

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 118	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2012 - * 020 Amendment No. (req. for Amendments *)
Proposed Rule Change by Financial Industry Regulatory Authority Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934			
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>
			Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b> Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). Proposed Rule Change Relating to TRACE Reporting and Dissemination of Transactions in Agency Pass-Through Mortgage-Backed Securities Traded To Be Announced			
<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 proposed rule change. First Name * Sharon Last Name * Zackula Title * Associate Vice President and Associate General Counsel E-mail * sharon.zackula@finra.org Telephone * (202) 728-8985 Fax (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 officer. Date 03/01/2012 By Patrice Gliniecki Senior Vice President and Deputy General Counsel (Name *) (Title *)  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. Patrice Gliniecki,			

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information (required)**

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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 (required)**

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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 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 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 amend the FINRA Rule 6700 Series and Trade Reporting and Compliance Engine (“TRACE”) dissemination protocols regarding the reporting and dissemination of transactions in TRACE-Eligible Securities that are Agency Pass-Through Mortgage-Backed Securities that are traded to be announced (“TBA”) (“TBA transactions”); to amend FINRA Rule 7730 regarding TRACE fees to provide for data fees for TBA transaction data; and to amend the FINRA Rule 6700 Series and FINRA Rule 7730 to delete references to a pilot program that expired on November 18, 2011, and to incorporate other minor administrative, technical or clarifying changes.<sup>2</sup>

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 September 22, 2011, 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.

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

<sup>2</sup> The terms TRACE-Eligible Security, Agency Pass-Through Mortgage-Backed Security and TBA are defined in, respectively, Rule 6710(a), Rule 6710(v) and Rule 6710(u).

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no earlier than August 1, 2012 and no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

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

(a) Purpose

FINRA proposes amendments to the TRACE rules and dissemination protocols to provide greater transparency in TBA transactions. First, FINRA proposes to amend Rule 6730, to establish distinct requirements for reporting TBA transactions for which good delivery may be made (“TBA transactions GD”) and for reporting TBA transactions in products that are not traded for good delivery (“TBA transactions NGD”), and, in two stages, to reduce the time frames to report each type of TBA transaction and to make a related amendment to Rule 6710(u), the definition of “TBA,” to incorporate the concepts “for good delivery” and “not for good delivery.” Second, FINRA proposes to amend Rule 6750 to provide for the dissemination of TBA transactions and to establish, as part of TRACE dissemination protocols, a \$25 million dissemination cap for TBA transactions GD and a \$10 million dissemination cap for TBA transactions NGD. Third, FINRA proposes to amend Rule 7730 to establish fees for current market data for TBA transactions and aged TBA transaction data.<sup>3</sup> Finally, FINRA proposes to amend Rule 6730 to delete references to a pilot program that expired on November 18, 2011, and

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<sup>3</sup> The term Historic TRACE Data is defined in Rule 7730(f)(4) and refers to aged TRACE transaction data, which will include TBA transaction data.

Rule 6730 and Rule 7730 to incorporate other minor administrative, technical or clarifying changes as described in greater detail below.

TBA Transactions

As provided in Rule 6710(u), TBA means

“to be announced” and refers to a transaction in an Agency Pass-Through Mortgage-Backed Security . . . where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number).<sup>4</sup>

In a TBA transaction, the parties agree on a price for delivering a given volume of Agency Pass-Through Mortgage-Backed Securities at a specified future date. The distinguishing feature of a TBA transaction is that the actual identity of the securities to be delivered at settlement is not specified on the date of execution (“Trade Date”).

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<sup>4</sup> As defined in Rule 6710(v), an Agency Pass-Through Mortgage-Backed Security means

a mortgage-backed security issued by an Agency or a Government-Sponsored Enterprise, for which the timely payment of principal and interest is guaranteed by an Agency or a Government-Sponsored Enterprise, representing ownership interests in a pool or pools of residential mortgage loans with the security structured to “pass through” the principal and interest payments made by the mortgagees to the owners of the pool(s) on a pro rata basis.

The terms Agency and Government-Sponsored Enterprise (“GSE”) are defined in, respectively, Rule 6710(k) and Rule 6710(n).

Instead, the parties to the trade agree on only five general parameters of the securities to be delivered: issuer, mortgage type, maturity, coupon, and month of settlement.

TBA transactions are “for good delivery” (“GD”) or “not for good delivery” (“NGD”). The GD and NGD distinctions and classifications are based on market standards and conventions that identify which mortgage pools (or combinations of mortgage pools) satisfy “good delivery” requirements, which were developed to facilitate the securitization of common mortgage products, and to enhance and maintain the liquidity in the TBA market for such mortgage-backed securities. The conventions and standards for TBA transactions GD are set forth in the “Uniform Practices for the Clearance and Settlement of Mortgage-Related Securities and Other Related Securities,” and particularly in Chapter 8 (“Standard Requirements for Delivery on Settlements of Fannie Mae, Freddie Mac and Ginnie Mae Securities”) (“Good Delivery Guidelines”).<sup>5</sup> For a TBA transaction to be GD, it must conform to certain GSE or Ginnie Mae program requirements regarding the mortgage loans and also meet certain other requirements, such as those regarding variance in the actual principal amount delivered compared to the principal amount of the trade, the number of pools that may be delivered at settlement, minimum original face amount of a pool, and final maturity guidelines regarding the maturity of the mortgage loans underlying the security, among others.<sup>6</sup> Products traded

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<sup>5</sup> “Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities” (“Uniform Practices Guidelines”) is published by the Securities Industry and Financial Markets Association (“SIFMA”).

