendments to Rule 6730, Reportable TRACE Transactions in U.S. Treasury Securities executed on a business day at or after 12:00:00 a.m. Eastern Time through 5:00:00 p.m. Eastern Time must be reported the same day during TRACE System Hours.<sup>22</sup> Transactions executed on a business day after 5:00:00 p.m. Eastern Time but before the TRACE system closes must be reported no later than the next business day (T + 1) during TRACE System Hours, and, if reported on T + 1, designated “as/of” and include the date of execution. Transactions executed on a business day at or after 6:30:00 p.m. Eastern Time through 11:59:59 p.m. Eastern Time—or on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day (determined using Eastern Time)—must be reported the next business day (T + 1) during TRACE System Hours, designated “as/of,” and include the date of execution.

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<sup>22</sup> TRACE System Hours are currently 8:00:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time on a business day. See Rule 6710(t).

(C) Reportable Transaction Information

Rule 6730(c) lists the following transaction information that must be reported to TRACE for each Reportable TRACE Transaction:

- (1) CUSIP number or, if a CUSIP number is not available at the Time of Execution, a similar numeric identifier or a FINRA symbol;
- (2) The size (volume) of the transaction, as required by Rule 6730(d)(2);
- (3) Price of the transaction (or the elements necessary to calculate price, which are contract amount and accrued interest) as required by Rule 6730(d)(1);
- (4) A symbol indicating whether the transaction is a buy or a sell;
- (5) Date of Trade Execution (for “as/of” trades only);
- (6) Contra-party’s identifier (MPID, customer, or a non-member affiliate, as applicable);
- (7) Capacity — Principal or Agent (with riskless principal reported as principal);
- (8) Time of Execution;
- (9) Reporting side executing broker as “give-up” (if any);
- (10) Contra side Introducing Broker in case of “give-up” trade;
- (11) The commission (total dollar amount);
- (12) Date of settlement; and
- (13) Such trade modifiers as required by either the TRACE rules or the TRACE users guide.

The proposed rule change would generally apply the existing information requirements for Reportable TRACE Transactions to trade reports in Reportable TRACE Transactions in U.S. Treasury Securities; however, FINRA is proposing several

amendments to Rule 6730 to clarify how some of this information would be reported if the transaction involves a U.S. Treasury Security. First, the proposed rule change amends Rule 6730 to clarify that, because when-issued trading is based on yield rather than on price as a percentage of face or par value, members should report the yield in lieu of the price when the transaction is a When-Issued Transaction, as defined in the TRACE rules. The proposed amendments also make clear that, as is the case whenever price is reported for a transaction executed on a principal basis, the yield reported by a member for a When-Issued Transaction must include any mark-up or mark-down. If the member, however, is acting in an agency capacity, the total dollar amount of any commission must be reported separately.

Second, the proposed rule change would require reporting of a more precise time of execution for transactions in U.S. Treasury Securities that are executed electronically. A significant portion of the trading activity in the U.S. Treasury cash market is conducted on electronic platforms. As noted in the RFI, inter-dealer trading in the cash market increasingly makes use of electronic platforms operated by inter-dealer brokers, and “a significant portion of trading in the dealer-to-customer market occurs on platforms that facilitate the matching of buy and sell orders primarily through request for quote (“RFQ”) systems.”<sup>23</sup> Because many of these electronic platforms capture timestamps in sub-second time increments, FINRA is proposing new Supplementary Material .04 to Rule 6730 that would require that, when reporting transactions in U.S. Treasury Securities executed electronically, members report the time of execution to the finest increment of time captured in the member’s system (e.g., milliseconds or microseconds) but, at a

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<sup>23</sup> RFI Notice, supra note 9, at 3928.

minimum, in increments of seconds. FINRA is not requiring members to update their systems to comply with a finer time increment; rather, the proposed rule change would simply require members to report the time of execution to TRACE in the same time increment the member's system captures.<sup>24</sup>

Finally, FINRA is proposing a new trade indicator and two new trade modifiers that reflect unique attributes of the U.S. Treasury cash market. The proposed rule change would establish a new trade indicator for any Reportable TRACE Transaction in a U.S. Treasury Security that meets the definition of "When-Issued Transaction." Such an indicator is necessary so that FINRA can readily determine whether price is being reported on the transaction based on a percentage of face or par value or whether, as required for When-Issued Transactions, the member is reporting the yield. The indicator would also be used to validate trades in a U.S. Treasury Security that are reported with an execution date before the auction for the security has taken place.

In addition to the new indicator, the proposed rule change would require the use of two new modifiers when applicable to reported transactions. Because individual transactions in U.S. Treasury Securities are often executed as part of larger trading strategies, individual transactions undertaken as part of these strategies can often be priced away from the current market for legitimate reasons. FINRA is proposing two new modifiers to indicate particular transactions that are part of larger trading strategies. First, the proposed rule change would require that members append a ".B" modifier to a

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<sup>24</sup> FINRA rules governing trade reporting of equity securities currently require members to report time to the millisecond if the member captures time to that level of granularity. See Rule 6380A, Supplementary Material .04; Rule 6380B, Supplementary Material .04; Rule 6622, Supplementary Material .04; see also Regulatory Notice 14-21 (May 2014).

trade report if the transaction being reported is part of a series of transactions where at least one of the transactions involves a futures contract (e.g., a “basis” trade). Second, the proposed rule change would require that members append an “.S” modifier to a trade report if the transaction being reported is part of a series of transactions where at least one of the transactions is executed at a pre-determined fixed price or would otherwise result in the transaction being executed away from the current market (e.g., a fixed price transaction in an “on-the-run” security as part of a transaction in an “off-the-run” security). These modifiers would allow FINRA to better understand and evaluate execution prices for specific transactions in U.S. Treasury Securities that may otherwise appear aberrant because they are significantly outside of the price range for that security at that time. Among other things, FINRA believes that these modifiers could reduce the number of false positive results that could be generated through automated surveillance patterns that include the price as part of the pattern.

(D) Other Amendments

The proposed rule change amends Rule 6750 regarding the dissemination of transaction information reported to TRACE. As indicated by numerous commenters to the RFI, there is substantial disagreement as to the potential benefits of public dissemination of information on transactions in U.S. Treasury Securities. Many commenters expressed concerns about public dissemination of these transactions, and these concerns are heightened when some, but not all, market participants are reporting transactions. Consequently, at this time, FINRA is not proposing to disseminate information on transactions in U.S. Treasury Securities, and the proposed rule change



amends Rule 6750(b) to add transactions in U.S. Treasury Securities to the list of transactions for which information will not be disseminated.

The proposed rule change also amends two fee provisions in the FINRA rules to reflect the fact that, initially, FINRA will not be charging transaction-level fees on transactions in U.S. Treasury Securities reported to TRACE. First, the proposed rule change amends Section 1(b)(2) of Schedule A to the FINRA By-Laws to exclude transactions in U.S. Treasury Securities from the Trading Activity Fee (“TAF”). Second, the proposed rule change amends Rule 7730 to exclude transactions in U.S. Treasury Securities from the TRACE transaction reporting fees. However, because FINRA will incur costs to expand the TRACE system and to enhance its examination and surveillance efforts to monitor its members’ trading activity in U.S. Treasury Securities, it is considering the appropriate long-term funding approach for the program and will analyze potential fee structures once it has more data relating to the size and volume of U.S. Treasury Security reporting.

Finally, the proposed rule change amends Rule 0150 to add the FINRA Rule 6700 Series to the list of FINRA rules that apply to “exempted securities,” except municipal securities.

As noted in Item 2 of this filing, 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 365 days following Commission approval.<sup>25</sup>

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<sup>25</sup> FINRA anticipates staggering the implementation dates so that the general reporting requirement is implemented before members are required to include the trade modifiers described above. Specific implementation dates will be announced in the Regulatory Notice.

FINRA understands that providing sufficient lead-time between the publication of technical specification and the implementation date is critical to firms' ability to meet the announced implementation date; FINRA will work to publish technical specifications as soon as possible after SEC approval of the proposed rule change.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>26</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. Prior to 1993, Section 15A(f) of the Act imposed limitations on a registered security association's ability to adopt rules applicable to transactions in exempted securities;<sup>27</sup> however, the Government Securities Act Amendments of 1993 ("GSAA")

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<sup>26</sup> 15 U.S.C. 78o-3(b)(6).

<sup>27</sup> Before 1986, Section 15A(f) of the Act provided that "[n]othing in this section shall be construed to apply with respect to any transaction by a broker or dealer in any exempted security." See 15 U.S.C. 78o-3 (historical notes). In 1986, the Government Securities Act of 1986 ("GSA") established a federal system for the regulation of brokers and dealers who transact business in government securities and certain other exempted securities. See Government Securities Act of 1986, Pub. L. No. 99-571, 100 Stat. 3208 (1986). The GSA, among other things, amended Section 15A(f) to provide that, "[e]xcept as provided in paragraph (2) of this subsection, nothing in this section shall be construed to apply with respect to any transaction by a registered broker or dealer in any exempted security." See Government Securities Act of 1986, Pub. L. No. 99-571, §102(g)(1), 100 Stat. 3208 (1986). Paragraph (f)(2), which was added by the GSA, provided that a registered securities association could adopt and implement rules with respect to exempted securities to (1) enforce members' compliance with the relevant provisions of the Act and rules and regulations thereunder, (2) adequately discipline its members, (3) inspect members' books and records, and (4) prohibit fraudulent, misleading, deceptive and false advertising. Id.

eliminated these statutory limitations.<sup>28</sup> FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(9) of the Act,<sup>29</sup> which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate. FINRA believes that the proposed rule change creates an effective structure for FINRA members to report transactions in U.S. Treasury Securities so that transaction information is available to regulators. FINRA believes the proposed reporting requirements will significantly enhance its, and other regulators', ability to review transactions in U.S. Treasury Securities to identify trading activity that may violate applicable laws or regulations. FINRA believes that leveraging the existing TRACE structure and reporting model will reduce the burdens on firms to comply with the new reporting obligations, thus making the implementation more efficient.

#### **4. 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.

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<sup>28</sup> See Government Securities Act Amendments of 1993, Pub. L. No. 103-202, §106(b)(1), 107 Stat. 2344 (1993). See also NASD Notice to Members 96-66 (October 1996); Securities Exchange Act Release No. 37588 (August 20, 1996), 61 FR 44100 (August 27, 1996) (Order Approving File No. SR-NASD-95-39). Although the GSAA also included a provision explicitly prohibiting the SEC from adopting regular reporting requirements, the GSAA included no such prohibition on FINRA. See Government Securities Act Amendments of 1993, Pub. L. No. 103-202, §103(a), 107 Stat. 2344 (1993).

<sup>29</sup> 15 U.S.C. 78o-3(b)(9).

Economic Impact Assessment

(a) Need for the Rule

As discussed above, the official sector does not currently receive any regular reporting of Treasury cash market transactions following auction. There is no central database reflecting the trading activities in the market of Treasuries. Recent events such as the anomalous price behavior of October 15, 2014 have showcased the need for a thorough review of the market structure by the official sector. The data collected under the proposed rule change will enable FINRA to enhance monitoring and enforcement of best execution and other broker-dealer obligations regarding transactions in Treasuries. The data will also be necessary for the official sector to conduct comprehensive market surveillance for Treasuries. As summarized by the RFI: “The need for more comprehensive official sector access to data, particularly with respect to U.S. Treasury cash market activity, is clear.”<sup>30</sup>

(b) Economic Baseline

The proposed rule change would impose reporting requirements on Treasury cash market participants that are FINRA members, extending with some modification the TRACE reporting requirements to transactions in U.S. Treasury Securities.<sup>31</sup> The current Treasury cash market structure serves as an economic baseline to assess the potential impacts on FINRA members, non-FINRA members, trading venues and investors. In an effort to rely to the extent possible on empirical evidence, much of the description of current activities relies on public evidence, primarily collected by regulators for a period

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<sup>30</sup> RFI Notice, supra note 9, at 3931.

<sup>31</sup> TRACE currently covers corporate debt securities, agency debentures, asset- and mortgage-backed securities.

preceding and including the October 15, 2014 event. This information is, in some cases, more than two years old and may not reflect current practices. These data are supplemented by discussions with a wide range of market participants.

(i) Overview of Treasury Cash Market

Broadly, the secondary markets for Treasuries can be categorized into two segments: cash and futures. The Treasury cash market has been bifurcated between the inter-dealer market, in which dealers trade with one another, and the dealer-to-customer market, where customers may include asset managers, pension funds, insurance companies, and corporations.<sup>32</sup> The daily trading volume in the U.S. Treasury cash market was estimated to be \$510 billion for the first two weeks of April 2014 and \$1,214 billion on October 15, 2014, when trading volume reached a record high.<sup>33</sup> The inter-dealer market accounted for approximately 45% of the trading volume for the first two weeks of April 2014 and 53% for October 15, 2014.<sup>34</sup> Traders in the cash market seek to establish positions as an investment and an effective hedge for other positions. Trading in the cash market also reflects short term funding activities, in the form of repurchase agreements. Trading strategies may also include simultaneous trades of different cash

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<sup>32</sup> As discussed further below, firms in the inter-dealer market can be grouped into several broad categories: bank dealer, non-bank dealer, hedge fund, asset manager, and PTFs. They may or may not be FINRA members. See JSR, supra note 5, at 12.

<sup>33</sup> See Federal Reserve Bank of New York, Michael Fleming, Frank Keane and Ernst Schaumburg, Primary Dealer Participation in the Secondary U.S. Treasury Market, Liberty Street Economics, February 12, 2016 (“Primary Dealer Participation”) available at <http://libertystreeteconomics.newyorkfed.org/2016/02/primary-dealer-participation-in-the-secondary-us-treasury-market.html#.V4hpXvkrJD8>.

<sup>34</sup> Id.

Treasury securities or cash and futures in order to hedge interest rate risk or arbitrage away small pricing discrepancies.

The inter-dealer market is dominated by automated trading, sometimes in large volumes and at high speed. The primary locations for price discovery in the Treasury cash market are the electronic trading platforms BrokerTec and eSpeed, which utilize a central limit order book (“CLOB”) protocol.<sup>35</sup> These platforms are operated by broker-dealers or affiliates of broker-dealers that are registered with the SEC and are FINRA members. In the inter-dealer market, the majority of trading occurs in the most recently issued Treasuries, known as “on-the-run” securities. While on-the-runs are the most actively traded Treasuries, likely accounting for more than half of total daily trading volumes, they make up less than 5% of outstanding marketable Treasuries.<sup>36</sup>

The dealer-to-customer market has less visibility to regulators and many market participants. In contrast to the inter-dealer market, a significant portion of trading in the dealer-to-customer market occurs on platforms that facilitate the matching of buy and sell orders primarily through request for quote (“RFQ”) systems. These platforms are increasingly electronic, but are generally not conducive to high frequency trading strategies.<sup>37</sup> The major RFQ platforms for Treasuries are TradeWeb and Bloomberg.<sup>38</sup>

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<sup>35</sup> RFI Notice, supra note 9, at 3929.

