

Notices

Regulatory Notices

- 12-39** FINRA Requests Comment on TRACE Dissemination Issues;
Comment Period Expires: October 10, 2012
- 12-40** SEC Approves New FINRA Rule 5123 Regarding Private Placements of
Securities; Effective Date: December 3, 2012
- 12-41** FINRA Amends the TAF Rate for Transactions in Covered Security Futures;
Effective Date: October 1, 2012

Election Notice

- 09/05/12** FINRA Small Firm Advisory Board Election; Nomination Deadline:
October 5, 2012
- 09/05/12** Upcoming Election to Fill FINRA District Committee Vacancies;
Nomination Deadline: October 5, 2012

© 2012 FINRA. All rights reserved. FINRA and other trademarks of the Financial Industry Regulatory Authority, Inc. may not be used without permission.

FINRA *Notices* are published monthly by FINRA Corporate Communications, Michelle Volpe-Kohler, Editor, 1735 K Street, NW, Washington, DC 20006-1506, (202) 728-8289. No portion of this publication may be copied, photocopied or duplicated in any form or by any means, except as described below, without prior written consent of FINRA. FINRA member firms are authorized to photocopy or otherwise duplicate any part of this publication without charge, only for internal use by the member firm and its associated persons. Nonmembers of FINRA may obtain permission to photocopy for internal use through the Copyright Clearance Center (CCC) for a \$3-per-page fee to be paid directly to CCC, 222 Rosewood Drive, Danvers, MA 01923.

Notices (December 1996 to current) are also available on the Internet at www.finra.org/notices.

Trade Reporting and Compliance Engine (TRACE)

FINRA Requests Comment on TRACE Dissemination Issues

Comment Period Expires: October 10, 2012

Executive Summary

FINRA requests comment on two issues relating to the dissemination of information on TRACE-eligible securities transactions.

First, FINRA seeks input on whether it should maintain or modify current TRACE dissemination caps, under which the actual size (volume) of a transaction over a certain par value is not displayed in disseminated real-time TRACE transaction data. Second, FINRA requests comment on whether transactions in TRACE-eligible securities effected pursuant to Securities Act Rule 144A¹ (Rule 144A transactions) should be disseminated, and if so, the scope and manner of such dissemination.

Questions regarding this *Notice* should be directed to:

- ▶ Elliot R. Levine, Associate Vice President and Counsel, Transparency Services, at (202) 728-8405; or
- ▶ Sharon Zackula, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8985.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by October 10, 2012.

Member firms and other interested parties can submit their comments using the following methods:

- ▶ Emailing comments to pubcom@finra.org; or

September 2012

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Fixed Income
- ▶ Legal
- ▶ Trading

Key Topics

- ▶ Dissemination Caps
- ▶ Rule 144A Transactions
- ▶ TRACE Dissemination
- ▶ TRACE-Eligible Security

Referenced Rules & Notices

- ▶ FINRA Rule 6710
- ▶ FINRA Rule 6750
- ▶ Securities Act Section 3
- ▶ Securities Act Section 5
- ▶ Securities Act Rule 144A

- ▶ Mailing comments in hard copy to:
Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

To help FINRA process and review comments more efficiently, persons should only use one method to comment on the proposal.

Important Notes: The only comments FINRA will consider are those submitted using the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. Generally, FINRA will post comments as they are received.²

Background & Discussion

Dissemination Caps

As part of the initial TRACE implementation in July 2002, FINRA established dissemination protocols that included certain caps. Disseminated TRACE transaction data includes price, time of execution, size and other information. The size disseminated is the total par value of the trade, subject to the limits of the applicable dissemination cap.

- ▶ For investment grade TRACE-eligible securities and agency debt securities, the current dissemination cap is \$5 million, and a transaction in excess of \$5 million is disseminated as "\$5MM+."³
- ▶ For non-investment grade TRACE-eligible securities, the current dissemination cap is \$1 million, and a transaction in excess of \$1 million is disseminated as "\$1MM+."⁴

FINRA recently announced additional caps as part of the dissemination of transaction information on agency pass-through mortgage-backed securities traded to be announced (TBA transactions).⁵ FINRA will begin disseminating TBA transactions on November 5, 2012.

- ▶ For TBA transactions eligible "for good delivery," the dissemination cap is \$25 million, and a transaction in excess of \$25 million will be disseminated as "\$25MM+."
- ▶ For TBA transactions "not for good delivery," the dissemination cap is \$10 million, and a transaction in excess of \$10 million will be disseminated as "\$10MM+."⁶

Discussion

FINRA periodically evaluates current practices and seeks input on modifications that may be beneficial. FINRA seeks comment as to whether to modify, leave unchanged or eliminate the \$1 million and \$5 million TRACE volume dissemination caps, which have been in place since TRACE began operating on July 1, 2002. As part of a broader effort to review dissemination practices, FINRA also seeks comment on the caps for TBA transactions that become effective on November 5, 2012.

Most firms have comprehensive policies and procedures for TRACE compliance, and regularly use TRACE data for pricing purposes, as well as for internal supervisory purposes. Providing transaction data showing the actual trade size may assist all market participants in determining the quality of their executions and member firms in complying with their best execution obligations. In addition, the dissemination of transaction data showing actual trade size may have a positive impact on the quality of pricing for valuation purposes.