<sup>36</sup> Chris Cameron, James Clark and Gabriel Mann, Examining Liquidity in On-the-Run and Off-the-Run Treasury Securities, Treasury Notes (blog) (May 20, 2016), available at <https://www.treasury.gov/connect/blog/Pages/Examining-Liquidity-in-On-the-Run-and-Off-the-Run-Treasury-Securities.aspx>.

<sup>37</sup> RFI Notice, supra note 9, at 3928.

<sup>38</sup> See Federal Reserve Bank of New York, Ernst Schaumburg, A Preliminary Look at Dealer-to-Customer Markets on October 15, 2014, presented at the conference of the Evolving Structure of the U.S. Treasury Market (October 20-21, 2015)

Much of the dealer-to-customer activity still takes place over the phone (voice). An ad hoc survey of trading activity of the largest dealers, estimated to represent more than half of overall dealer-to-customer activity, revealed that voice trading remains an important protocol for executing customer trades.<sup>39</sup> An estimated 62% of this dealer-to-customer trading volume still takes place over the phone on normal trading days, with the remaining 38% occurring via RFQ systems.<sup>40</sup> The dealer-to-customer market serves an important role in liquidity provision for older, “off-the-run” issues and other less liquid securities. For example, the average daily trading volume on TradeWeb and Bloomberg was estimated to be \$22 billion for on-the-runs and \$25 billion for off-the-runs during April 2-17, 2014.<sup>41</sup>

(ii) Treasury Cash Market Participants

As reported by the JSR, participants of the inter-dealer market can be grouped into several broad categories based on their business model and corporate structure: bank-dealer, non-bank dealer, hedge fund, asset manager, and PTFs.<sup>42</sup> PTFs are

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(“Preliminary Look”) available at <https://www.newyorkfed.org/medialibrary/media/newsevents/events/markets/2015/October-15-Dealer-to-Customer-Analysis.pdf>.

<sup>39</sup> See Primary Dealer Participation, supra note 33.

<sup>40</sup> See Primary Dealer Participation, supra note 33.

<sup>41</sup> See Preliminary Look, supra note 38.

<sup>42</sup> See JSR, supra note 5, at 12. When referring to findings from the JSR or other source material citing to the JSR, this filing relies on the entity definitions in the JSR. In its description of market participants, the JSR does not attempt to separate FINRA-member broker-dealers from other participants. Bank-dealers include FINRA members, their affiliates and dealers supervised by federal or state banking regulators. Elsewhere, this filing refers to FINRA-member broker dealers as firms, FINRA members or broker-dealers and other dealers as bank-regulated dealers.

increasingly prevalent and now account for the majority of trading and standing quotes in the order book of the inter-dealer cash market.<sup>43</sup> By contrast, bank-dealers still account for a majority of secondary cash market trading overall (when including dealer-to-customer trading), but they constitute well under half of the trading and quoting activity in the inter-dealer cash market.<sup>44</sup> For example, in the inter-dealer market on October 15, 2014, PTFs accounted for more than 50% of the total trading volume across various maturities in the cash market, while bank-dealers accounted for roughly 30 to 40% of volume in the cash market.<sup>45</sup>

When asked, market participants offer a wide range of estimates of the percentage of cash market activities conducted by FINRA members in the Treasury market. These estimates range from 25%-65% of the dollar volume, with most participants indicating that broker-dealers remain particularly active in on-the-run trading.

While bank-dealers may account for a minority share of trading volume in the inter-dealer market, they trade significant volume directly with their customers. The Federal Reserve Bank of New York designated 23 primary dealers to serve as trading counterparties in its implementation of monetary policy.<sup>46</sup> These primary dealers are included in the bank-dealer category of the JSR. Data reported to the Federal Reserve

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<sup>43</sup> See James Clark and Gabriel Mann, A Deeper Look at Liquidity Conditions in the Treasury Market, Treasury Notes (blog) (May 6, 2016), available at <https://www.treasury.gov/connect/blog/Pages/A-Deeper-Look-at-Liquidity-Conditions-in-the-Treasury-Market.aspx>.

<sup>44</sup> Id. The article cites the JSR and does not attempt to separate FINRA members from dealers supervised by federal or state banking regulators.

<sup>45</sup> See JSR, supra note 5, at 21.

<sup>46</sup> See Federal Reserve Bank of New York, Primary Dealers List, available at [https://www.newyorkfed.org/markets/pridealers\\_current.html](https://www.newyorkfed.org/markets/pridealers_current.html).



Bank of New York by the primary dealers show that over the first three quarters of 2015, average daily activity of these dealers in the dealer-to-customer market was \$292 billion.<sup>47</sup> Out of the 23 primary dealers, 21 are broker-dealer FINRA members and would be subject to the proposed reporting requirements. FINRA understands that bank holding companies that also include a broker-dealer affiliate typically conduct the majority of the trading through the broker-dealer. The bank-regulated dealer's activities are typically limited to investment for its own portfolios or for hedging purposes. In addition, the broker-dealer affiliate may enter repurchase agreement transactions with the bank-regulated dealer, and the bank-regulated dealer then reverses the Treasuries out to its customers.

To assess the potential impact of the proposed rule change, it may also be useful to examine the proportion of government securities brokers ("GSBs") or government securities dealers ("GSDs") that would be subject to the proposed reporting requirements. GSBs and GSDs are designations used by FINRA and bank regulators for regulated entities acting as brokers or dealers in the government securities markets. Approximately 1,260 FINRA members identified themselves as GSBs or GSDs on Form BD.<sup>48</sup> FINRA understands that there are at least 23 non-FINRA members that registered as GSDs with their respective federal banking regulators. These entities are regulated by the Office of

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<sup>47</sup> See Primary Dealer Participation, *supra* note 33.

<sup>48</sup> General-purpose broker-dealers that conduct a government securities business must note this activity on their Form BD if it accounts for at least 1% of annual revenue from the securities or investment advisory business. It is possible that some broker-dealers trade government securities in small sizes without self-identifying as GSBs or GSDs.

the Comptroller of the Currency (19 firms), the Federal Reserve (three firms), or the Federal Deposit Insurance Corporation (one firm).

(c) Economic Impacts

(i) Benefits

The primary benefits from the proposed rule change arise from better monitoring of the Treasuries markets and participants by regulators. As discussed above, the primary locations for price discovery in the Treasury cash market are FINRA members, and transactions on those platforms would be subject to the proposed reporting requirements. Therefore, the proposed data collection is expected to capture a significant portion of transactions in the inter-dealer Treasury cash market. Further, since 21 of the 23 primary dealers are FINRA members, the data collection will shed light on the less transparent dealer-to-customer market and the trading of less liquid off-the-run securities. The data will improve the official sector's general monitoring and surveillance capabilities, including those designed to detect disruptive trading practices or risks to market stability. The proposed rule change will assist in the analysis of specific market events or trends, and provide regulators with the data to better evaluate how policy decisions may be expected to impact the market. Collectively, these should strengthen the Treasury cash market microstructure, reduce manipulative activities, and enhance investor protection. Moreover, the proposed data collection will permit FINRA to better monitor for compliance with its own rules. FINRA believes that using the existing TRACE reporting infrastructure is an efficient and cost effective mechanism to collect the data.

(ii) Potential Direct Costs

FINRA understands that the proposed rule change is associated with potential direct and indirect costs. Direct costs would be born primarily by FINRA-member firms with new reporting obligations or the clearing firms or other service providers who would report on their behalf.

The technical and operational costs associated with reporting Treasury cash market transactions are likely to vary across firms. For FINRA-member firms that are already reporting to TRACE, the costs associated with reporting U.S. Treasury Security transactions may be more limited. Within FINRA members that would be required to report Treasury cash market transactions, some are already reporting transactions in TRACE-Eligible Securities. These firms may be able to use or otherwise leverage the TRACE infrastructure and the associated compliance framework for U.S. Treasury Securities and reduce costs associated with the proposed rule change. For example, out of the FINRA members that identified themselves as GSBs or GSDs on Form BD, more than 70% had TRACE reporting activities between June 2015 and May 2016. Based on conversations with market participants, some current TRACE reporters will have much higher volume of reported transactions.

Based on the review of TRACE reporting for the year June 2015 through May 2016, FINRA identified 338 FINRA-member firms registered as GSBs or GSDs with no reported TRACE transactions. FINRA does not have any data to measure the extent of these firms' activities in the Treasury market today. For these firms that are active in the Treasury cash market but currently not subject to TRACE reporting requirements, the costs may be more significant as the firms will need to develop new reporting systems or

enter into agreements with third parties to report and to develop and maintain regulatory compliance programs with respect to the new reporting requirements.

The larger inter-dealer platforms have indicated to FINRA that the operational challenges with collecting and delivering trade reporting may be material but not unduly large. A potential challenge for some platforms may be to update and maintain counterparty identification systems to meet the reporting requirements.

For introducing firms, FINRA understands that clearing firms and service providers will be able to offer regulatory reporting in U.S. Treasury Securities as they do currently for TRACE-Eligible Securities. Introducing firms may need to enhance their systems to provide the additional information necessary to complete a trade report. FINRA understands that these firms will also incur additional service costs, typically based on the trade volume reported on their behalf.

The new modifiers may introduce additional complexity to the proposed reporting, as traders at FINRA-member firms must apply the modifiers correctly and consistently to ensure meaningful data collection. Larger firms indicated that Treasuries are typically traded across many desks within the firm and this increases compliance costs because the new modifiers need to be identified by individual traders, as they are uniquely situated to know whether a specific trade is associated with a cross-instrument strategy that would require the modifier. Some firms also suggested that it may be difficult for a trader to know at the time of a trade whether it is part of a cross-instrument strategy, thus increasing complexity and their regulatory risk. Moreover, some firms indicated to FINRA that the costs associated with the expansion of current systems to accommodate the proposed new trade indicator and modifiers may be substantial.

FINRA notes that it plans to phase in the modifiers to simplify the immediate implementation of the proposed rule change and provide firms additional time to make the necessary changes to implement the new modifiers.

Based on conversations with market participants, another potential challenge for some firms is to update their systems to meet the requirement that the yield reported by a member for a When-Issued Transaction must include any mark-up or mark-down. FINRA understands that there may be differences in current practices as to whether mark-ups and mark-downs are captured at the time of a When-Issued Transaction. Those firms that do not currently capture this information will incur additional costs in meeting this condition of the proposed rule.

Finally, all FINRA-member firms subject to the proposed rule change would need to establish policies and procedures and monitor ongoing reporting activities to ensure compliance with the reporting requirements.

The proposed rule change does not contemplate any direct assessments to firms reporting U.S. Treasury Security transactions to TRACE, as is required for other TRACE reportable events. But FINRA notes that it may seek to collect transaction or other forms of fees from reporting firms in the future, subject to a separate rule filing with the SEC.

(iii) Potential Indirect Costs

FINRA has identified several sources of potential indirect costs. Although the data collection is expected to capture a significant portion of the Treasury cash market, not all participants in this market are FINRA members, and this fact may impact the proposed rule change in different ways. First, the official sector may not be able to obtain a complete picture of Treasury cash market activities, thereby potentially limiting

the benefits of the proposed rule change. Specifically, the proposed rule change only requires that FINRA-member firms be identified uniquely in the trade report. Thus, regulators would not be able to assign trading activity directly or uniquely to other market participants or reasonably estimate positions in government securities to those firms. This impediment may be mitigated by the authorities of regulators, particularly bank regulators, to monitor the activities of market participants under their immediate jurisdictions. But, FINRA notes that some PTFs and hedge funds do not have a primary prudential regulator, although regulators can gather identity and trading information of PTFs and hedge funds directly from the market participants under their jurisdiction.

Second, the proposed reporting requirements may create competitive disadvantage for FINRA members. This disadvantage may arise in several related contexts. First, the proposed rule change would impose operational and compliance costs avoided by some competitors. Second, regulators will have a greater ability to monitor the Treasury cash market activity of those firms uniquely identified in TRACE reporting. These firms' Treasury trading may face higher regulatory scrutiny than firms not so identified or lacking a primary prudential regulator. These firms may incur greater costs in responding to regulators' inquiries and other compliance-related activities. Firms reporting to TRACE might also find that dealers that are not required to report their transactions in U.S. Treasury Securities may try to leverage the lack of reporting as a competitive advantage with customers. Customers may migrate their business from FINRA-member firms to other dealers if they believe there is value to avoiding surveillance. Further, even FINRA-member firms may seek to migrate their government

securities business to affiliates that are not FINRA members if they determine there is a net benefit to do so.

However, as noted above, the Treasury Dept. stated that it would develop a plan for collecting similar data from non-FINRA members active in the Treasury cash market. In addition, FINRA understands from market participants that these competitive impacts are likely small. For instance, market participants do not generally believe that regulatory reporting, by itself, would lead non-reporters to shift inter-dealer trading out of the large inter-dealer platforms in order to avoid reporting. The access to deep liquidity and the ability to transact when desired are deemed to be more valuable than the gain from anonymity.

The proposed rule change may also have other indirect impacts on the Treasury cash market. If the reporting costs are significant, they potentially may raise barriers to entry and reduce participation of FINRA members in the Treasury cash market. The depth of the “on the run” Treasury market, in particular, suggests that dealers face low margins in these securities, and any material additional regulatory costs may be a more significant impediment where the firm does not have extensive activity in Treasuries or can mutualize the regulatory costs through a third party provider. Moreover, depending on the competitiveness of the Treasury cash market, some FINRA-member firms may transfer the costs to customers and thereby increase transaction costs.

(d) Alternatives Considered

FINRA evaluated various options around implementing reporting as proposed. FINRA reviewed its existing reporting facilities as well as alternative options such as periodic batch-reporting and file submissions.

Given the intended coverage, FINRA determined that TRACE provided the most efficient and cost effective way of implementing the requirement for several reasons. First, the reporting structure that has been developed and implemented for other fixed income securities can be extended to U.S. Treasury Securities with minor modifications. Second, the infrastructure supporting TRACE is already in use by a significant portion of FINRA members affected by the proposal such that these members have connectivity established and currently report to the facility. In addition to the transaction reporting infrastructure itself, FINRA as well as member firms have developed supporting processes around the TRACE facility that can be leveraged, such as monitoring tools, compliance processes, and alerts.

Among other alternatives, FINRA considered other existing FINRA trade reporting facilities, including the OTC Reporting Facility and the Alternative Display Facility, that support transaction reporting for equity securities and concluded these facilities were not suitable for reporting of transactions in U.S. Treasury Securities and that TRACE, with its existing reporting protocols and framework, was preferable. FINRA also considered developing an alternative processes of collecting the information (such as batch file submissions); however, such a process would require creation and maintenance of an additional, parallel infrastructure by all affected firms as well as FINRA, providing for a costlier implementation and ongoing support. Some firms may find it more cost effective to report trades singularly throughout the day, while others may prefer providing trade reports at fixed intervals, allowing firms sufficient time to ensure the accuracy of the transaction information prior to submitting the information to



FINRA. FINRA notes that much of the benefits of batch-reporting can be achieved by providing an end-of-day reporting timeframe.

The existing TRACE reporting framework requires that if there are two FINRA members executing a trade (one as the buyer and one as the seller), both FINRA members must report. Several commenters to the RFI advocated for one-sided reporting rather than two-sided reporting. FINRA determined that maintaining the two-sided reporting framework is preferable and will allow FINRA to compare the information reported by each party to identify discrepancies or potential non-reporting by one party. Moreover, accommodating one-sided reporting would necessitate significant changes to the existing TRACE infrastructure that could affect all TRACE reporting firms and significantly reduce the benefits to using an existing system described above. In addition, FINRA believes the burdens to firms of two-sided reporting can be reduced because TRACE allows for one participant to report on behalf of another, provided the two parties have proper agreements in place to allow the party to report on the other party's behalf. Any such arrangements are voluntary, and each participant (including ATs) can determine if they would like to provide this service to its trading partners or subscribers.

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

Written comments on the proposed rule change were neither solicited nor received; however, the Treasury Dept. received numerous comments in response to the RFI addressing reporting requirements for transactions in Treasuries. Fifty-two

comments were submitted. Approximately 30 letters addressed reporting to the official sector or public dissemination.<sup>49</sup>

As noted above, Section III of the RFI emphasized the need for more comprehensive official sector access to transaction data for Treasuries and requested comment on the types of data that should be made available to the official sector regarding the Treasury cash securities market and on numerous practical considerations associated with gathering that data. The RFI noted that “[t]he need for more comprehensive official sector access to data, particularly with respect to U.S. Treasury cash market activity, is clear.”<sup>50</sup> Section III solicited views on ways to collect, aggregate, and monitor data but also included questions on additional infrastructure that would be necessary for market participants to begin reporting data, especially given the diversity of

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<sup>49</sup> The RFI Notice and all of the comment letters submitted in response to the RFI Notice are available at <https://www.regulations.gov/document?D=TREAS-DO-2015-0013-0001>. The following comment letters are specifically cited below: Letters to David R. Pearl, Office of the Executive Secretary, Treasury Dept., from Citadel LLC (April 22, 2016) (“Citadel”); Direct Match (April 22, 2016) (“Direct Match”); Federal Reserve Bank of Chicago (May 5, 2016) (“FRB Chicago”); FIA Principal Traders Group (April 22, 2016) (“FIA PTG”); ICAP plc (April 22, 2016) (“ICAP”); Investment Company Institute (April 8, 2016) (“ICI”); KCG Holdings, Inc. (April 28, 2016) (“KCG”); Andrei Kirilenko, Director, Centre for Global Finance and Technology, Imperial College Business School (April 22, 2016) (“Kirilenko”); Managed Funds Association (April 22, 2016) (“MFA”); MarketAxess Holdings, Inc. and Xtracker Ltd. (April 21, 2016) (“MarketAxess”); Modern Markets Initiative (April 22, 2016) (“MMI”); Morgan Stanley & Co. (April 22, 2016) (“Morgan Stanley”); Nasdaq, Inc. (April 22, 2016) (“Nasdaq”); Prudential Fixed Income (April 21, 2016) (“Prudential”); RBS Securities Inc. (April 22, 2016) (“RBS Securities”); SIFMA, Asset Management Group (April 22, 2016) (“SIFMA AMG”); SIFMA and American Bankers Association (April 22, 2016) (“SIFMA/ABA”); Tradeweb Markets LLC (April 22, 2016) (“Tradeweb”); Rakesh Tripathy (March 22, 2016) (“Tripathy”); Virtu Financial, Inc. (March 18, 2016) (“Virtu”); Wells Fargo & Company (April 21, 2016) (“Wells Fargo”).

<sup>50</sup> See RFI Notice, *supra* note 9, at 3931.

trading venues in the Treasury markets and the fact that trading activity in these markets “often extends beyond individual regulator boundaries.”<sup>51</sup> Section III included questions concerning the scope of potential transaction reporting obligations and market participant obligations, numerous specific questions on the mechanics of trade reporting, and questions as to whether additional data (e.g., orders, quotes) should be reported.<sup>52</sup>

Approximately 26 commenters expressed some level of support for official sector reporting. As the Treasury Dept. noted, “[t]he responses to the RFI expressed broad support for more comprehensive reporting to regulators, including nearly unanimous support for reporting additional information on Treasury cash market activity.”<sup>53</sup>

Several commenters to the RFI provided views on specific reporting requirements. Industry participants expressed the view that a single-side reporting obligation was preferable to having multiple counterparties or venues report the same transaction;<sup>54</sup> however, one commenter suggested using a two-sided reporting structure.<sup>55</sup>

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<sup>51</sup> See RFI Notice, supra note 9, at 3931-32.

<sup>52</sup> See RFI Notice, supra note 9, at 3932-33.

<sup>53</sup> Treasury Press Release, supra note 12.

<sup>54</sup> See Citadel, at 11 (suggesting that “single-sided reporting (i.e., where each transaction is only reported by one party) has proven successful in reducing complexity and data discrepancies under the CFTC’s reporting regime for swaps”); MFA, at 5 (“On a practical level, it would also be much easier, more efficient and cost-effective to implement a single-sided reporting regime that requires trading platforms and intermediaries to report transactions.”); RBS Securities, at 7 (“RBS notes that based on experience in other regulatory frameworks, bilateral reporting substantially increases the required technology and controls for compliance, with minimal additional benefit to the regulator or public.”); SIFMA AMG, at 4 (arguing that a “‘one-sided’ approach is more operationally efficient and reduces the risk of trade reporting errors”). See also FIA PTG, at 23; Prudential, at 14; Tradeweb, at 5.

<sup>55</sup> See Kirilenko, at 1.

Those commenters expressing support for single-side reporting often also suggested that trades conducted on a trading platform be reported by the trading platform rather than the counterparties;<sup>56</sup> however, this view was not unanimous.<sup>57</sup> MFA suggested that requiring all Treasury cash market participants to report “would be extremely costly and burdensome for managers/funds . . . and could deter some market participants from trading in the Treasury cash markets.”<sup>58</sup>

As noted above, the proposed rule change follows the current TRACE reporting structure requiring that any Party to the Transaction that is a FINRA Member report the transaction to TRACE; therefore, if two or more FINRA members are Parties to the Transaction, each member will have an independent obligation to report the transaction to TRACE. FINRA believes that this reporting structure helps to ensure the accuracy of reported transactions and, as a result, significantly enhances the quality of the audit trail. Although requiring multiple reports for some transactions may increase the overall number of errors, it also provides FINRA with a means to validate reports that does not exist if a single party reports the transaction. FINRA believes that the overall benefits to the audit trail of requiring multiple reports outweigh the costs, particularly since FINRA

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<sup>56</sup> See FIA PTG, at 23 (“Wherever possible, the official sector should use information provided by trading venues and depositories to support its information gathering.”); MFA, at 4 (stating their view that “reporting should be by trading platforms, dealers and market makers/principal trading firms” because these entities “are in the best position to efficiently provide streamlined data to regulators”).

<sup>57</sup> See MarketAxess, at 3 (“We would recommend placing the reporting responsibility on the counterparties to the trade rather than on the venue...so that firms have a single process, regardless of how and where the trade is executed.”).

<sup>58</sup> MFA, at 5.

is proposing to initially exempt reports in U.S. Treasury Securities from the TRACE trade reporting fees.

There was widespread support among the commenters to extend reporting obligations to all Treasury securities rather than a defined subset.<sup>59</sup> The suggested timing of submitting trade reports varied between those generally urging real-time reporting,<sup>60</sup> delayed reporting,<sup>61</sup> or a combination thereof depending upon the type of security.<sup>62</sup> As one commenter noted, the timing of trade report submission is also influenced by the purpose: reporting solely for regulatory purposes does not require the immediacy that would be necessary if post-trade market transparency were also a goal.<sup>63</sup>

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<sup>59</sup> See Citadel, at 10; FIA PTG, at 3; ICAP, at 6; MMI, at 10; Nasdaq, at 6; Prudential, at 13; Tripathy, at 5; Wells Fargo, at 5.

<sup>60</sup> See Citadel, at 10-11; Tradeweb, at 5 (“Such reporting should occur as frequently as real-time, although the implementation and phasing of any reporting requirement should be carefully evaluated with respect to the cost and the technical build required.”).

<sup>61</sup> See FIA PTG, at 30 (recognizing that, while real-time reporting may be an end goal, “a reasonable standard would target the end-of-trading-day as a starting point for reporting objectives”); MarketAxess, at 3 (“T+1 reporting is sufficient to ensure that regulators have a timely picture of market activity and that firms have sufficient time to deliver the required level of accuracy.”); Prudential, at 16.

<sup>62</sup> See Morgan Stanley, at 3 (“Timing requirements should vary based on transaction type, e.g., illiquid investments should have a longer time to report.”) Virtu, at 2 (suggesting real-time reporting for “electronically matched on-the-run trades,” five-minute reporting for manual trades, fifteen-minute reporting for “trades in excess of a specified volume threshold in on-the-run Treasuries,” and “an extended reporting window” for off-the-run Treasuries). Those in favor of real-time reporting—and generally real-time public dissemination—recognized the need for some exceptions. Citadel, for example, suggested exceptions of 15 to 30 minutes for block transactions and less liquid off-the-run securities. See Citadel, at 11.

<sup>63</sup> See MarketAxess, at 2.

As discussed above, FINRA is proposing to impose reporting obligations on all Treasuries with the exception of savings bonds, which are not generally traded in the secondary market; thus, the proposed reporting requirements would apply to all marketable Treasuries and all transactions in those securities with the exceptions of purchases in the initial auction, repurchase transactions, and reverse repurchase transactions. Because FINRA is not currently proposing to disseminate any trade-level information to the public regarding transactions in U.S. Treasury Securities, the proposed rule change generally imposes a same-day reporting requirement as opposed to a more immediate requirement, such as 15 minutes. FINRA believes an end-of-day or next-day timing requirement strikes an appropriate balance between ensuring timely access by regulators to the transaction data without imposing unnecessary requirements on reporting firms. Permitting end-of-day or next-day reporting will also provide members with additional time to submit their filings and, if necessary, make any corrections to their trade reports before submission. This flexibility will provide members with more choices in how to comply with the reporting requirements, and FINRA believes this flexibility should reduce the burdens on firms in complying with the new reporting requirements and improve the accuracy of trade reports, particularly given the high volumes in which U.S. Treasury Securities are traded.

Relatively few commenters provided views on specific elements that should be reported to the official sector. In addition to the general transaction information necessary for effective transaction reporting (e.g., security, side, size, price, time), some commenters suggested including:

- trading venue;<sup>64</sup>
- settlement date;<sup>65</sup>
- category of counterparty;<sup>66</sup>
- type of trading protocol;<sup>67</sup>
- whether the transaction was cleared;<sup>68</sup> and
- whether the trade was part of a package transaction.<sup>69</sup>

As discussed above, the proposed rule change largely extends to transactions in U.S. Treasury Securities the existing TRACE reporting fields, which include settlement date, category of counterparties, and in some cases the trading venue (e.g., alternative trading system (“ATS”) identifiers if the ATS does not also report the transaction). As

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<sup>64</sup> See Citadel, at 11; Direct Match, at 11; Morgan Stanley, at 3; Tradeweb, at 5.

<sup>65</sup> See Morgan Stanley, at 2. MarketAxess noted that settlement date is not a current field for MiFID transaction reporting in Europe but noted that a settlement date “beyond the standard settlement cycle may impact the agreed price, so there may be value in collecting that information, depending on the ultimate purpose of the reporting regime.” MarketAxess, at 4; see also FIA PTG, at 27 (noting that non-standard settlement dates may have reporting value).

<sup>66</sup> See Morgan Stanley, at 3.

<sup>67</sup> See Citadel, at 11 (suggesting examples of “voice, electronic RFQ, or CLOB [central limit order book]”).

<sup>68</sup> See Citadel, at 11.

<sup>69</sup> See Citadel, at 11. Citadel noted that common package transactions involving Treasuries include spread overs (an interest rate swap and a Treasury), curves (two Treasuries of different maturities), butterflies (three Treasuries of different maturities), and exchange for physicals (a future and a Treasury). Citadel also suggested that “to distinguish between different types of packages, data should also be collected on how many legs are associated with the specific package transaction and the instruments involved.”

noted, FINRA is proposing two new modifiers to capture information on transactions that are part of larger trading strategies. FINRA believes that, initially, the new fields and modifiers it is proposing are sufficient for surveillance and review of transaction activity; however, FINRA will monitor the information once reporting begins to determine whether additional transaction information may be needed to enhance the audit trail and its surveillance program.

Multiple commenters suggested that any reporting requirement should span across all market participants, and some commenters specifically noted the importance of regulatory cooperation, as a benefit for both regulators and for reporting firms.<sup>70</sup> FRB Chicago noted the current lack of regulation for the Treasury market and called for coordinated efforts to “harmonize the processes observed in the U.S. Treasury markets around trading, clearing and reporting requirements.”<sup>71</sup> SIFMA noted that reporting requirements “must meet the desire to provide the official sector with a comprehensive and expedient view of the markets” while also recognizing the burdens that reporting

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<sup>70</sup> See Direct Match, at 10; FRB Chicago, at 5; ICI, at 4-5; KCG, at 3; MFA, at 4; MMI, at 10; SIFMA AMG, at 3-4; SIFMA/ABA, at 10. ICI explicitly noted the benefits to both regulators and reporters:

Regulatory coordination will enhance the ability of Treasury, as well as other regulators, to conduct more comprehensive analysis and surveillance of trading in the Treasury markets by obtaining a broader view of these integrated markets, and increase regulators’ ability to obtain higher quality and more consistent data. A coordinated rulemaking effort will help minimize compliance costs for market participants, to the extent they can utilize existing reporting infrastructures and requirements to meet any new reporting obligations that Treasury may impose. ICI, at 5.