The following tables show the percentage of transactions in TRACE-eligible securities reported to TRACE—excluding asset-backed securities—by total par value and trade count, that are effected at various sizes, and the impact of the \$5 million dissemination cap (for investment grade and agency debt securities) and \$1 million dissemination cap (for non-investment grade securities) on the percentage of par value and trades for which actual size is above the indicated cap level and therefore not displayed in disseminated data. The tables also show the impact of dissemination caps if set at alternative levels.⁷

INVESTMENT GRADE CORPORATE BONDS		NON-INVESTMENT GRADE CORPORATE BONDS		AGENCY DEBT SECURITIES	
Percentage of Par Value Traded Above Cap Level		Percentage of Par Value Traded Above Cap Level		Percentage of Par Value Traded Above Cap Level	
Cap Level	Percentage	Cap Level	Percentage	Cap Level	Percentage
\$1 million +	83.17%	\$1 million +	79.49%	\$1 million +	94.14%
\$5 million + <i>Current Level</i>	48.91%	<i>Current Level</i>		\$5 million + <i>Current Level</i>	77.20%
\$5 million +		\$5 million +	36.39%	\$5 million +	
\$10 million +	30.49%	\$10 million +	23.03%	\$10 million +	66.01%
\$15 million +	22.99%	\$15 million +	18.39%	\$15 million +	60.07%
\$20 million +	17.84%	\$20 million +	15.22%	\$20 million +	54.99%
\$25 million +	14.10%	\$25 million +	12.89%	\$25 million +	47.42%
\$50 million +	7.23%	\$50 million +	8.06%	\$50 million +	31.50%
\$75 million +	5.19%	\$75 million +	6.59%	\$75 million +	26.93%
\$100 million +	3.90%	\$100 million +	5.49%	\$100 million +	20.36%
Percentage of Trades Above Cap Level		Percentage of Trades Above Cap Level		Percentage of Trades Above Cap Level	
Cap Level	Percentage	Cap Level	Percentage	Cap Level	Percentage
\$1 million +	8.08%	\$1 million +	10.85%	\$1 million +	23.90%
\$5 million + <i>Current Level</i>	1.81%	<i>Current Level</i>		\$5 million + <i>Current Level</i>	8.34%
\$5 million +		\$5 million +	1.43%	\$5 million +	
\$10 million +	0.64%	\$10 million +	0.46%	\$10 million +	4.65%
\$15 million +	0.35%	\$15 million +	0.26%	\$15 million +	3.40%
\$20 million +	0.21%	\$20 million +	0.16%	\$20 million +	2.64%
\$25 million +	0.13%	\$25 million +	0.11%	\$25 million +	1.76%
\$50 million +	0.03%	\$50 million +	0.03%	\$50 million +	0.63%
\$75 million +	0.02%	\$75 million +	0.02%	\$75 million +	0.43%
\$100 million +	0.0080%	\$100 million +	0.0105%	\$100 million +	0.23%

The following tables show the percentage of TBA transactions reported to TRACE, by total par value and trade count, that are effected at various sizes, and the impact the \$25 million dissemination cap (for TBA transactions eligible “for good delivery”) and the \$10 million dissemination cap (for TBA transactions “not for good delivery”) (based on historical transaction data) would have had on the percentage of par value traded and trades for which the actual size would not have been displayed (if such transactions had been disseminated during that period).⁸ The tables also show the impact of dissemination caps if set at alternative levels.

TBA GOOD DELIVERY	
Percentage of Par Value Traded Above Cap Level	
Cap Level	Percentage
\$10 million +	92.40%
\$25 million + <i>Current Level</i>	84.17%
\$50 million +	74.20%
\$75 million +	69.37%
\$100 million +	57.70%
\$250 million +	33.82%
\$500 million +	17.40%
Percentage of Trades Above Cap Level	
Cap Level	Percentage
\$10 million +	32.79%
\$25 million + <i>Current Level</i>	20.13%
\$50 million +	12.45%
\$75 million +	10.04%
\$100 million +	6.19%
\$250 million +	1.87%
\$500 million +	0.51%

TBA NOT GOOD DELIVERY	
Percentage of Par Value Traded Above Cap Level	
Cap Level	Percentage
\$10 million + <i>Current Level</i>	84.53%
\$25 million +	54.71%
\$50 million +	23.52%
\$75 million +	15.50%
\$100 million +	10.11%
\$250 million +	2.68%
\$500 million +	0.00%
Percentage of Trades Above Cap Level	
Cap Level	Percentage
\$10 million + <i>Current Level</i>	41.47%
\$25 million +	15.98%
\$50 million +	3.80%
\$75 million +	1.80%
\$100 million +	0.90%
\$250 million +	0.12%
\$500 million +	0.00%

Rule 144A Transactions

Securities Act Rule 144A is a safe harbor exemption from the registration requirements of Securities Act Section 5 for certain offers and sales of qualifying securities by certain persons other than the issuer of the securities. The exemption applies to the re-sale of securities to qualified institutional buyers (QIBs).⁹ Rule 144A transactions have been subject to TRACE reporting requirements since TRACE inception. Unlike transactions in publicly traded bonds, Rule 144A transactions are not subject to dissemination because of the private nature of the transactions.¹⁰ However, this approach results in limited or no price transparency in the market in Rule 144A TRACE-eligible securities. Without any disseminated data, it may be difficult for market participants to assess the quality of the executions of their orders and for firms to determine if they have complied with their best execution obligations. In addition, the lack of disseminated data in Rule 144A transactions may have an adverse impact on the accurate valuation of positions in such securities.

FINRA seeks comment on the current approach and whether Rule 144A transactions should be subject to dissemination. FINRA notes that Rule 144A transactions account for approximately 4 percent of trades and 18 percent of par value in corporate debt securities reported to TRACE. The table below summarizes the percentage of all TRACE corporate debt trades, all TRACE non-investment grade corporate debt trades and all TRACE investment grade corporate debt trades that are Rule 144A trades.¹¹

	July 2011 Through June 2012
Rule 144A trades as a percentage of total TRACE corporate trades	4.37%
Rule 144A non-investment grade trades as a percentage of all TRACE non-investment grade trades	8.09%
Rule 144A investment grade trades as a percentage of all TRACE investment grade corporate trades	2.50%
Rule 144A par value traded as a percentage of total TRACE corporate par value traded	17.53%
Rule 144A non-investment grade par value traded as a percentage of all TRACE non-investment grade corporate par value traded	20.59%
Rule 144A investment grade par value traded as a percentage of all TRACE investment grade corporate par value traded	14.89%

If Rule 144A transactions were disseminated and dissemination caps were applied, the following tables show the percentages of Rule 144A transactions (and par value traded) that would be subject to various dissemination cap levels.