<sup>71</sup> FRB Chicago, at 5.



requirements could impose.<sup>72</sup> Similarly, MMI noted that the requirements must “cast an all-encompassing net” so that regulators have a comprehensive view of market activity and suggested that regulators “must have a complete picture of order, indicative pricing, RFQ responses and trade data across all instruments (cash and futures) all sectors (on-the-run and off-the-run) all methods (electronic and voice) and all platforms (IDBs, D2C Venues, etc.).”<sup>73</sup> Direct Match noted that lack of consistency could create regulatory arbitrage opportunities that could result in market changes.<sup>74</sup>

As noted above, after reviewing the comments, the Treasury Dept. and the SEC requested that FINRA consider a proposal to require its members to report Treasury cash market transactions to a centralized repository. FINRA has filed the proposed rule change in response to that request. Although the proposed rule change would apply only to FINRA members, the Treasury Dept. noted that it “will continue working with other agencies and authorities to develop a plan for collecting similar data from institutions who actively trade U.S. Treasury securities but are not FINRA members.”<sup>75</sup>

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<sup>72</sup> SIFMA/ABA, at 10.

<sup>73</sup> MMI, at 10. See also SIFMA AMG, at 4 (“[M]andating, establishing, and implementing an official sector reporting regime requires coordination across markets and jurisdictions.”)

<sup>74</sup> See Direct Match, at 10 (“[I]n a market as fragmented and as lightly-regulated as the one for Treasuries, the potential for adverse second order effects is substantial: in the event that regulations disadvantage a particular market segment, it is very easy for trading to move to another, or to create a new one.”).

<sup>75</sup> Treasury Press Release, supra note 12.

**6. Extension of Time Period for Commission Action**

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>76</sup>

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

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<sup>76</sup> 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2016-027)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Reporting of U.S. Treasury Securities to the Trade Reporting and Compliance Engine

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 , 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 expand the Trade Reporting and Compliance Engine (“TRACE”) reporting rules to include most secondary market transactions in marketable U.S. Treasury securities.

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.

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

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

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

(i) Background

The market in U.S. Treasury securities—or “Treasuries”<sup>3</sup>—is the deepest and most liquid government securities market in the world.<sup>4</sup> Treasuries are traded by broker-dealers as well as commercial bank dealers and principal trading firms (“PTFs”) that are

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<sup>3</sup> When used throughout this filing, the term “Treasuries” includes all debt securities issued by the U.S. Department of the Treasury, and the term “U.S. Treasury Securities” reflects the definition of that term in the TRACE Rules, which comprises a narrower group of Treasuries. See Rule 6710(p). The term “Treasuries” does not include Treasury futures, and as discussed below, the proposed rule change would not apply to transactions in Treasury futures.

<sup>4</sup> Treasuries—such as bills, notes, and bonds—are debt obligations of the U.S. government. Because these debt obligations are backed by the “full faith and credit” of the government, and thus by its ability to raise tax revenues and print currency, Treasuries are generally considered the safest of all investments. As of April 30, 2016, there was approximately \$13.4 trillion outstanding of interest-bearing marketable U.S. Treasury debt. See U.S. Department of the Treasury, Bureau of the Fiscal Service, Monthly Statement of the Public Debt, April 30, 2016, available at <http://www.treasurydirect.gov/govt/reports/pd/mspd/2016/opds042016.prn>. According to data compiled by the Securities Industry and Financial Markets Association (“SIFMA”), average daily trading volumes by primary dealers in June 2016 was estimated at slightly over \$512.5 billion. See U.S. Treasury Trading Volume, available at <http://www.sifma.org/research/statistics.aspx>.

not registered as broker-dealers with the SEC or members of FINRA. There is not currently a complete public repository or audit trail for information on transactions in Treasuries.<sup>5</sup>

On October 15, 2014, the market for Treasuries (as well as for Treasury futures and other closely-related financial markets) experienced an unusually high level of volatility and a rapid round-trip in prices. In response to the unexplained volatility, an existing interagency working group (“IAWG”) led by the U.S. Department of the Treasury (“Treasury Dept.”) analyzed both the conditions that contributed to the events of October 15 and the structure of the U.S. Treasury market more generally.<sup>6</sup> A detailed joint staff report (“JSR”), was issued on July 13, 2015, that included a set of preliminary findings on the October 15 volatility, described the current state of the U.S. Treasury market, and proposed a series of four “next steps” in understanding the evolution of the U.S. Treasury market.<sup>7</sup> Included among these “next steps” was an assessment of the data available to regulators and to the public regarding the cash market for Treasuries.<sup>8</sup>

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<sup>5</sup> See Joint Staff Report: The U.S. Treasury Market on October 15, 2014, at 9 (July 13, 2015) (“JSR”), available at <https://www.sec.gov/reportspubs/special-studies/treasury-market-volatility-10-14-2014-joint-report.pdf>. (“Several agencies under a range of authorities are responsible for regulating various components of the Treasury market and its participants.”). Transactions in Treasury futures are ultimately reported to the Commodity Futures Trading Commission (“CFTC”), which has jurisdiction over futures. See id. at 10-12.

<sup>6</sup> The IAWG consists of representatives of the Treasury Dept., the Federal Reserve Board of Governors, the Federal Reserve Bank of New York, the SEC, and the CFTC.

<sup>7</sup> See JSR, supra note 5, at 7.

<sup>8</sup> See JSR, supra note 5, at 6-7, 45-49.

Following publication of the JSR, on January 19, 2016, the Treasury Dept. published a Request for Information (“RFI”) seeking public comment on structural changes in the U.S. Treasury market and their implications for market functioning.<sup>9</sup> One of the RFI’s stated intents was to develop a holistic view of trading and risk management practices in the U.S. Treasury market, particularly in light of the evolution of the market resulting from technological advances over the past two decades, including the associated growth of high-speed electronic trading. The RFI noted that, given this evolution, “access to timely and comprehensive data across related markets is increasingly important,” and the Treasury Dept. is therefore “interested in the most efficient and effective ways for the official sector to obtain additional market data and in ways to more effectively monitor diverse but related markets.”<sup>10</sup> The RFI stated that the Treasury Dept. was also interested in “the potential benefits and costs of additional transparency with respect to Treasury market trading activity and trading venue policies and practices.”<sup>11</sup>

The RFI included four sections, each of which expanded upon one of the four “next steps” identified in the JSR, and each section included numerous questions for public consideration, ranging from broad high-level questions to detailed and specific questions on discrete issues. Section I requested comment on the evolution of the U.S. Treasury market, the primary drivers of that evolution, and implications for market

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<sup>9</sup> The RFI, which was written in consultation with the staffs of all of the agencies involved in the JSR, was published in the Federal Register on January 22, 2016. See Notice Seeking Public Comment on the Evolution of the Treasury Market Structure, 81 FR 3928 (January 22, 2016) (“RFI Notice”).

<sup>10</sup> RFI Notice, supra note 9, at 3929.

<sup>11</sup> RFI Notice, supra note 9, at 3929.

functioning and liquidity. Section II asked for information on risk management practices and market conduct across the U.S. Treasury market and on implications for operational risks and risks to market functioning and integrity. Section III requested comment on official sector access to data regarding the cash market for Treasuries. Section IV focused on whether dissemination of U.S. Treasury market transaction data to the public would be beneficial.

The comment period on the RFI closed on April 22, 2016, and 52 comment letters were submitted. As discussed below, approximately 30 of the letters addressed reporting to the official sector or public dissemination. Following receipt and review of the comment letters, on May 16, 2016, the Treasury Dept. and the SEC announced that “they are working together to explore efficient and effective means of collecting U.S. Treasury cash market transaction information[, and that as] part of those efforts, the agencies are requesting that [FINRA] consider a proposal to require its member brokers and dealers to report Treasury cash market transactions to a centralized repository.”<sup>12</sup> The Treasury Dept. noted that it “will continue working with other agencies and authorities to develop a plan for collecting similar data from institutions who actively trade U.S. Treasury securities but are not FINRA members.” The proposed rule change is FINRA’s proposal to require reporting by its members of transactions in U.S. Treasury Securities.

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<sup>12</sup> Press Release, U.S. Department of the Treasury, Statement on Trade Reporting in the U.S. Treasury Market (May 16, 2016), available at <https://www.treasury.gov/press-center/press-releases/Pages/jl0457.aspx> (“Treasury Press Release”). See also Press Release, U.S. Securities and Exchange Commission, Statement on Trade Reporting in the U.S. Treasury Market (May 16, 2016), available at <https://www.sec.gov/news/pressrelease/2016-90.html>.

(ii) Proposed Rule Change

As described below, the proposed rule change would require all FINRA members involved in transactions in U.S. Treasury Securities, as defined in the TRACE rules, to report most transactions in those securities to TRACE.

(A) Scope of Securities

The TRACE reporting rules apply to “Reportable TRACE Transactions,” as defined in Rule 6710(c), involving “TRACE-Eligible Securities,” as defined in Rule 6710(a). Any “U.S. Treasury Security,” as defined in Rule 6710(p), is currently excluded from the definition of TRACE-Eligible Security; consequently, no trading activity by FINRA members in U.S. Treasury Securities is required to be reported to TRACE. Rule 6710(p) defines “U.S. Treasury Security” as “a security issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities.”

FINRA is proposing to amend the TRACE rules to require the reporting of transactions in all Treasuries with the exception of savings bonds.<sup>13</sup> To effectuate this requirement, the proposed rule change amends the definition of “TRACE-Eligible Security” to include U.S. Treasury Securities and amends the definition of “U.S. Treasury Security” to exclude savings bonds. The term “U.S. Treasury Securities” will therefore include all marketable Treasuries, including Treasury bills, notes, and bonds, as well as

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<sup>13</sup> Unlike other Treasuries, savings bonds issued by the Treasury Dept. are generally non-transferable and are therefore not marketable securities purchased and sold in the secondary market. See, e.g., 31 CFR 353.15 (providing that Series EE and Series HH “[s]avings bonds are not transferable and are payable only to the owners named on the bonds, except as specifically provided in these regulations and then only in the manner and to the extent so provided”); see also 31 CFR 360.15 (establishing the same transfer provisions for Series I savings bonds).



separate principal and interest components of a U.S. Treasury Security that have been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program operated by the Treasury Dept.<sup>14</sup> Because Money Market Instruments are excluded from the definition of TRACE-Eligible Security, the proposed rule change also amends the definition of “Money Market Instrument” to exclude U.S. Treasury Securities, including U.S. Treasury bills, which have maturities of one year or less, and therefore any U.S. Treasury Security, including U.S. Treasury bills, would be TRACE reportable under the proposed rule change.<sup>15</sup>

(B) Reportable Transactions

In general, any transaction in a TRACE-Eligible Security is a “Reportable TRACE Transaction” unless the transaction is subject to an exemption.<sup>16</sup> Consequently,

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<sup>14</sup> The STRIPS program is a program operated by the Treasury Dept. under which eligible securities are authorized to be separated into principal and interest components and transferred separately. See 31 CFR 356.2; see generally 31 CFR 356.31 (providing details on how the STRIPS program works).

<sup>15</sup> See 31 CFR 356.5(a). Rule 6710(o) defines a “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 paragraph (k), or a Government-Sponsored Enterprise, as defined in paragraph (n), a maturity of one calendar year and one day or less.”

<sup>16</sup> For purposes of the trade reporting rules, FINRA considers a “trade” or a “transaction” to entail a change of beneficial ownership between parties. See, e.g., Securities Exchange Act Release No. 74482 (March 11, 2015), 80 FR 13940, 13941 (March 17, 2015) (Order Approving SR-FINRA-2014-050) (noting that, in the context of TRACE reporting, “[b]ecause the transaction between the member and its non-member affiliate represents a change in beneficial ownership between different legal entities, it is a reportable transaction and is publicly disseminated under the current rule”); Trade Reporting Frequently Asked Questions, Q100.4, available at <http://www.finra.org/industry/trade-reporting-faq#100> (defining “trade” and “transaction” for purposes of the equity trade reporting rules as a change in beneficial ownership). For this reason, although trading a principal or interest component of a U.S. Treasury Security that has been separated under the STRIPS program would constitute a Reportable TRACE Transaction, the act of

unless specifically exempted, the proposed rule change would define all transactions in U.S. Treasury Securities as “Reportable TRACE Transactions,” and therefore subject to TRACE reporting requirements. As is currently the case with all TRACE reporting obligations, any member that is a “Party to a Transaction” in a TRACE-Eligible Security is required to report the transaction; thus, a reportable transaction in U.S. Treasury Securities between two FINRA members must be reported by both members.<sup>17</sup>

Rule 6730(e) currently includes six exemptions from the TRACE trade reporting requirements for certain types of transactions. The proposed rule change amends Rule 6730(e) to exempt from the reporting requirement purchases by a member from the Treasury Dept. as part of an auction. All U.S. Treasury Securities reportable to TRACE are offered to the public by the Treasury Dept. through an auction process.<sup>18</sup> When-issued trading in these securities, however, which would be reportable under the proposed rule change, can begin before the auction takes place after the Treasury Dept. announces an auction.<sup>19</sup>

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separating or reconstituting the components of a U.S. Treasury Security under the STRIPS program would not constitute a Reportable TRACE Transaction. FINRA is proposing to adopt Supplementary Material .05 to Rule 6730 to clarify the reporting obligations in this scenario.

<sup>17</sup> See Rule 6730(a), (b)(1). The term “Party to a Transaction” is defined in Rule 6710(e) as “an introducing broker, if any, an executing broker-dealer, or a customer.” For purposes of the definition, the term “customer” includes a broker-dealer that is not a FINRA member. See Rule 6710(e).

<sup>18</sup> The regulations governing the sale and issuance of these Treasuries, as well as the auction process, are set forth in Part 356 of Title 31 of the Code of Federal Regulations.

<sup>19</sup> See Kenneth D. Garbade and Jeffrey F. Ingber, The Treasury Auction Process: Objectives, Structure, and Recent Adaptations, 11 *Current Issues in Econ. & Fin.*, Feb. 2005, at 2, available at [https://www.newyorkfed.org/research/current\\_issues/ci11-2.html](https://www.newyorkfed.org/research/current_issues/ci11-2.html).

The proposed rule change includes three new definitions for “Auction,” “Auction Transaction,” and “When-Issued Transaction” to address members’ reporting obligations involving when-issued trading activity and purchases directly from the Treasury Dept. as part of an auction. The proposed rule change amends Rule 6730(e) to exempt an “Auction Transaction,” defined as the purchase of a U.S. Treasury Security in an Auction,<sup>20</sup> from the TRACE reporting requirements. FINRA is proposing to exempt Auction Transactions from the reporting requirements because this transaction data is already maintained by the Treasury Dept. as part of the auction process and is readily accessible to regulators; therefore, reporting these transactions to TRACE would be duplicative and provide limited additional benefit to regulators. When-issued transactions, however, are not currently reported to the Treasury Dept., and the proposed rule change would require members to report “When-Issued Transactions,” defined as “a transaction in a U.S. Treasury Security that is executed before the Auction for the security.”

The proposed rule change also amends the list of exempted transactions in Rule 6730(e) to codify a long-standing interpretation for all TRACE-Eligible Securities that repurchase and reverse repurchase transactions are not reportable to TRACE.<sup>21</sup> Although repurchase and reverse repurchase transactions are structured as purchases and sales, the transfer of securities effectuated as part of these transactions is not made as the result of

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<sup>20</sup> The proposed rule change defines an “Auction” as “the bidding process by which the U.S. Department of the Treasury sells marketable securities to the public pursuant to Part 356 of Title 31 of the Code of Federal Regulations.” See 31 CFR 356.2.

<sup>21</sup> See Reporting of Corporate and Agencies Debt Frequently Asked Questions, Question 4.6, available at <http://www.finra.org/industry/faq-reporting-corporate-and-agencies-debt-frequently-asked-questions-faq>.

an investment decision but, rather, is more akin to serving as collateral pledged as part of a secured financing. Consequently, repurchase and reverse repurchase transactions are economically equivalent to financings, and the pricing components of these transactions are typically not the market value of the securities. For these reasons, historically, FINRA has taken the position that repurchase and reverse repurchase transactions should not be reported to TRACE and is proposing to codify this exemption as part of the proposed rule change.

The proposed rule change would require Reportable TRACE Transactions in U.S. Treasury Securities generally to be reported on the same day as the transaction on an end-of-day basis. Because FINRA is not currently proposing to disseminate any trade-level information to the public regarding transactions in U.S. Treasury Securities, the proposed rule change generally imposes a same-day reporting requirement as opposed to a more immediate requirement, such as 15 minutes. Under the proposed amendments to Rule 6730, Reportable TRACE Transactions in U.S. Treasury Securities executed on a business day at or after 12:00:00 a.m. Eastern Time through 5:00:00 p.m. Eastern Time must be reported the same day during TRACE System Hours.<sup>22</sup> Transactions executed on a business day after 5:00:00 p.m. Eastern Time but before the TRACE system closes must be reported no later than the next business day (T + 1) during TRACE System Hours, and, if reported on T + 1, designated “as/of” and include the date of execution. Transactions executed on a business day at or after 6:30:00 p.m. Eastern Time through 11:59:59 p.m. Eastern Time—or on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day

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<sup>22</sup> TRACE System Hours are currently 8:00:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time on a business day. See Rule 6710(t).

(determined using Eastern Time)—must be reported the next business day (T + 1) during TRACE System Hours, designated “as/of,” and include the date of execution.

(C) Reportable Transaction Information

Rule 6730(c) lists the following transaction information that must be reported to TRACE for each Reportable TRACE Transaction:

- (1) CUSIP number or, if a CUSIP number is not available at the Time of Execution, a similar numeric identifier or a FINRA symbol;
- (2) The size (volume) of the transaction, as required by Rule 6730(d)(2);
- (3) Price of the transaction (or the elements necessary to calculate price, which are contract amount and accrued interest) as required by Rule 6730(d)(1);
- (4) A symbol indicating whether the transaction is a buy or a sell;
- (5) Date of Trade Execution (for “as/of” trades only);
- (6) Contra-party’s identifier (MPID, customer, or a non-member affiliate, as applicable);
- (7) Capacity — Principal or Agent (with riskless principal reported as principal);
- (8) Time of Execution;
- (9) Reporting side executing broker as “give-up” (if any);
- (10) Contra side Introducing Broker in case of “give-up” trade;
- (11) The commission (total dollar amount);
- (12) Date of settlement; and
- (13) Such trade modifiers as required by either the TRACE rules or the TRACE users guide.

The proposed rule change would generally apply the existing information requirements for Reportable TRACE Transactions to trade reports in Reportable TRACE Transactions in U.S. Treasury Securities; however, FINRA is proposing several amendments to Rule 6730 to clarify how some of this information would be reported if the transaction involves a U.S. Treasury Security. First, the proposed rule change amends Rule 6730 to clarify that, because when-issued trading is based on yield rather than on price as a percentage of face or par value, members should report the yield in lieu of the price when the transaction is a When-Issued Transaction, as defined in the TRACE rules. The proposed amendments also make clear that, as is the case whenever price is reported for a transaction executed on a principal basis, the yield reported by a member for a When-Issued Transaction must include any mark-up or mark-down. If the member, however, is acting in an agency capacity, the total dollar amount of any commission must be reported separately.

Second, the proposed rule change would require reporting of a more precise time of execution for transactions in U.S. Treasury Securities that are executed electronically. A significant portion of the trading activity in the U.S. Treasury cash market is conducted on electronic platforms. As noted in the RFI, inter-dealer trading in the cash market increasingly makes use of electronic platforms operated by inter-dealer brokers, and “a significant portion of trading in the dealer-to-customer market occurs on platforms that facilitate the matching of buy and sell orders primarily through request for quote (“RFQ”) systems.”<sup>23</sup> Because many of these electronic platforms capture timestamps in sub-second time increments, FINRA is proposing new Supplementary Material .04 to Rule

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<sup>23</sup> RFI Notice, supra note 9, at 3928.

6730 that would require that, when reporting transactions in U.S. Treasury Securities executed electronically, members report the time of execution to the finest increment of time captured in the member's system (e.g., milliseconds or microseconds) but, at a minimum, in increments of seconds. FINRA is not requiring members to update their systems to comply with a finer time increment; rather, the proposed rule change would simply require members to report the time of execution to TRACE in the same time increment the member's system captures.<sup>24</sup>

Finally, FINRA is proposing a new trade indicator and two new trade modifiers that reflect unique attributes of the U.S. Treasury cash market. The proposed rule change would establish a new trade indicator for any Reportable TRACE Transaction in a U.S. Treasury Security that meets the definition of "When-Issued Transaction." Such an indicator is necessary so that FINRA can readily determine whether price is being reported on the transaction based on a percentage of face or par value or whether, as required for When-Issued Transactions, the member is reporting the yield. The indicator would also be used to validate trades in a U.S. Treasury Security that are reported with an execution date before the auction for the security has taken place.

In addition to the new indicator, the proposed rule change would require the use of two new modifiers when applicable to reported transactions. Because individual transactions in U.S. Treasury Securities are often executed as part of larger trading strategies, individual transactions undertaken as part of these strategies can often be

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<sup>24</sup> FINRA rules governing trade reporting of equity securities currently require members to report time to the millisecond if the member captures time to that level of granularity. See Rule 6380A, Supplementary Material .04; Rule 6380B, Supplementary Material .04; Rule 6622, Supplementary Material .04; see also Regulatory Notice 14-21 (May 2014).

priced away from the current market for legitimate reasons. FINRA is proposing two new modifiers to indicate particular transactions that are part of larger trading strategies. First, the proposed rule change would require that members append a “.B” modifier to a trade report if the transaction being reported is part of a series of transactions where at least one of the transactions involves a futures contract (e.g., a “basis” trade). Second, the proposed rule change would require that members append an “.S” modifier to a trade report if the transaction being reported is part of a series of transactions where at least one of the transactions is executed at a pre-determined fixed price or would otherwise result in the transaction being executed away from the current market (e.g., a fixed price transaction in an “on-the-run” security as part of a transaction in an “off-the-run” security). These modifiers would allow FINRA to better understand and evaluate execution prices for specific transactions in U.S. Treasury Securities that may otherwise appear aberrant because they are significantly outside of the price range for that security at that time. Among other things, FINRA believes that these modifiers could reduce the number of false positive results that could be generated through automated surveillance patterns that include the price as part of the pattern.

(D) Other Amendments

The proposed rule change amends Rule 6750 regarding the dissemination of transaction information reported to TRACE. As indicated by numerous commenters to the RFI, there is substantial disagreement as to the potential benefits of public dissemination of information on transactions in U.S. Treasury Securities. Many commenters expressed concerns about public dissemination of these transactions, and these concerns are heightened when some, but not all, market participants are reporting



transactions. Consequently, at this time, FINRA is not proposing to disseminate information on transactions in U.S. Treasury Securities, and the proposed rule change amends Rule 6750(b) to add transactions in U.S. Treasury Securities to the list of transactions for which information will not be disseminated.

The proposed rule change also amends two fee provisions in the FINRA rules to reflect the fact that, initially, FINRA will not be charging transaction-level fees on transactions in U.S. Treasury Securities reported to TRACE. First, the proposed rule change amends Section 1(b)(2) of Schedule A to the FINRA By-Laws to exclude transactions in U.S. Treasury Securities from the Trading Activity Fee (“TAF”). Second, the proposed rule change amends Rule 7730 to exclude transactions in U.S. Treasury Securities from the TRACE transaction reporting fees. However, because FINRA will incur costs to expand the TRACE system and to enhance its examination and surveillance efforts to monitor its members’ trading activity in U.S. Treasury Securities, it is considering the appropriate long-term funding approach for the program and will analyze potential fee structures once it has more data relating to the size and volume of U.S. Treasury Security reporting.

Finally, the proposed rule change amends Rule 0150 to add the FINRA Rule 6700 Series to the list of FINRA rules that apply to “exempted securities,” except municipal securities.

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

365 days following Commission approval.<sup>25</sup> FINRA understands that providing sufficient lead-time between the publication of technical specification and the implementation date is critical to firms' ability to meet the announced implementation date; FINRA will work to publish technical specifications as soon as possible after SEC approval of the proposed rule change

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>26</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. Prior to 1993, Section 15A(f) of the Act imposed limitations on a registered security association's ability to adopt rules applicable to transactions in exempted securities;<sup>27</sup> however, the Government Securities Act Amendments of 1993 ("GSAA")

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<sup>25</sup> FINRA anticipates staggering the implementation dates so that the general reporting requirement is implemented before members are required to include the trade modifiers described above. Specific implementation dates will be announced in the Regulatory Notice.

<sup>26</sup> 15 U.S.C. 78o-3(b)(6).

<sup>27</sup> Before 1986, Section 15A(f) of the Act provided that "[n]othing in this section shall be construed to apply with respect to any transaction by a broker or dealer in any exempted security." See 15 U.S.C. 78o-3 (historical notes). In 1986, the Government Securities Act of 1986 ("GSA") established a federal system for the regulation of brokers and dealers who transact business in government securities and certain other exempted securities. See Government Securities Act of 1986, Pub. L. No. 99-571, 100 Stat. 3208 (1986). The GSA, among other things, amended Section 15A(f) to provide that, "[e]xcept as provided in paragraph (2) of this subsection, nothing in this section shall be construed to apply with respect to any transaction by a registered broker or dealer in any exempted security." See Government Securities Act of 1986, Pub. L. No. 99-571, §102(g)(1), 100 Stat. 3208 (1986). Paragraph (f)(2), which was added by the GSA, provided that a registered securities association could adopt and implement rules with respect to

eliminated these statutory limitations.<sup>28</sup> FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(9) of the Act,<sup>29</sup> which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate. FINRA believes that the proposed rule change creates an effective structure for FINRA members to report transactions in U.S. Treasury Securities so that transaction information is available to regulators. FINRA believes the proposed reporting requirements will significantly enhance its, and other regulators', ability to review transactions in U.S. Treasury Securities to identify trading activity that may violate applicable laws or regulations. FINRA believes that leveraging the existing TRACE structure and reporting model will reduce the burdens on firms to comply with the new reporting obligations, thus making the implementation more efficient.

**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.

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exempted securities to (1) enforce members' compliance with the relevant provisions of the Act and rules and regulations thereunder, (2) adequately discipline its members, (3) inspect members' books and records, and (4) prohibit fraudulent, misleading, deceptive and false advertising. Id.

<sup>28</sup> See Government Securities Act Amendments of 1993, Pub. L. No. 103-202, §106(b)(1), 107 Stat. 2344 (1993). See also NASD Notice to Members 96-66 (October 1996); Securities Exchange Act Release No. 37588 (August 20, 1996), 61 FR 44100 (August 27, 1996) (Order Approving File No. SR-NASD-95-39). Although the GSAA also included a provision explicitly prohibiting the SEC from adopting regular reporting requirements, the GSAA included no such prohibition on FINRA. See Government Securities Act Amendments of 1993, Pub. L. No. 103-202, §103(a), 107 Stat. 2344 (1993).

<sup>29</sup> 15 U.S.C. 78o-3(b)(9).

Economic Impact Assessment

(a) Need for the Rule

As discussed above, the official sector does not currently receive any regular reporting of Treasury cash market transactions following auction. There is no central database reflecting the trading activities in the market of Treasuries. Recent events such as the anomalous price behavior of October 15, 2014 have showcased the need for a thorough review of the market structure by the official sector. The data collected under the proposed rule change will enable FINRA to enhance monitoring and enforcement of best execution and other broker-dealer obligations regarding transactions in Treasuries. The data will also be necessary for the official sector to conduct comprehensive market surveillance for Treasuries. As summarized by the RFI: “The need for more comprehensive official sector access to data, particularly with respect to U.S. Treasury cash market activity, is clear.”<sup>30</sup>

(b) Economic Baseline

The proposed rule change would impose reporting requirements on Treasury cash market participants that are FINRA members, extending with some modification the TRACE reporting requirements to transactions in U.S. Treasury Securities.<sup>31</sup> The current Treasury cash market structure serves as an economic baseline to assess the potential impacts on FINRA members, non-FINRA members, trading venues and investors. In an effort to rely to the extent possible on empirical evidence, much of the description of current activities relies on public evidence, primarily collected by regulators for a period

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<sup>30</sup> RFI Notice, supra note 9, at 3931.