July 2011 Through June 2012	
INVESTMENT GRADE RULE 144A	
Percentage of Par Value Traded Above Cap Level	
Cap Level	Percentage
\$1 million +	94.02%
\$5 million +	64.30%
\$10 million +	47.22%
\$15 million +	39.48%
\$20 million +	33.58%
\$25 million +	28.40%
\$50 million +	18.01%
\$75 million +	14.70%
\$100 million +	12.48%
Percentage of Trades Above Cap Level	
Cap Level	Percentage
\$1 million +	50.68%
\$5 million +	13.28%
\$10 million +	5.52%
\$15 million +	3.38%
\$20 million +	2.23%
\$25 million +	1.44%
\$50 million +	0.42%
\$75 million +	0.23%
\$100 million +	0.15%

July 2011 Through June 2012	
NON-INVESTMENT GRADE RULE 144A	
Percentage of Par Value Traded Above Cap Level	
Cap Level	Percentage
\$1 million +	89.41%
\$5 million +	44.63%
\$10 million +	30.57%
\$15 million +	25.07%
\$20 million +	21.20%
\$25 million +	18.42%
\$50 million +	12.22%
\$75 million +	9.93%
\$100 million +	8.01%
Percentage of Trades Above Cap Level	
Cap Level	Percentage
\$1 million +	51.47%
\$5 million +	7.35%
\$10 million +	2.61%
\$15 million +	1.51%
\$20 million +	0.96%
\$25 million +	0.66%
\$50 million +	0.21%
\$75 million +	0.12%
\$100 million +	0.06%

Request for Comment

FINRA welcomes all comments on the use of dissemination caps and the dissemination of Rule 144A transactions. FINRA also specifically requests comment on the issues identified below.

Dissemination Caps for Investment Grade and Non-Investment Grade Debt Securities

1. What would be the impact of raising the dissemination caps for:
 - a. investment grade TRACE-eligible securities transactions to \$10 million, \$15 million, \$20 million or higher; and
 - b. non-investment grade TRACE-eligible securities transactions to \$5 million, \$10 million, \$20 million or higher?
2. Should FINRA set a dissemination cap applicable solely to agency debt securities in light of the larger size of many transactions in such securities?
 - a. If so, should it be set at \$25 million, \$50 million, \$100 million or higher?
3. Should there continue to be different dissemination caps for investment grade and non-investment grade debt securities?
4. Should the dissemination caps for investment grade and non-investment grade debt securities be eliminated entirely?
5. Would the information available as a result of higher dissemination caps allow broker-dealers and institutional investors to better value positions?
6. Could alternative ways of determining dissemination caps—for example, by dollar value²² of transaction rather than par value—provide meaningful trade volume exposure while still limiting the transaction sizes displayed through the caps?

Dissemination Caps for TBA Transactions

1. Should there be a dissemination cap for TBA transactions?
 - a. If yes, are the levels appropriate or should higher or lower caps be considered?

Rule 144A Transactions

1. Should Rule 144A transactions—private re-sales of securities to QIBs—be subject to dissemination?
2. If yes, should Rule 144A transactions be subject to dissemination in the same manner as other disseminated transactions in TRACE-eligible securities?
 - a. If yes, should they be disseminated subject to a dissemination cap?
 - b. If yes, what is the appropriate size (volume) at which to set the dissemination cap?

- c. If yes, should FINRA distinguish between investment grade and non-investment grade securities, and set a higher dissemination cap for Rule 144A transactions in investment grade securities and a lower dissemination cap for Rule 144A transactions in non-investment grade securities?
3. Would dissemination of Rule 144A transaction information impact investment decisions and price negotiations, and, if yes, how?
4. If information on Rule 144A TRACE-eligible securities transactions should be disseminated, should the transaction information be disseminated publicly without limitation or on a more limited basis?

Endnotes

1. 17 CFR 239.144A.
2. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See [Notice to Members 03-73](#) (November 2003) (NASD Announces Online Availability of Comments) for more information.
3. The term investment grade is defined in FINRA Rule 6710(h). In most cases, an agency debt security that is not rated is traded and priced as an investment grade security. Thus, for purposes of TRACE, in most cases, such securities are classified as investment grade debt and subject to the \$5MM+ dissemination cap. The term agency debt security is defined in FINRA Rule 6710(l).
4. The term non-investment grade is defined in FINRA Rule 6710(i). For purposes of TRACE, most unrated corporate bonds are considered non-investment grade debt and are subject to the \$1MM+ dissemination cap.
5. The terms agency pass-through mortgage-backed security and to be announced are defined in, respectively, FINRA Rule 6710(v) and FINRA Rule 6710(u). See Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (SEC Approval Order Relating to Post-Trade Transparency of Agency Pass-Through Mortgage-Backed Securities Traded TBA) (TBA Dissemination Approval Order); [Regulatory Notice 12-26](#) (May 2012) (announcing November 5, 2012, as the effective date for the dissemination of TBA transactions, dissemination caps for such TBA transactions, and related rule changes).
6. See FINRA Rule 6710(u) (as effective on November 5, 2012) for reference to the terms “for good delivery” and “not for good delivery.” See also [Regulatory Notice 12-26](#) and TBA Dissemination Approval Order.
7. FINRA calculated the percentages based on the 12-month period from July 1, 2011, to June 30, 2012.
8. See *supra* note 5.

© 2012 FINRA. All rights reserved. FINRA and other trademarks of the Financial Industry Regulatory Authority, Inc. may not be used without permission. *Regulatory Notices* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

9. Qualified institutional buyer is defined in Securities Act Rule 144A(a)(1). 17 CFR 239.144A(a)(1).
10. See FINRA Rule 6750(b)(1).
11. FINRA calculated the percentages based on the 12-month period from July 1, 2011, to June 30, 2012.
12. For this discussion, the dollar value of the transaction means the par value multiplied by the execution price of the transaction.