<sup>31</sup> TRACE currently covers corporate debt securities, agency debentures, asset- and mortgage-backed securities.

preceding and including the October 15, 2014 event. This information is, in some cases, more than two years old and may not reflect current practices. These data are supplemented by discussions with a wide range of market participants.

(i) Overview of Treasury Cash Market

Broadly, the secondary markets for Treasuries can be categorized into two segments: cash and futures. The Treasury cash market has been bifurcated between the inter-dealer market, in which dealers trade with one another, and the dealer-to-customer market, where customers may include asset managers, pension funds, insurance companies, and corporations.<sup>32</sup> The daily trading volume in the U.S. Treasury cash market was estimated to be \$510 billion for the first two weeks of April 2014 and \$1,214 billion on October 15, 2014, when trading volume reached a record high.<sup>33</sup> The inter-dealer market accounted for approximately 45% of the trading volume for the first two weeks of April 2014 and 53% for October 15, 2014.<sup>34</sup> Traders in the cash market seek to establish positions as an investment and an effective hedge for other positions. Trading in the cash market also reflects short term funding activities, in the form of repurchase agreements. Trading strategies may also include simultaneous trades of different cash

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<sup>32</sup> As discussed further below, firms in the inter-dealer market can be grouped into several broad categories: bank dealer, non-bank dealer, hedge fund, asset manager, and PTFs. They may or may not be FINRA members. See JSR, supra note 5, at 12.

<sup>33</sup> See Federal Reserve Bank of New York, Michael Fleming, Frank Keane and Ernst Schaumburg, Primary Dealer Participation in the Secondary U.S. Treasury Market, Liberty Street Economics, February 12, 2016 (“Primary Dealer Participation”) available at <http://libertystreeteconomics.newyorkfed.org/2016/02/primary-dealer-participation-in-the-secondary-us-treasury-market.html#.V4hpXvkrJD8>.

<sup>34</sup> Id.

Treasury securities or cash and futures in order to hedge interest rate risk or arbitrage away small pricing discrepancies.

The inter-dealer market is dominated by automated trading, sometimes in large volumes and at high speed. The primary locations for price discovery in the Treasury cash market are the electronic trading platforms BrokerTec and eSpeed, which utilize a central limit order book (“CLOB”) protocol.<sup>35</sup> These platforms are operated by broker-dealers or affiliates of broker-dealers that are registered with the SEC and are FINRA members. In the inter-dealer market, the majority of trading occurs in the most recently issued Treasuries, known as “on-the-run” securities. While on-the-runs are the most actively traded Treasuries, likely accounting for more than half of total daily trading volumes, they make up less than 5% of outstanding marketable Treasuries.<sup>36</sup>

The dealer-to-customer market has less visibility to regulators and many market participants. In contrast to the inter-dealer market, a significant portion of trading in the dealer-to-customer market occurs on platforms that facilitate the matching of buy and sell orders primarily through request for quote (“RFQ”) systems. These platforms are increasingly electronic, but are generally not conducive to high frequency trading strategies.<sup>37</sup> The major RFQ platforms for Treasuries are TradeWeb and Bloomberg.<sup>38</sup>

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<sup>35</sup> RFI Notice, supra note 9, at 3929.

<sup>36</sup> Chris Cameron, James Clark and Gabriel Mann, Examining Liquidity in On-the-Run and Off-the-Run Treasury Securities, Treasury Notes (blog) (May 20, 2016), available at <https://www.treasury.gov/connect/blog/Pages/Examining-Liquidity-in-On-the-Run-and-Off-the-Run-Treasury-Securities.aspx>.

<sup>37</sup> RFI Notice, supra note 9, at 3928.

<sup>38</sup> See Federal Reserve Bank of New York, Ernst Schaumburg, A Preliminary Look at Dealer-to-Customer Markets on October 15, 2014, presented at the conference of the Evolving Structure of the U.S. Treasury Market (October 20-21, 2015)

Much of the dealer-to-customer activity still takes place over the phone (voice). An ad hoc survey of trading activity of the largest dealers, estimated to represent more than half of overall dealer-to-customer activity, revealed that voice trading remains an important protocol for executing customer trades.<sup>39</sup> An estimated 62% of this dealer-to-customer trading volume still takes place over the phone on normal trading days, with the remaining 38% occurring via RFQ systems.<sup>40</sup> The dealer-to-customer market serves an important role in liquidity provision for older, “off-the-run” issues and other less liquid securities. For example, the average daily trading volume on TradeWeb and Bloomberg was estimated to be \$22 billion for on-the-runs and \$25 billion for off-the-runs during April 2-17, 2014.<sup>41</sup>

(ii) Treasury Cash Market Participants

As reported by the JSR, participants of the inter-dealer market can be grouped into several broad categories based on their business model and corporate structure: bank-dealer, non-bank dealer, hedge fund, asset manager, and PTFs.<sup>42</sup> PTFs are

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(“Preliminary Look”) available at <https://www.newyorkfed.org/medialibrary/media/newsevents/events/markets/2015/October-15-Dealer-to-Customer-Analysis.pdf>.

<sup>39</sup> See Primary Dealer Participation, supra note 33.

<sup>40</sup> See Primary Dealer Participation, supra note 33.

<sup>41</sup> See Preliminary Look, supra note 38.

<sup>42</sup> See JSR, supra note 5, at 12. When referring to findings from the JSR or other source material citing to the JSR, this filing relies on the entity definitions in the JSR. In its description of market participants, the JSR does not attempt to separate FINRA-member broker-dealers from other participants. Bank-dealers include FINRA members, their affiliates and dealers supervised by federal or state banking regulators. Elsewhere, this filing refers to FINRA-member broker dealers as firms, FINRA members or broker-dealers and other dealers as bank-regulated dealers.

increasingly prevalent and now account for the majority of trading and standing quotes in the order book of the inter-dealer cash market.<sup>43</sup> By contrast, bank-dealers still account for a majority of secondary cash market trading overall (when including dealer-to-customer trading), but they constitute well under half of the trading and quoting activity in the inter-dealer cash market.<sup>44</sup> For example, in the inter-dealer market on October 15, 2014, PTFs accounted for more than 50% of the total trading volume across various maturities in the cash market, while bank-dealers accounted for roughly 30 to 40% of volume in the cash market.<sup>45</sup>

When asked, market participants offer a wide range of estimates of the percentage of cash market activities conducted by FINRA members in the Treasury market. These estimates range from 25%-65% of the dollar volume, with most participants indicating that broker-dealers remain particularly active in on-the-run trading.

While bank-dealers may account for a minority share of trading volume in the inter-dealer market, they trade significant volume directly with their customers. The Federal Reserve Bank of New York designated 23 primary dealers to serve as trading counterparties in its implementation of monetary policy.<sup>46</sup> These primary dealers are included in the bank-dealer category of the JSR. Data reported to the Federal Reserve

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<sup>43</sup> See James Clark and Gabriel Mann, A Deeper Look at Liquidity Conditions in the Treasury Market, Treasury Notes (blog) (May 6, 2016), available at <https://www.treasury.gov/connect/blog/Pages/A-Deeper-Look-at-Liquidity-Conditions-in-the-Treasury-Market.aspx>.

<sup>44</sup> Id. The article cites the JSR and does not attempt to separate FINRA members from dealers supervised by federal or state banking regulators.

<sup>45</sup> See JSR, supra note 5, at 21.

<sup>46</sup> See Federal Reserve Bank of New York, Primary Dealers List, available at [https://www.newyorkfed.org/markets/pridealers\\_current.html](https://www.newyorkfed.org/markets/pridealers_current.html).



Bank of New York by the primary dealers show that over the first three quarters of 2015, average daily activity of these dealers in the dealer-to-customer market was \$292 billion.<sup>47</sup> Out of the 23 primary dealers, 21 are broker-dealer FINRA members and would be subject to the proposed reporting requirements. FINRA understands that bank holding companies that also include a broker-dealer affiliate typically conduct the majority of the trading through the broker-dealer. The bank-regulated dealer's activities are typically limited to investment for its own portfolios or for hedging purposes. In addition, the broker-dealer affiliate may enter repurchase agreement transactions with the bank-regulated dealer, and the bank-regulated dealer then reverses the Treasuries out to its customers.

To assess the potential impact of the proposed rule change, it may also be useful to examine the proportion of government securities brokers ("GSBs") or government securities dealers ("GSDs") that would be subject to the proposed reporting requirements. GSBs and GSDs are designations used by FINRA and bank regulators for regulated entities acting as brokers or dealers in the government securities markets. Approximately 1,260 FINRA members identified themselves as GSBs or GSDs on Form BD.<sup>48</sup> FINRA understands that there are at least 23 non-FINRA members that registered as GSDs with their respective federal banking regulators. These entities are regulated by the Office of

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<sup>47</sup> See Primary Dealer Participation, *supra* note 33.

<sup>48</sup> General-purpose broker-dealers that conduct a government securities business must note this activity on their Form BD if it accounts for at least 1% of annual revenue from the securities or investment advisory business. It is possible that some broker-dealers trade government securities in small sizes without self-identifying as GSBs or GSDs.

the Comptroller of the Currency (19 firms), the Federal Reserve (three firms), or the Federal Deposit Insurance Corporation (one firm).

(c) Economic Impacts

(i) Benefits

The primary benefits from the proposed rule change arise from better monitoring of the Treasuries markets and participants by regulators. As discussed above, the primary locations for price discovery in the Treasury cash market are FINRA members, and transactions on those platforms would be subject to the proposed reporting requirements. Therefore, the proposed data collection is expected to capture a significant portion of transactions in the inter-dealer Treasury cash market. Further, since 21 of the 23 primary dealers are FINRA members, the data collection will shed light on the less transparent dealer-to-customer market and the trading of less liquid off-the-run securities. The data will improve the official sector's general monitoring and surveillance capabilities, including those designed to detect disruptive trading practices or risks to market stability. The proposed rule change will assist in the analysis of specific market events or trends, and provide regulators with the data to better evaluate how policy decisions may be expected to impact the market. Collectively, these should strengthen the Treasury cash market microstructure, reduce manipulative activities, and enhance investor protection. Moreover, the proposed data collection will permit FINRA to better monitor for compliance with its own rules. FINRA believes that using the existing TRACE reporting infrastructure is an efficient and cost effective mechanism to collect the data.

(ii) Potential Direct Costs

FINRA understands that the proposed rule change is associated with potential direct and indirect costs. Direct costs would be born primarily by FINRA-member firms with new reporting obligations or the clearing firms or other service providers who would report on their behalf.

The technical and operational costs associated with reporting Treasury cash market transactions are likely to vary across firms. For FINRA-member firms that are already reporting to TRACE, the costs associated with reporting U.S. Treasury Security transactions may be more limited. Within FINRA members that would be required to report Treasury cash market transactions, some are already reporting transactions in TRACE-Eligible Securities. These firms may be able to use or otherwise leverage the TRACE infrastructure and the associated compliance framework for U.S. Treasury Securities and reduce costs associated with the proposed rule change. For example, out of the FINRA members that identified themselves as GSBs or GSDs on Form BD, more than 70% had TRACE reporting activities between June 2015 and May 2016. Based on conversations with market participants, some current TRACE reporters will have much higher volume of reported transactions.

Based on the review of TRACE reporting for the year June 2015 through May 2016, FINRA identified 338 FINRA-member firms registered as GSBs or GSDs with no reported TRACE transactions. FINRA does not have any data to measure the extent of these firms' activities in the Treasury market today. For these firms that are active in the Treasury cash market but currently not subject to TRACE reporting requirements, the costs may be more significant as the firms will need to develop new reporting systems or

enter into agreements with third parties to report and to develop and maintain regulatory compliance programs with respect to the new reporting requirements.

The larger inter-dealer platforms have indicated to FINRA that the operational challenges with collecting and delivering trade reporting may be material but not unduly large. A potential challenge for some platforms may be to update and maintain counterparty identification systems to meet the reporting requirements.

For introducing firms, FINRA understands that clearing firms and service providers will be able to offer regulatory reporting in U.S. Treasury Securities as they do currently for TRACE-Eligible Securities. Introducing firms may need to enhance their systems to provide the additional information necessary to complete a trade report. FINRA understands that these firms will also incur additional service costs, typically based on the trade volume reported on their behalf.

The new modifiers may introduce additional complexity to the proposed reporting, as traders at FINRA-member firms must apply the modifiers correctly and consistently to ensure meaningful data collection. Larger firms indicated that Treasuries are typically traded across many desks within the firm and this increases compliance costs because the new modifiers need to be identified by individual traders, as they are uniquely situated to know whether a specific trade is associated with a cross-instrument strategy that would require the modifier. Some firms also suggested that it may be difficult for a trader to know at the time of a trade whether it is part of a cross-instrument strategy, thus increasing complexity and their regulatory risk. Moreover, some firms indicated to FINRA that the costs associated with the expansion of current systems to accommodate the proposed new trade indicator and modifiers may be substantial.

FINRA notes that it plans to phase in the modifiers to simplify the immediate implementation of the proposed rule change and provide firms additional time to make the necessary changes to implement the new modifiers.

Based on conversations with market participants, another potential challenge for some firms is to update their systems to meet the requirement that the yield reported by a member for a When-Issued Transaction must include any mark-up or mark-down.

FINRA understands that there may be differences in current practices as to whether mark-ups and mark-downs are captured at the time of a When-Issued Transaction. Those firms that do not currently capture this information will incur additional costs in meeting this condition of the proposed rule.

Finally, all FINRA-member firms subject to the proposed rule change would need to establish policies and procedures and monitor ongoing reporting activities to ensure compliance with the reporting requirements.

The proposed rule change does not contemplate any direct assessments to firms reporting U.S. Treasury Security transactions to TRACE, as is required for other TRACE reportable events. But FINRA notes that it may seek to collect transaction or other forms of fees from reporting firms in the future, subject to a separate rule filing with the SEC.

(iii) Potential Indirect Costs

FINRA has identified several sources of potential indirect costs. Although the data collection is expected to capture a significant portion of the Treasury cash market, not all participants in this market are FINRA members, and this fact may impact the proposed rule change in different ways. First, the official sector may not be able to obtain a complete picture of Treasury cash market activities, thereby potentially limiting

the benefits of the proposed rule change. Specifically, the proposed rule change only requires that FINRA-member firms be identified uniquely in the trade report. Thus, regulators would not be able to assign trading activity directly or uniquely to other market participants or reasonably estimate positions in government securities to those firms. This impediment may be mitigated by the authorities of regulators, particularly bank regulators, to monitor the activities of market participants under their immediate jurisdictions. But, FINRA notes that some PTFs and hedge funds do not have a primary prudential regulator, although regulators can gather identity and trading information of PTFs and hedge funds directly from the market participants under their jurisdiction.