Private Placements of Securities

SEC Approves New FINRA Rule 5123 Regarding Private Placements of Securities

Effective Date: December 3, 2012

Executive Summary

The SEC approved new FINRA Rule 5123 to require each FINRA member firm that sells an issuer's securities in a private placement, subject to certain exemptions, to file with FINRA a copy of any private placement memorandum, term sheet or other offering document the firm used within 15 calendar days of the date of the sale, or indicate that it did not use any such offering documents.¹ Firms must file the required offering documents electronically with FINRA through the FINRA Firm Gateway.² The rule becomes effective December 3, 2012, and applies prospectively to private placements that begin selling efforts on or after that date.

In addition, effective December 3, 2012, firms must submit filings required by FINRA Rule 5122 ((Private Placements of Securities Issued By Members), regarding member firm private offerings or MPOs) through the Firm Gateway.³

The text of Rule 5123 is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- ▶ Joseph E. Price, Senior Vice President, Corporate Financing/Advertising Regulation, at (240) 386-4623;
- ▶ Paul Mathews, Director, Corporate Financing Department, at (240) 386-4623;
- ▶ Lisa Jones Toms, Associate Director and Senior Counsel, Corporate Financing Department, at (240) 386-4661;
- ▶ Gary L. Goldsholle, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8104; or
- ▶ Stan Macel, Assistant General Counsel, OGC, at (202) 728-8056.

September 2012

Notice Type

- ▶ New Rule

Suggested Routing

- ▶ Compliance
- ▶ Corporate Finance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management

Key Topics

- ▶ Institutional Accounts
- ▶ Private Placement Memorandum
- ▶ Private Placements
- ▶ Regulation D

Referenced Rules & Notices

- ▶ FINRA Rule 5110
- ▶ FINRA Rule 5122
- ▶ FINRA Rule 5123
- ▶ Regulatory Notice 09-27
- ▶ Regulatory Notice 10-22

Background & Discussion

FINRA Rule 5123 is part of a multi-pronged approach to enhance oversight and investor protection in private placements. In Rule 5122, FINRA established standards on disclosure, use of proceeds and a filing requirement for private placements issued by a member firm or a control entity. FINRA also has previously provided guidance on the scope of a firm's responsibility to conduct a reasonable investigation of private placement issuers in [Regulatory Notice 10-22](#).

Rule 5123 will provide FINRA with more timely and complete information about the private placement activities of firms on behalf of other issuers. Under the rule, each firm that sells a security in a private placement, subject to certain exemptions, must file a copy of the offering document with FINRA within 15 calendar days of the date of the first sale.⁴ If a firm sells a private placement without using any offering documents, then the firm should indicate that it did not use any such offering documents. The rule requires firms to file any materially amended versions of the documents originally filed.

The rule exempts some private placements sold solely to qualified purchasers, institutional purchasers and other sophisticated investors.

Private Placement Filing System

FINRA is developing a private placement filing system to receive the offering documents that firms must file under the new rule. The filing system, which firms will access through the Firm Gateway, will provide an efficient way for firms to electronically submit the filings in searchable Portable Document Format (PDF) to FINRA. In response to comments during the rulemaking process, the filing system will allow a firm to submit a filing on behalf of other firms involved in the sale of the private placement. A firm that makes a filing on behalf of itself and other firms must identify the other firms as part of its submission.

Notice Filings

On December 3, 2012, when the new filing system becomes operational, firms that file offering documents pursuant to Rule 5122 must use the new filing system. Firms are reminded that filings under Rules 5123 and 5122 are "notice" type filings. As such, FINRA will not respond to the filings with a comment letter or provide a clearance letter.

Confidential Treatment and Exemptions

Similar to Rule 5122, FINRA will accord confidential treatment to all documents and information filed pursuant to Rule 5123. The rule also provides firms with a method to apply for an exemption from its provisions for good cause pursuant to the Rule 9600 Series.

Endnotes

1. See Securities Exchange Act Release No. 67157 (June 7, 2012), 77 FR 35457 (June 13, 2012) (Notice of Filing of Amendments No. 2 and No. 3 and Order Granting Accelerated Approval of File No. SR-FINRA-2011-057).
2. Firm Gateway is an online compliance tool that provides consolidated access to FINRA applications and allows firms to submit required filings electronically to meet their compliance and regulatory obligations.
3. Offering documents for MPOs are currently filed with the Corporate Financing Department via email. See *Regulatory Notice 09-27*, which announced the effective date for Rule 5122 and provided details concerning the filing requirements for the private placement memoranda or other offering documents.
4. This 15-day time period tracks the filing requirement for issuers under SEC Form D. See SEC Form D (Notice of Exempt Offering of Securities) General Instructions (“An issuer must file a new notice with the SEC for each new offering of securities no later than 15 calendar days after the “date of first sale” of securities in the offering...).

Attachment A

5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

* * * * *

5120. Offerings of Members' Securities

* * * * *

5123. Private Placements of Securities

(a) Filing Requirements

Each member that sells a security in a non-public offering in reliance on an available exemption from registration under the Securities Act ("private placement") must: (i) submit to FINRA, or have submitted on its behalf by a designated member, a copy of any private placement memorandum, term sheet or other offering document, including any materially amended versions thereof, used in connection with such sale within 15 calendar days of the date of first sale; or (ii) indicate to FINRA that no such offering documents were used.