Second, the proposed reporting requirements may create competitive disadvantage for FINRA members. This disadvantage may arise in several related contexts. First, the proposed rule change would impose operational and compliance costs avoided by some competitors. Second, regulators will have a greater ability to monitor the Treasury cash market activity of those firms uniquely identified in TRACE reporting. These firms' Treasury trading may face higher regulatory scrutiny than firms not so identified or lacking a primary prudential regulator. These firms may incur greater costs in responding to regulators' inquiries and other compliance-related activities. Firms reporting to TRACE might also find that dealers that are not required to report their transactions in U.S. Treasury Securities may try to leverage the lack of reporting as a competitive advantage with customers. Customers may migrate their business from FINRA-member firms to other dealers if they believe there is value to avoiding surveillance. Further, even FINRA-member firms may seek to migrate their government

securities business to affiliates that are not FINRA members if they determine there is a net benefit to do so.

However, as noted above, the Treasury Dept. stated that it would develop a plan for collecting similar data from non-FINRA members active in the Treasury cash market. In addition, FINRA understands from market participants that these competitive impacts are likely small. For instance, market participants do not generally believe that regulatory reporting, by itself, would lead non-reporters to shift inter-dealer trading out of the large inter-dealer platforms in order to avoid reporting. The access to deep liquidity and the ability to transact when desired are deemed to be more valuable than the gain from anonymity.

The proposed rule change may also have other indirect impacts on the Treasury cash market. If the reporting costs are significant, they potentially may raise barriers to entry and reduce participation of FINRA members in the Treasury cash market. The depth of the “on the run” Treasury market, in particular, suggests that dealers face low margins in these securities, and any material additional regulatory costs may be a more significant impediment where the firm does not have extensive activity in Treasuries or can mutualize the regulatory costs through a third party provider. Moreover, depending on the competitiveness of the Treasury cash market, some FINRA-member firms may transfer the costs to customers and thereby increase transaction costs.

(d) Alternatives Considered

FINRA evaluated various options around implementing reporting as proposed. FINRA reviewed its existing reporting facilities as well as alternative options such as periodic batch-reporting and file submissions.

Given the intended coverage, FINRA determined that TRACE provided the most efficient and cost effective way of implementing the requirement for several reasons. First, the reporting structure that has been developed and implemented for other fixed income securities can be extended to U.S. Treasury Securities with minor modifications. Second, the infrastructure supporting TRACE is already in use by a significant portion of FINRA members affected by the proposal such that these members have connectivity established and currently report to the facility. In addition to the transaction reporting infrastructure itself, FINRA as well as member firms have developed supporting processes around the TRACE facility that can be leveraged, such as monitoring tools, compliance processes, and alerts.

Among other alternatives, FINRA considered other existing FINRA trade reporting facilities, including the OTC Reporting Facility and the Alternative Display Facility, that support transaction reporting for equity securities and concluded these facilities were not suitable for reporting of transactions in U.S. Treasury Securities and that TRACE, with its existing reporting protocols and framework, was preferable. FINRA also considered developing an alternative processes of collecting the information (such as batch file submissions); however, such a process would require creation and maintenance of an additional, parallel infrastructure by all affected firms as well as FINRA, providing for a costlier implementation and ongoing support. Some firms may find it more cost effective to report trades singularly throughout the day, while others may prefer providing trade reports at fixed intervals, allowing firms sufficient time to ensure the accuracy of the transaction information prior to submitting the information to



FINRA. FINRA notes that much of the benefits of batch-reporting can be achieved by providing an end-of-day reporting timeframe.

The existing TRACE reporting framework requires that if there are two FINRA members executing a trade (one as the buyer and one as the seller), both FINRA members must report. Several commenters to the RFI advocated for one-sided reporting rather than two-sided reporting. FINRA determined that maintaining the two-sided reporting framework is preferable and will allow FINRA to compare the information reported by each party to identify discrepancies or potential non-reporting by one party. Moreover, accommodating one-sided reporting would necessitate significant changes to the existing TRACE infrastructure that could affect all TRACE reporting firms and significantly reduce the benefits to using an existing system described above. In addition, FINRA believes the burdens to firms of two-sided reporting can be reduced because TRACE allows for one participant to report on behalf of another, provided the two parties have proper agreements in place to allow the party to report on the other party's behalf. Any such arrangements are voluntary, and each participant (including ATs) can determine if they would like to provide this service to its trading partners or subscribers.

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

Written comments on the proposed rule change were neither solicited nor received; however, the Treasury Dept. received numerous comments in response to the RFI addressing reporting requirements for transactions in Treasuries. Fifty-two

comments were submitted. Approximately 30 letters addressed reporting to the official sector or public dissemination.<sup>49</sup>

As noted above, Section III of the RFI emphasized the need for more comprehensive official sector access to transaction data for Treasuries and requested comment on the types of data that should be made available to the official sector regarding the Treasury cash securities market and on numerous practical considerations associated with gathering that data. The RFI noted that “[t]he need for more comprehensive official sector access to data, particularly with respect to U.S. Treasury cash market activity, is clear.”<sup>50</sup> Section III solicited views on ways to collect, aggregate, and monitor data but also included questions on additional infrastructure that would be necessary for market participants to begin reporting data, especially given the diversity of

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<sup>49</sup> The RFI Notice and all of the comment letters submitted in response to the RFI Notice are available at <https://www.regulations.gov/document?D=TREAS-DO-2015-0013-0001>. The following comment letters are specifically cited below: Letters to David R. Pearl, Office of the Executive Secretary, Treasury Dept., from Citadel LLC (April 22, 2016) (“Citadel”); Direct Match (April 22, 2016) (“Direct Match”); Federal Reserve Bank of Chicago (May 5, 2016) (“FRB Chicago”); FIA Principal Traders Group (April 22, 2016) (“FIA PTG”); ICAP plc (April 22, 2016) (“ICAP”); Investment Company Institute (April 8, 2016) (“ICI”); KCG Holdings, Inc. (April 28, 2016) (“KCG”); Andrei Kirilenko, Director, Centre for Global Finance and Technology, Imperial College Business School (April 22, 2016) (“Kirilenko”); Managed Funds Association (April 22, 2016) (“MFA”); MarketAxess Holdings, Inc. and Xtracker Ltd. (April 21, 2016) (“MarketAxess”); Modern Markets Initiative (April 22, 2016) (“MMI”); Morgan Stanley & Co. (April 22, 2016) (“Morgan Stanley”); Nasdaq, Inc. (April 22, 2016) (“Nasdaq”); Prudential Fixed Income (April 21, 2016) (“Prudential”); RBS Securities Inc. (April 22, 2016) (“RBS Securities”); SIFMA, Asset Management Group (April 22, 2016) (“SIFMA AMG”); SIFMA and American Bankers Association (April 22, 2016) (“SIFMA/ABA”); Tradeweb Markets LLC (April 22, 2016) (“Tradeweb”); Rakesh Tripathy (March 22, 2016) (“Tripathy”); Virtu Financial, Inc. (March 18, 2016) (“Virtu”); Wells Fargo & Company (April 21, 2016) (“Wells Fargo”).

<sup>50</sup> See RFI Notice, *supra* note 9, at 3931.

trading venues in the Treasury markets and the fact that trading activity in these markets “often extends beyond individual regulator boundaries.”<sup>51</sup> Section III included questions concerning the scope of potential transaction reporting obligations and market participant obligations, numerous specific questions on the mechanics of trade reporting, and questions as to whether additional data (e.g., orders, quotes) should be reported.<sup>52</sup>

Approximately 26 commenters expressed some level of support for official sector reporting. As the Treasury Dept. noted, “[t]he responses to the RFI expressed broad support for more comprehensive reporting to regulators, including nearly unanimous support for reporting additional information on Treasury cash market activity.”<sup>53</sup>

Several commenters to the RFI provided views on specific reporting requirements. Industry participants expressed the view that a single-side reporting obligation was preferable to having multiple counterparties or venues report the same transaction;<sup>54</sup> however, one commenter suggested using a two-sided reporting structure.<sup>55</sup>

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<sup>51</sup> See RFI Notice, supra note 9, at 3931-32.

<sup>52</sup> See RFI Notice, supra note 9, at 3932-33.

<sup>53</sup> Treasury Press Release, supra note 12.

<sup>54</sup> See Citadel, at 11 (suggesting that “single-sided reporting (i.e., where each transaction is only reported by one party) has proven successful in reducing complexity and data discrepancies under the CFTC’s reporting regime for swaps”); MFA, at 5 (“On a practical level, it would also be much easier, more efficient and cost-effective to implement a single-sided reporting regime that requires trading platforms and intermediaries to report transactions.”); RBS Securities, at 7 (“RBS notes that based on experience in other regulatory frameworks, bilateral reporting substantially increases the required technology and controls for compliance, with minimal additional benefit to the regulator or public.”); SIFMA AMG, at 4 (arguing that a “‘one-sided’ approach is more operationally efficient and reduces the risk of trade reporting errors”). See also FIA PTG, at 23; Prudential, at 14; Tradeweb, at 5.

<sup>55</sup> See Kirilenko, at 1.

Those commenters expressing support for single-side reporting often also suggested that trades conducted on a trading platform be reported by the trading platform rather than the counterparties;<sup>56</sup> however, this view was not unanimous.<sup>57</sup> MFA suggested that requiring all Treasury cash market participants to report “would be extremely costly and burdensome for managers/funds . . . and could deter some market participants from trading in the Treasury cash markets.”<sup>58</sup>

As noted above, the proposed rule change follows the current TRACE reporting structure requiring that any Party to the Transaction that is a FINRA Member report the transaction to TRACE; therefore, if two or more FINRA members are Parties to the Transaction, each member will have an independent obligation to report the transaction to TRACE. FINRA believes that this reporting structure helps to ensure the accuracy of reported transactions and, as a result, significantly enhances the quality of the audit trail. Although requiring multiple reports for some transactions may increase the overall number of errors, it also provides FINRA with a means to validate reports that does not exist if a single party reports the transaction. FINRA believes that the overall benefits to the audit trail of requiring multiple reports outweigh the costs, particularly since FINRA

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<sup>56</sup> See FIA PTG, at 23 (“Wherever possible, the official sector should use information provided by trading venues and depositories to support its information gathering.”); MFA, at 4 (stating their view that “reporting should be by trading platforms, dealers and market makers/principal trading firms” because these entities “are in the best position to efficiently provide streamlined data to regulators”).

<sup>57</sup> See MarketAxess, at 3 (“We would recommend placing the reporting responsibility on the counterparties to the trade rather than on the venue...so that firms have a single process, regardless of how and where the trade is executed.”).

<sup>58</sup> MFA, at 5.

is proposing to initially exempt reports in U.S. Treasury Securities from the TRACE trade reporting fees.

There was widespread support among the commenters to extend reporting obligations to all Treasury securities rather than a defined subset.<sup>59</sup> The suggested timing of submitting trade reports varied between those generally urging real-time reporting,<sup>60</sup> delayed reporting,<sup>61</sup> or a combination thereof depending upon the type of security.<sup>62</sup> As one commenter noted, the timing of trade report submission is also influenced by the purpose: reporting solely for regulatory purposes does not require the immediacy that would be necessary if post-trade market transparency were also a goal.<sup>63</sup>

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<sup>59</sup> See Citadel, at 10; FIA PTG, at 3; ICAP, at 6; MMI, at 10; Nasdaq, at 6; Prudential, at 13; Tripathy, at 5; Wells Fargo, at 5.

<sup>60</sup> See Citadel, at 10-11; Tradeweb, at 5 (“Such reporting should occur as frequently as real-time, although the implementation and phasing of any reporting requirement should be carefully evaluated with respect to the cost and the technical build required.”).

<sup>61</sup> See FIA PTG, at 30 (recognizing that, while real-time reporting may be an end goal, “a reasonable standard would target the end-of-trading-day as a starting point for reporting objectives”); MarketAxess, at 3 (“T+1 reporting is sufficient to ensure that regulators have a timely picture of market activity and that firms have sufficient time to deliver the required level of accuracy.”); Prudential, at 16.

<sup>62</sup> See Morgan Stanley, at 3 (“Timing requirements should vary based on transaction type, e.g., illiquid investments should have a longer time to report.”) Virtu, at 2 (suggesting real-time reporting for “electronically matched on-the-run trades,” five-minute reporting for manual trades, fifteen-minute reporting for “trades in excess of a specified volume threshold in on-the-run Treasuries,” and “an extended reporting window” for off-the-run Treasuries). Those in favor of real-time reporting—and generally real-time public dissemination—recognized the need for some exceptions. Citadel, for example, suggested exceptions of 15 to 30 minutes for block transactions and less liquid off-the-run securities. See Citadel, at 11.

<sup>63</sup> See MarketAxess, at 2.

As discussed above, FINRA is proposing to impose reporting obligations on all Treasuries with the exception of savings bonds, which are not generally traded in the secondary market; thus, the proposed reporting requirements would apply to all marketable Treasuries and all transactions in those securities with the exceptions of purchases in the initial auction, repurchase transactions, and reverse repurchase transactions. Because FINRA is not currently proposing to disseminate any trade-level information to the public regarding transactions in U.S. Treasury Securities, the proposed rule change generally imposes a same-day reporting requirement as opposed to a more immediate requirement, such as 15 minutes. FINRA believes an end-of-day or next-day timing requirement strikes an appropriate balance between ensuring timely access by regulators to the transaction data without imposing unnecessary requirements on reporting firms. Permitting end-of-day or next-day reporting will also provide members with additional time to submit their filings and, if necessary, make any corrections to their trade reports before submission. This flexibility will provide members with more choices in how to comply with the reporting requirements, and FINRA believes this flexibility should reduce the burdens on firms in complying with the new reporting requirements and improve the accuracy of trade reports, particularly given the high volumes in which U.S. Treasury Securities are traded.

Relatively few commenters provided views on specific elements that should be reported to the official sector. In addition to the general transaction information necessary for effective transaction reporting (e.g., security, side, size, price, time), some commenters suggested including:

- trading venue;<sup>64</sup>
- settlement date;<sup>65</sup>
- category of counterparty;<sup>66</sup>
- type of trading protocol;<sup>67</sup>
- whether the transaction was cleared;<sup>68</sup> and
- whether the trade was part of a package transaction.<sup>69</sup>

As discussed above, the proposed rule change largely extends to transactions in U.S. Treasury Securities the existing TRACE reporting fields, which include settlement date, category of counterparties, and in some cases the trading venue (e.g., alternative trading system (“ATS”) identifiers if the ATS does not also report the transaction). As

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<sup>64</sup> See Citadel, at 11; Direct Match, at 11; Morgan Stanley, at 3; Tradeweb, at 5.