(b) Exemptions

The following private placements are exempt from the requirements of this Rule:

(1) offerings sold by the member or person associated with the member solely to any one or more of the following:

- (A) institutional accounts, as defined in Rule 4512(c);
- (B) qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act;
- (C) qualified institutional buyers, as defined in Securities Act Rule 144A;
- (D) investment companies, as defined in Section 3 of the Investment Company Act;
- (E) an entity composed exclusively of qualified institutional buyers, as defined in Securities Act Rule 144A;
- (F) banks, as defined in Section 3(a)(2) of the Securities Act;
- (G) employees and affiliates, as defined in Rule 5121, of the issuer;

- (H) knowledgeable employees as defined in Investment Company Act Rule 3c-5;
 - (I) eligible contract participants, as defined in Section 3(a)(65) of the Exchange Act; and
 - (J) accredited investors described in Securities Act Rule 501(a)(1), (2), (3) or (7).
- (2) offerings of exempted securities, as defined in Section 3(a)(12) of the Exchange Act;
 - (3) offerings made pursuant to Securities Act Rule 144A or SEC Regulation S;
 - (4) offerings of exempt securities with short term maturities under Section 3(a)(3) of the Securities Act and debt securities sold by members pursuant to Section 4(2) of the Securities Act so long as the maturity does not exceed 397 days and the securities are issued in minimum denominations of \$150,000 (or the equivalent thereof in another currency);
 - (5) offerings of subordinated loans under SEA Rule 15c3-1, Appendix D (see NASD Notice to Members 02-32 (June 2002)); 11-01 January 2011 11-04
 - (6) offerings of “variable contracts,” as defined in Rule 2320(b)(2);
 - (7) offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referenced in Rule 5110(b)(8)(E);
 - (8) offerings of non-convertible debt or preferred securities that meet the transaction eligibility criteria for registering primary offerings of non-convertible securities on Forms S-3 and F-3;
 - (9) offerings of securities issued in conversions, stock splits and restructuring transactions that are executed by an already existing investor without the need for additional consideration or investments on the part of the investor;
 - (10) offerings of securities of a commodity pool operated by a commodity pool operator, as defined under Section 1a(11) of the Commodity Exchange Act;
 - (11) business combination transactions as defined in Securities Act Rule 165(f);
 - (12) offerings of registered investment companies;

(13) standardized options, as defined in Securities Act Rule 238; and

(14) offerings filed with FINRA under Rules 2310, 5110, 5121 and 5122, or exempt from filing thereunder in accordance with Rule 5110(b)(7).

(c) Confidential Treatment

FINRA shall accord confidential treatment to all documents and information filed pursuant to this Rule and shall utilize such documents and information solely for the purpose of review to determine compliance with the provisions of applicable FINRA rules or for other regulatory purposes deemed appropriate by FINRA.

(d) Application for Exemption

Pursuant to the Rule 9600 Series, FINRA may exempt a member or associated person from the provisions of this Rule for good cause shown.

* * * * *

Trading Activity Fee (TAF)

FINRA Amends the TAF Rate for Transactions in Covered Security Futures

Effective Date: October 1, 2012

Executive Summary

Effective October 1, 2012, the Trading Activity Fee (TAF) rate for transactions in covered security futures will decrease from \$0.04 for each security futures contract traded on a round-turn basis carried in a securities account to \$0.00008, with a minimum fee of \$0.01 per round-turn transaction.¹ The new rate applies to round-turn transactions in security futures subject to the TAF occurring on or after October 1, 2012.

The text of the new rule is available in the online FINRA Manual.

Questions concerning this *Notice* should be directed to:

- ▶ FINRA Finance at (240) 386-5397; or
- ▶ The Office of General Counsel at (202) 728-8071.

Background & Discussion

FINRA's primary member fee structure consists of the Personnel Assessment, the Gross Income Assessment and the TAF. Revenue from these fees funds FINRA's regulatory activities, including examinations, financial monitoring, and FINRA's policymaking, rulemaking and enforcement activities.² Currently, the TAF is generally assessed on round-turn transactions in security futures held in securities (as opposed to futures) accounts.³ For transactions in covered security futures, member firms must pay to FINRA a fee for each round-turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.⁴ The current TAF rate for security future transactions is \$0.04 per contract for each round-turn transaction.⁵

September 2012

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Finance
- ▶ Internal Audit
- ▶ Legal
- ▶ Operations
- ▶ Senior Management
- ▶ Systems
- ▶ Trading

Key Topics

- ▶ Security Futures
- ▶ Trading Activity Fee

Referenced Rules & Notices

- ▶ FINRA By-Laws, Schedule A, Section 1
- ▶ NTM 02-75
- ▶ NTM 02-63
- ▶ Regulatory Notice 12-31
- ▶ Regulatory Notice 10-56

Effective September 1, 2012, the National Futures Association (NFA) amended its assessment fee on diminutive notional value contracts and security futures products from \$0.04 for each security futures contract traded on a round-turn basis carried in a commodity futures account to \$0.00008 per round-turn transaction with a minimum fee of \$0.01 per round-turn transaction.⁶ To ensure there is no disincentive to hold security futures in securities accounts because of the TAF rate, FINRA has amended the TAF rate for round-turn security future transactions from \$0.04 per contract for each round-turn transaction to \$0.00008 per contract for each round-turn transaction, with a minimum fee of \$0.01 per round-turn transaction.⁷

Beginning with round-turn transactions in covered security futures occurring on or after October 1, 2012, the TAF rate for such transactions is \$0.00008 per contract, with a minimum fee of \$0.01 per round-turn transaction. The new rate will apply to any round-turn transaction in a covered security future subject to the TAF occurring on or after October 1, 2012. The TAF Self-Reporting Form⁸ will reflect this new rate beginning with TAF Self-Reporting Forms due on November 15, 2012,⁹ which reflect trades subject to the TAF occurring in October 2012.¹⁰