<sup>65</sup> See Morgan Stanley, at 2. MarketAxess noted that settlement date is not a current field for MiFID transaction reporting in Europe but noted that a settlement date “beyond the standard settlement cycle may impact the agreed price, so there may be value in collecting that information, depending on the ultimate purpose of the reporting regime.” MarketAxess, at 4; see also FIA PTG, at 27 (noting that non-standard settlement dates may have reporting value).

<sup>66</sup> See Morgan Stanley, at 3.

<sup>67</sup> See Citadel, at 11 (suggesting examples of “voice, electronic RFQ, or CLOB [central limit order book]”).

<sup>68</sup> See Citadel, at 11.

<sup>69</sup> See Citadel, at 11. Citadel noted that common package transactions involving Treasuries include spread overs (an interest rate swap and a Treasury), curves (two Treasuries of different maturities), butterflies (three Treasuries of different maturities), and exchange for physicals (a future and a Treasury). Citadel also suggested that “to distinguish between different types of packages, data should also be collected on how many legs are associated with the specific package transaction and the instruments involved.”

noted, FINRA is proposing two new modifiers to capture information on transactions that are part of larger trading strategies. FINRA believes that, initially, the new fields and modifiers it is proposing are sufficient for surveillance and review of transaction activity; however, FINRA will monitor the information once reporting begins to determine whether additional transaction information may be needed to enhance the audit trail and its surveillance program.

Multiple commenters suggested that any reporting requirement should span across all market participants, and some commenters specifically noted the importance of regulatory cooperation, as a benefit for both regulators and for reporting firms.<sup>70</sup> FRB Chicago noted the current lack of regulation for the Treasury market and called for coordinated efforts to “harmonize the processes observed in the U.S. Treasury markets around trading, clearing and reporting requirements.”<sup>71</sup> SIFMA noted that reporting requirements “must meet the desire to provide the official sector with a comprehensive and expedient view of the markets” while also recognizing the burdens that reporting

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<sup>70</sup> See Direct Match, at 10; FRB Chicago, at 5; ICI, at 4-5; KCG, at 3; MFA, at 4; MMI, at 10; SIFMA AMG, at 3-4; SIFMA/ABA, at 10. ICI explicitly noted the benefits to both regulators and reporters:

Regulatory coordination will enhance the ability of Treasury, as well as other regulators, to conduct more comprehensive analysis and surveillance of trading in the Treasury markets by obtaining a broader view of these integrated markets, and increase regulators’ ability to obtain higher quality and more consistent data. A coordinated rulemaking effort will help minimize compliance costs for market participants, to the extent they can utilize existing reporting infrastructures and requirements to meet any new reporting obligations that Treasury may impose. ICI, at 5.

<sup>71</sup> FRB Chicago, at 5.



requirements could impose.<sup>72</sup> Similarly, MMI noted that the requirements must “cast an all-encompassing net” so that regulators have a comprehensive view of market activity and suggested that regulators “must have a complete picture of order, indicative pricing, RFQ responses and trade data across all instruments (cash and futures) all sectors (on-the-run and off-the-run) all methods (electronic and voice) and all platforms (IDBs, D2C Venues, etc.).”<sup>73</sup> Direct Match noted that lack of consistency could create regulatory arbitrage opportunities that could result in market changes.<sup>74</sup>

As noted above, after reviewing the comments, the Treasury Dept. and the SEC requested that FINRA consider a proposal to require its members to report Treasury cash market transactions to a centralized repository. FINRA has filed the proposed rule change in response to that request. Although the proposed rule change would apply only to FINRA members, the Treasury Dept. noted that it “will continue working with other agencies and authorities to develop a plan for collecting similar data from institutions who actively trade U.S. Treasury securities but are not FINRA members.”<sup>75</sup>

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<sup>72</sup> SIFMA/ABA, at 10.

<sup>73</sup> MMI, at 10. See also SIFMA AMG, at 4 (“[M]andating, establishing, and implementing an official sector reporting regime requires coordination across markets and jurisdictions.”)

<sup>74</sup> See Direct Match, at 10 (“[I]n a market as fragmented and as lightly-regulated as the one for Treasuries, the potential for adverse second order effects is substantial: in the event that regulations disadvantage a particular market segment, it is very easy for trading to move to another, or to create a new one.”).

<sup>75</sup> Treasury Press Release, supra note 12.

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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2016-027 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2016-027. 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 a.m. and 3 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-2016-027 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>76</sup>

Robert W. Errett  
Deputy Secretary

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<sup>76</sup> 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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**BY-LAWS OF THE CORPORATION**

\* \* \* \* \*

**Schedule A to the By-Laws of the Corporation**

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation shall be determined on the following basis.

**Section 1—Member Regulatory Fees**

(a) No Change.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) No Change.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(A) through (I) No Change.

(J) Transactions in security futures held in futures accounts; [and]

(K) Proprietary transactions in TRACE-Eligible Securities by a firm that is a member of both FINRA and a national securities exchange and that are effected in the firm's capacity as an exchange specialist or exchange market maker; and[.]

(L) Transactions in U.S. Treasury Securities, as that term is defined in Rule 6710.

\* \* \* \* \*

(3) through (4) No Change.

(c) through (e) No Change.

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## **FINRA RULES**

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### **0100. GENERAL STANDARDS**

\* \* \* \* \*

#### **0150. Application of Rules to Exempted Securities Except Municipal Securities**

(a) through (b) No Change.

(c) Unless otherwise indicated within a particular Rule, the following FINRA and NASD rules are applicable to transactions in, and business activities relating to, exempted securities, except municipal securities, conducted by members and associated persons:

FINRA Rules 2010, 2020, 2060, 2111, 2122, 2150, 2210, 2212, 2261, 2268, 2269, 2320(g), 3110, 3220, 3270, 3280, 4120, 4130, 4210, 4311, 4330, 4360, 4510 Series, 4530, 5160, 5210, 5220, 5230, 5310, 5340, 6700 Series, 8110, 8120, 8210, 8310, 8311, 8312, 8320, 8330 and 9552; NASD Rules IM-2210-2, 2340, 2510, 3050 and 3140.

(d) No Change.

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### **6000. QUOTATION AND TRANSACTION REPORTING FACILITIES**

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## **6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)**

### **6710. Definitions**

The terms used in this Rule 6700 Series shall have the same meaning as those defined in the FINRA By-Laws and rules unless otherwise specified. For the purposes of this Rule 6700 Series, the following terms have the following meaning:

(a) “TRACE-Eligible Security” means 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; [or is a debt security that is U.S. dollar-denominated and] (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[, a U.S. Treasury Security as defined in paragraph (p),] or a Money Market Instrument as defined in paragraph (o).

(b) through (n) No Change.

(o) “Money Market Instrument” means, other than a U.S. Treasury Security, 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 paragraph (k), or a Government-Sponsored Enterprise, as defined in paragraph (n), a maturity of one calendar year and one day or less.

(p) “U.S. Treasury Security” means 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.

(q) through (ee) No Change.

(ff) “Auction” means the bidding process by which the U.S. Department of the Treasury sells marketable securities to the public pursuant to Part 356 of Title 31 of the Code of Federal Regulations.

(gg) “Auction Transaction” means the purchase of a U.S. Treasury Security in an Auction.

(hh) “When-Issued Transaction” means a transaction in a U.S. Treasury Security that is executed before the Auction for the security.

\* \* \* \* \*

### **6730. Transaction Reporting**

#### **(a) When and How Transactions are Reported**

Each member that is a Party to a Transaction in a TRACE-Eligible Security must report the transaction. A member must report a transaction in a TRACE-Eligible Security as soon as practicable, but no later than within 15 minutes of the Time of Execution, except as otherwise specifically provided below. Transactions not reported within the specified timeframe will be designated as “late.” A member must transmit the report to TRACE during TRACE System Hours.

(1) through (3) No Change.

**(4) Reporting Requirements — U.S. Treasury Securities**

Transactions in U.S. Treasury Securities must be reported as provided in this paragraph (a)(4).

**(A) General Reporting Requirements**

Transactions in U.S. Treasury Securities executed on:

(i) a business day at or after 12:00:00 a.m. Eastern Time through 5:00:00 p.m. Eastern Time must be reported the same day during TRACE System Hours;

(ii) a business day after 5:00:00 p.m. Eastern Time but before the TRACE system closes must be reported no later than the next business day (T + 1) during TRACE System Hours, and, if reported on T + 1, designated “as/of” and include the date of execution; or

(iii) a business day at or after 6:30:00 p.m. Eastern Time through 11:59:59 p.m. Eastern Time, or a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T + 1) during TRACE System Hours, designated “as/of” and include the date of execution.

**([4]5)** Members have an ongoing obligation to report transaction information promptly, accurately, and completely. The member may employ an



agent for the purpose of submitting transaction information. However, the primary responsibility for the timely, accurate, and complete reporting of transaction information remains the non-delegable duty of the member obligated to report the transaction.

**([5]6)** A member may be required to report as soon as practicable to the Market Regulation Department on a paper form, the transaction information required under Rule 6730 if electronic submission into TRACE is not possible. Transactions that can be reported into TRACE, including transactions executed on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day (determined using Eastern Time), and transactions that can be submitted on the trade date or a subsequent date on an “as/of” basis shall not be reported on a paper form.

**([6]7)** If a member that is a Party to a Transaction makes a good faith determination that a transaction involves a TRACE-Eligible Security, the member must report the transaction as provided in this Rule, and if the TRACE-Eligible Security is not entered in the TRACE system, the member must promptly notify and provide FINRA Operations the information required under Rule 6760(b) prior to reporting the transaction.

(b) No Change.

**(c) Transaction Information To Be Reported**

Each TRACE trade report shall contain the following information:

(1) and (2) No Change.

(3) Price of the transaction (or the elements necessary to calculate price, which are contract amount and accrued interest) or, for When-Issued Transactions in U.S. Treasury Securities, the yield as required by paragraph (d)(1) below;

(4) through (14) No Change.

**(d) Procedures for Reporting Price, Capacity, Volume**

**(1) Price**

(A) Except as noted in paragraph (B) for When-Issued Transactions in U.S. Treasury Securities, [F]for principal transactions, report the price, which must include the mark-up or mark-down. (However, if a price field is not available, report the contract amount and, if applicable, the accrued interest.) For agency transactions, report the price, which must exclude the commission. (However, if a price field is not available, report the contract amount and, if applicable, the accrued interest.) Report the total dollar amount of the commission if one is assessed on the transaction. Notwithstanding the foregoing, a member is not required to include a commission, mark-up or mark-down where one is not assessed on a trade-by-trade basis at the time of the transaction or where the amount is not known at the time the trade report is due. A member must use the “No Remuneration” indicator described in paragraph (d)(4)(F) where a trade report does not reflect either a commission, mark-up or mark-down, except for an inter-dealer transaction, a “List or Fixed Offering Price Transaction,” as defined in Rule 6710(q), or a “Takedown Transaction,” as defined in Rule 6710(r).

(B) For When-Issued Transactions in U.S. Treasury Securities conducted on a principal basis, report the yield, which must include the mark-up or mark-down, of the security in lieu of price. For When-Issued Transactions in U.S. Treasury Securities conducted on an agency basis, report the yield, which must exclude the commission, of the security in lieu of price. Report the total dollar amount of the commission.

(2) through (3) No Change.

**(4) Modifiers; Indicators**

Members shall append the applicable trade report modifiers or indicators as specified by FINRA to all transaction reports.

(A) through (F) No Change.

**(G) U.S. Treasury Security Indicators and Modifiers**

(i) If reporting a When-Issued Transaction, select the appropriate indicator.

(ii) Select the modifier:

a. “.B,” if the transaction is part of a series of transactions where at least one of the transactions involves a futures contract;

b. “.S,” if the transaction is part of a series of transactions where at least one of the transactions is executed at a pre-determined fixed price or would otherwise result in the transaction being executed away from the current market.

**(e) Reporting Requirements for Certain Transactions and Transfers of Securities**

The following shall not be reported:

(1) through (6) No Change.

(7) Bona fide repurchase and reverse repurchase transactions involving TRACE-Eligible Securities.

(8) Auction Transactions.

(f) No Change.

**••• Supplementary Material: -----**

.01 through .03 No Change.

**.04 Time of Execution for Transactions in U.S. Treasury Securities.** When reporting transactions in U.S. Treasury Securities executed electronically, members must report the time of execution pursuant to paragraph (c)(8) to the finest increment of time captured in the member's system (e.g., millisecond, microsecond), but at a minimum, in increments of seconds.

**.05 STRIPS Program (Separate Trading of Registered Interest and Principal of Securities).** Members are not required to report transactions undertaken as part of the process of separating and reconstituting securities pursuant to the STRIPS Program operated by the U.S. Department of Treasury under which eligible U.S. Treasury Securities are authorized to be separated into principal and interest components and transferred separately.

\* \* \* \* \*

**6750. Dissemination of Transaction Information**

(a) No Change.

**(b) Transaction Information Not Disseminated**

FINRA will not disseminate information on a transaction in a TRACE-Eligible Security that is:

(1) through (2) No Change.

(3) a List or Fixed Offering Price Transaction or a Takedown Transaction;

[or]

(4) a Securitized Product, except:

(A) an Agency Pass-Through Mortgage-Backed Security;

(B) an SBA-Backed ABS; and

(C) an Asset-Backed Security; or[.]

(5) a U.S. Treasury Security.

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**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS,  
AND FACILITY CHARGES**

\* \* \* \* \*

**7700. CHARGES FOR OTC REPORTING FACILITY, OTC BULLETIN BOARD  
AND TRADE REPORTING AND COMPLIANCE ENGINE SERVICES**

\* \* \* \* \*

**7730. Trade Reporting and Compliance Engine (TRACE)**

\* \* \* \* \*

(a) No Change.

**(b) Transaction Reporting Fees**

[For e]Each transaction in a TRACE-Eligible Security that is reportable to FINRA pursuant to the Rule 6700 Series[,] is subject to the [following] charges in this paragraph (b), and these charges shall be assessed against each member responsible for reporting the transaction.[:] Transactions in U.S. Treasury Securities that are reportable to FINRA pursuant to the Rule 6700 Series are not subject to transaction reporting fees under this paragraph (b).

(1) through (3) No Change.

(c) through (g) No Change.

\* \* \* \* \*