Endnotes

1. See SR-FINRA-2012-044.
2. See FINRA By-Laws, Schedule A, § 1(a).
3. See FINRA By-Laws, Schedule A, § 1(a), (b)(2)(I).
4. See FINRA By-Laws, Schedule A, § 1(b)(3)(C).
5. See FINRA By-Laws, Schedule A, § 1. This rate has been in place since October 1, 2002. See [Notice to Members 02-75](#) (November 2002).
6. See NFA Notice to Members I-12-15 (July 20, 2012); see also NFA Filing from Thomas W. Sexton, Senior Vice President and General Counsel, NFA, to David A. Stawick, Office of the Secretariat, CFTC, dated June 1, 2012.
7. Since the TAF was adopted, FINRA has charged trades in security futures that result in delivery of the underlying securities based on the TAF equity rate structure rather than the rate for round-turn transactions in security futures. See [Notice to Members 02-63](#), Question 10 (Sept. 2002); see also [TAF Frequently Asked Question 500.4](#). FINRA is not changing this guidance. As of July 1, 2012, the TAF rate on covered equity securities is \$0.000119 per share, with a per-transaction cap of \$5.95. See [Regulatory Notice 12-31](#) (June 2012).
8. FINRA maintains a [TAF page](#) on its website that provides firms with additional guidance on the TAF, including Frequently Asked Questions (FAQ), as well as applicable forms. See [Regulatory Notice 10-56](#) (October 2010).
9. The TAF is self-reported by firms on a monthly basis. See [TAF FAQ 100.5](#). TAF Self-Reporting Forms should be submitted to FINRA by the tenth business day following the end of the month. See [TAF FAQ 100.7](#).
10. The TAF is calculated based on trade date, not settlement date. See [TAF FAQ 100.8](#).

Election Notice

District Elections

Upcoming Election to Fill FINRA District Committee Vacancies

Nomination Deadline: **October 5, 2012**

Executive Summary

This *Notice* notifies member firms of the upcoming nomination and election process to fill forthcoming vacancies on FINRA District Committees.

All eligible candidates will be placed on the ballot if they submit a candidate nomination and profile form to the FINRA Corporate Secretary by **Friday, October 5, 2012**. The candidate profile form is available online at www.finra.org/notices/DistrictElection/090512 and as an attachment to this *Notice*.

The seats open for election are included in Attachment A. A list of the current District Committee members is available at www.finra.org/districtcommittees.

Note: This *Notice* was distributed electronically to the executive representative of each FINRA member firm and is posted on FINRA's website. Executive representatives should circulate this *Notice* to their firm's branch managers.

Questions concerning this *Election Notice* may be directed to

- ▶ Marcia Asquith, Senior Vice President and Corporate Secretary, at (202) 728-8949 or via email to CorporateSecretary@finra.org;
- ▶ Jennifer Piorko Mitchell, Assistant Corporate Secretary, at (202) 728-8949 or via email to Jennifer.Mitchell@finra.org; or
- ▶ Chip Jones, Senior Vice President, Member Relations, at (240) 386-4797 or via email to Chip.Jones@finra.org.

September 5, 2012

Suggested Routing

- ▶ Branch Managers
- ▶ Executive Representatives
- ▶ Senior Management

Background

The FINRA District Committees serve an important role in the self-regulatory process by, among other things:

- ▶ serving on disciplinary panels in accordance with FINRA rules;
- ▶ alerting FINRA to industry trends that could present regulatory concerns; and
- ▶ consulting with FINRA on proposed policies and rule changes.

Committee members must have the experience, ability and commitment to fulfill these responsibilities, including:

- ▶ understanding the issues facing the securities industry and possessing the ability to apply knowledge and expertise to these issues to develop solutions;
- ▶ educating firms in their district on the responsibilities of FINRA;
- ▶ attending regularly and participating in a collegial manner in District Committee meetings; and
- ▶ remaining objective and unbiased, regardless of the interest of their firm, in the performance of District Committee matters.

Committee members also must adhere to the following prohibitions and restrictions:

- ▶ being sensitive to conflicts, such as those that can arise from firm-related work and service on industry committees, or as an expert witness, hearing panelist or arbitrator, and refraining from participating in a particular matter when a conflict exists;
- ▶ refraining from using membership on the District Committee for commercial purposes, for qualifying as an expert or suggesting special access to FINRA; and
- ▶ keeping sensitive, non-public or proprietary information confidential.

Changes to District Committee Composition

On May 4, 2011, the SEC approved amendments to FINRA Regulation's By-Laws¹ to, among other things, adjust the size and composition of District Committees, over a three-year transition period, to align more closely with the industry representation on the FINRA Board of Governors.² The by-law change also replaced the District Nominating Committees with a process of direct nomination and election based on firm size.³

This is the second election under the new procedures and the three-year transition period will be complete following the 2013 election.

Terms & Vacancies

The full term for a District Committee member is three years. There is no limit on the number of terms that a member of a District Committee may serve, except that a District Committee member may not serve two full terms consecutively. Terms of District Committee members will terminate if they do not remain eligible for the seat for which they were elected.

Terms of all of the individuals elected during this election will begin on January 1, 2013.

Full-Term Vacancies

In this election, the District Committees for Districts 1, 2, 3, 4, 5, 6, 7, 8, 9 and 11 each have two full-term vacancies to fill: one representing a small firm seat and one representing a large firm seat. District 10 has five full-term vacancies to fill: two representing small firm seats, one representing a mid-sized firm seat and two representing large firm seats.

Firm size categories are:

- ▶ **small firm**—a firm that employs at least one and no more than 150 registered persons;⁴
- ▶ **mid-size firm**—a firm that employs at least 151 and no more than 499 registered persons;⁵ and
- ▶ **large firm**—a firm that employs 500 or more registered persons.⁶

The individuals elected to fill the above vacancies will be elected to serve three-year terms expiring December 31, 2015.

Partial Term Vacancy

In addition to the vacancies listed above, District 2 has an additional vacancy to fill to complete the term of a small firm member who resigned prior to the completion of her term. The individual elected to fill this vacancy will serve a term expiring December 31, 2014.

Nomination Process and Eligibility

All candidates who submit their names and meet the qualifications set forth in Article VIII, Section 8.2 of the FINRA Regulation By-Laws (see below) will be included on their district's ballot. FINRA encourages current and former committee members to assist FINRA by soliciting candidates for committee service.

Individuals who seek a seat on the District Committee within their district must complete a candidate nomination and profile form and submit it to FINRA by **October 5, 2011**.

The candidate nomination and profile form is available online at www.finra.org/Notices/DistrictElection/090512 and as an attachment to this Notice.

Article VIII, Section 8.2 of the FINRA Regulation By-Laws requires that District Committee members:

1. be associated with a FINRA member firm eligible to vote in the district for District Committee elections and registered in the capacity of a branch manager or principal or denoted as a corporate officer of the FINRA member;
2. work primarily from the FINRA member firm's principal office or a branch office that is located within the district where the member would serve on a District Committee; and
3. represent and be directly elected by the applicable classification of FINRA members based on the size of the firm with which he or she is associated: small, mid-size or large.

The names of all qualified individuals will be included on the ballot for the appropriate seat. Ballots will be mailed on or around October 17, 2012.

Additional information on District Committee election procedures may be found in Article VIII of FINRA Regulation's By-Laws.

Firm Contact Information

Firms are reminded to accurately maintain their executive representative's name and email address, as well as their firm's main postal address in the FINRA Contact System. This will ensure that important mailings, such as election information, are properly directed. A firm's failure to keep this information accurate may jeopardize the firm's ability to participate in elections.⁷

To update an executive representative name, mailing address and email address, firms may access the FINRA Contact System, via the Firm Gateway, at <https://firms.finra.org/fcs>. For assistance updating FCS, contact FINRA's Call Center at (301) 590-6500.

Endnotes

1. See Securities Exchange Act Release No. 64363 (April 28, 2011), 76 FR 25397.
2. Any members elected prior to the by-law change will serve out their original terms.
3. Additionally, all District Committees except District 10 (New York) were adjusted from nine to seven members and District 10 is adjusted from 12 to 14 members. Any members elected prior to the by-law change will serve out their original terms.
4. See Article I (jj) of the FINRA Regulation By-Laws.
5. See Article I (aa) of the FINRA Regulation By-Laws.
6. See Article I (y) of the FINRA Regulation By-Laws.
7. Under NASD Rule 1160, firms must 1) update their contact information promptly, but in any event not later than 30 days following any change in such information, as well as 2) review and, if necessary, update the information within 17 business days after the end of each calendar year. Additionally, firms must comply with any FINRA request for such information promptly, but in any event not later than 15 days following the request, or such longer period agreed to by FINRA staff. See NASD Rule 1160 and [*Regulatory Notice 07-42*](#) (September 2007).

Attachment A

District Committee Positions to Be Elected

District 1

Northern California (the counties of Monterey, San Benito, Fresno and Inyo, and the remainder of the state north or west of such counties), northern Nevada (the counties of Esmeralda and Nye, and the remainder of the state north or west of such counties) and Hawaii

District Committee for District 1

- ▶ Committee members to be elected to terms expiring December 31, 2015: One small firm representative and one large firm representative.
-

District 2

Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno and Inyo), southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye) and the former U.S. Trust Territories

District Committee for District 2

- ▶ Committee members to be elected to terms expiring December 31, 2015: One small firm representative and one large firm representative.
 - ▶ Committee member to be elected to a term expiring December 31, 2014: One small firm representative.
-

District 3

Alaska, Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington and Wyoming

District Committee for District 3

- ▶ Committee members to be elected to terms expiring December 31, 2015: One small firm representative and one large firm representative.
-

District 4

Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota

District Committee for District 4

- ▶ Committee members to be elected to terms expiring December 31, 2015: One small firm representative and one large firm representative.

District 5

Alabama, Arkansas, Louisiana, Mississippi, Oklahoma and Tennessee

District Committee for District 5

- ▶ Committee members to be elected to terms expiring December 31, 2015: One small firm representative and one large firm representative.

District 6

Texas

District Committee for District 6

- ▶ Committee members to be elected to terms expiring December 31, 2015: One small firm representative and one large firm representative.

District 7

Florida, Georgia, North Carolina, Puerto Rico, Panama, South Carolina and the Virgin Islands

District Committee for District 7

- ▶ Committee members to be elected to terms expiring December 31, 2015: One small firm representative and one large firm representative.

District 8

Illinois, Indiana, Kentucky, Michigan, Ohio and Wisconsin

District Committee for District 8

- ▶ Committee members to be elected to terms expiring December 31, 2015: One small firm representative and one large firm representative.

District 9

Delaware, the District of Columbia, Maryland, New Jersey and New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City), Pennsylvania, Virginia and West Virginia

District Committee for District 9

- ▶ Committee members to be elected to terms expiring December 31, 2015: One small firm representative and one large firm representative.

District 10

New York (the counties of Nassau and Suffolk, and the five boroughs of New York City)

District Committee for District 10

- ▶ Committee members to be elected to terms expiring December 31, 2015: Two small firm representatives, one mid-sized firm representative and two large firm representatives.

District 11

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont

District Committee for District 11

- ▶ Committee members to be elected to terms expiring December 31, 2015: One small firm representative and one large firm representative.

Attachment B Candidate Profile Form—District Committee Election

Please complete all sections and email this document to CorporateSecretary@finra.org. An electronic version of this form is also available at www.finra.org/notices/DistrictElection/090512.

Name: _____ Date: _____

(As you would like it to appear on official correspondence)

Current Registration

Title/Primary Responsibility: _____

Firm CRD#: _____ Individual CRD#: _____

FINRA District No.: _____ Number of Registered Reps. at Firm: _____

Address

Street Address: _____ Suite/Floor: _____

City: _____ State: _____

Email: _____

Phone: _____

District Committee Seat Sought

- Small Firm (150 or fewer registered representatives)
- Mid-Size Firm (151 to 499 registered representatives)
- Large Firm (500 or more registered representatives)

Eligibility (Check all that apply)

- Associated with FINRA member firm eligible to vote in the district for District Committee elections
- Work primarily from FINRA member firm's principal or branch office in the district of the District Committee sought
- Position

Registered as

- branch manager
- principal

OR

- Denoted as a corporate officer of the FINRA member firm.

Election Notice

FINRA Small Firm Advisory Board Election

Nomination Deadline: October 5, 2012

Executive Summary

The purpose of this *Notice* is to inform FINRA small firm members¹ of the upcoming Small Firm Advisory Board (SFAB) election. Two seats on the SFAB are up for election: the North and West Region seats.

The SFAB provides guidance to FINRA staff, particularly regarding the potential impact of proposed regulatory initiatives on FINRA's small firms, and meets five times a year primarily in Washington, DC, prior to each FINRA Board of Governors meeting. SFAB members are expected to attend SFAB meetings in person, and may be requested to attend certain regional, district and other FINRA meetings. Potential candidates should ensure that their other commitments will allow for their in-person attendance at all SFAB meetings.

Any eligible candidate wishing to have his or her name added to the ballot must submit the relevant information via the Candidate Nomination and Profile Form to FINRA's Corporate Secretary no later than Friday, October 5, 2012. The candidate profile form is available online at www.finra.org/notices/SFABElection/090512 and as an attachment to this *Notice*.

On or about Wednesday, October 17, 2012, FINRA will mail the official *Election Notice* and ballots to the executive representatives of small firms in the North and West Regions to elect their regional representatives on the SFAB. Voting will conclude in November 2012 and new members will take office in January 2013.

Questions regarding this *Election Notice* may be directed to:

- ▶ Marcia E. Asquith, Senior Vice President and Corporate Secretary, at (202) 728-8949;
- ▶ Jennifer Piorko Mitchell, Assistant Corporate Secretary, at (202) 728-8949; or
- ▶ Chip Jones, Senior Vice President, Member Relations, at (240) 386-4797.

September 5, 2012

Suggested Routing

- ▶ Executive Representatives
- ▶ Senior Management

Composition of the FINRA Small Firm Advisory Board

The SFAB comprises 10 members:

- ▶ five regional members elected by small firms in the five FINRA regions (one from each region); and
- ▶ five at-large members appointed by FINRA.

Additionally, the FINRA Board's Small Firm Governors² serve as ex-officio members of the SFAB.

The five regional members represent the following geographic regions:

- ▶ Midwest Region: Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (Districts 4 and 8)
- ▶ New York Region: New York (the counties of Nassau and Suffolk, and the five boroughs of New York City) (District 10)
- ▶ North Region: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City), Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia (Districts 9 and 11)
- ▶ South Region: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Puerto Rico and the Virgin Islands (Districts 5, 6 and 7)
- ▶ West Region: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and the former U.S. Trust Territories (Districts 1, 2 and 3)

As mentioned above, two seats on the SFAB are up for election: the North and West Region seats.

Candidate Eligibility

Any senior member of a small firm whose primary place of business and whose firm has its main office (as indicated in FINRA records) in the North and West region is eligible to have his or her name placed on the SFAB ballot for that region. Senior members of firms include owners, chief executive officers, presidents, chief compliance officers, chief operating officers, the firm's FINOP or individuals of comparable status. There may be only one candidate per firm on each ballot.

Eligible individuals must complete the attached SFAB candidate profile form³ and submit it, through their firm's Executive Representative, to FINRA's Corporate Secretary. SFAB candidate profiles must be received by the Corporate Secretary of FINRA no later than Friday, October 5, 2012.

FINRA's Corporate Secretary will confirm the firm's status as a small firm and the candidate's eligibility, and include certified candidates on the relevant region's ballot. Individuals have a continuing obligation to satisfy the firm-size requirement on the date the candidacy is certified by the Corporate Secretary and the date the ballots are mailed. Individuals who fail to meet this requirement will be disqualified from election.

SFAB members must also continue to meet their qualifications for election at all times during their terms of office.

Voting Eligibility

FINRA small firms are eligible to vote for candidates running for the SFAB seat representing the region corresponding to the district to which they are assigned in the Central Registration Depository. Only those firms eligible to vote for the North and West region seats will receive ballots. The size of each firm and the location of each firm's main office will be verified on the day the ballots are mailed.

Firms may vote for only one candidate listed on the ballot.

Terms of SFAB Members

The successful candidate will be the individual who receives the most votes and will be elected to serve a three-year term.

The term of an SFAB member shall terminate immediately upon a determination by the SFAB, by a majority vote of the remaining members, that the member no longer satisfies the eligibility criteria. Additionally, the FINRA Board may remove from the SFAB a member who is unable or fails to discharge the member's duties or violates SFAB policies.

Once an individual has completed a full three-year elected term on the SFAB, he or she is ineligible to run for re-election to the SFAB for another three years.

Endnotes

1. A small firm is defined as a firm that employs at least one and no more than 150 registered persons. See Article I (ww) of the FINRA By-Laws.
2. A Small Firm Governor is defined as a member of the FINRA Board elected by small firm members. In order to be eligible to serve, a Small Firm Governor must be registered with a member that is a small firm and must be an Industry Governor. See Article I (xx) of the FINRA By-Laws.
3. The SFAB candidate profile form is also available at www.finra.org/notices/SFABElection/090512.

Attachment A

Candidate Nomination and Profile Form — SFAB Election

Please complete all sections and email this document to CorporateSecretary@finra.org. An electronic version of this form is also available at www.finra.org/notices/SFABElection/090512.

Current Registration

Name: _____ CRD#: _____

(As you would like it to appear on official correspondence)

Firm Name: _____ Firm #: _____

FINRA District No.: _____ Number of Registered Reps. at Firm: _____

Title/Primary Responsibility: _____

Address

Street Address: _____ Suite/Floor: _____

City: _____ State: _____

Email: _____

Phone: _____

SFAB Seat Sought

North Region

- ▶ Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City), Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia (Districts 9 and 11)

West Region

- ▶ Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and the former U.S. Trust Territories (Districts 1, 2 and 3)

Eligibility Checklist (must meet all three)

1. Senior member of a small firm;
 - ▶ Senior members include owners, chief executive officers, presidents, chief compliance officers, chief operating officers, the firm’s FINOP or individuals of comparable status.
2. Firm’s main office is in the North or West Region
 - ▶ Location of firm’s main office: _____
3. Your primary place of business is in the same region as the firm’s main office.