<sup>6</sup> Pooled mortgage loans that are traded GD include, but are not limited to, those conforming to the Fannie Mae and Freddie Mac “Single Family” programs (*i.e.*, single family mortgages identified by coupon ranges and maturities), and certain other products conforming to Fannie Mae, Freddie Mac or GNMA programs (*e.g.*, the Gold Single Family, Balloon, Gold Balloon and Jumbo programs). Most

TBA but that are not eligible according to the Good Delivery Guidelines are considered “not for good delivery.”

The vast majority of loans eligible for inclusion in TBA-delivered pools traded GD are known as standard loans. They are 15- and 30-year fixed-rate single-family loans with certain general characteristics set forth in the Good Delivery Guidelines.<sup>7</sup> Other loans that are eligible for good delivery upon meeting specific criteria set forth in the Good Delivery Guidelines include Fannie Mae 11<sup>th</sup> District Cost of Funds Index (“COFI”) adjusted rate mortgages (“ARMs”) and Ginnie Mae ARMs. Also, TBA identification numbers assigned by the CUSIP Service Bureau distinguish the issuers and the various pool types, among other things, providing another means of identifying a transaction as a TBA transaction GD or a TBA transaction NGD.<sup>8</sup>

Together, the securitization process and the TBA market transform what is a fundamentally heterogeneous universe of individual mortgages and mortgage pools (with

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newly issued Agency Pass-Through Mortgage-Backed Securities are eligible to be sold as TBA transactions GD. Examples of mortgage products not eligible for good delivery to settle a TBA transaction include, but are not limited to, interest only mortgages, project/construction loans, and certain non-conforming mortgages on single family residences.

<sup>7</sup> See Good Delivery Guidelines, Section 11 (“General Characteristics of Standard Loans for 15 and 30yr Fixed-Rate Single-Family TBA-eligible Pools,” listing 14 general characteristics of standard 15-year or 30-year loans (e.g., fixed rate, first lien, and level payment).)

<sup>8</sup> CUSIP means Committee on Uniform Security Identification Procedures. A CUSIP consists of nine characters. Positions 1 and 2 denote the product type (for example, 01 refers to single family loans, 06 refers to balloon loans, and 16 refers to ARMs), and Position 3 identifies the Agency or GSE (F denotes Fannie Mae, R denotes Freddie Mac, N denotes GNMA I and H denotes GNMA II). Positions 4 through 8 are used to identify coupon, maturity in years and settlement month, and Position 9 is a check digit (i.e., a mathematical formula that checks the accuracy of the previous 8 digits).

myriad credit and prepayment characteristics) into groups of fungible – and therefore liquid – fixed-income instruments.<sup>9</sup>

#### Reduction of TBA Transaction Reporting Period

Currently, Asset-Backed Securities transactions (except certain pre-issuance transactions in collateralized mortgage obligations (“CMOs”) and real estate mortgage investment conduits (“REMICs”)) that are executed on a business day through 5:00:00 p.m. Eastern Time must be reported to TRACE on the Trade Date during TRACE System Hours, as provided in Rule 6730(a)(3)(A)(ii).<sup>10</sup> In contrast, secondary market transactions in all other TRACE-Eligible Securities must be reported within 15 minutes of the Time of Execution.<sup>11</sup> With certain exceptions, transaction information on such TRACE-Eligible Securities is disseminated as soon as the transaction is reported, and the 15-minute reporting requirement results in meaningful price transparency for market participants trading such securities.<sup>12</sup>

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<sup>9</sup> James Vichery and Joshua Wright, TBA Trading and Liquidity in the Agency MBS Market, Federal Reserve Bank of New York Staff Reports, no. 468 (August 2010), available at [http://www.newyorkfed.org/research/staff\\_reports/sr468.pdf](http://www.newyorkfed.org/research/staff_reports/sr468.pdf).

<sup>10</sup> In general, Asset-Backed Securities must be reported to TRACE under Rules 6730(a)(3)(A) and (B). Rule 6730(a)(3)(B)(i) addresses reporting requirements for Asset-Backed Securities transactions executed after 5:00:00 p.m. Eastern Time on a business day, and Rule 6730(a)(3)(B)(ii) addresses reporting requirements for Asset-Backed Securities transactions executed after TRACE System Hours, or on a weekend or a holiday, or other day on which the TRACE system is not open at any time during that day. However, for certain pre-issuance transactions in CMOs and REMICs, the applicable reporting provisions are set forth in Rule 6730(a)(3)(C), and Rules 6730(a)(3)(A) and (B) do not apply. The terms Asset-Backed Security and TRACE System Hours are defined in, respectively, Rule 6710(m) and Rule 6710(t).

<sup>11</sup> The term Time of Execution is defined in Rule 6710(d).

<sup>12</sup> Currently, transaction information on all types of securities that are TRACE-Eligible Securities, except Asset-Backed Securities, is disseminated as provided



In connection with proposing that TBA transactions be disseminated, FINRA proposes to reduce the reporting time frames for TBA transactions GD to provide market participants meaningful and timely price information about the more liquid and active TBA market segment. The proposed rule change also will reduce the reporting period for the less liquid and active TBA transactions NGD, but to a lesser extent, as discussed in greater detail below. In addition, FINRA proposes to reduce the reporting time frames proposed for TBA transactions GD and TBA transactions NGD in two stages to permit industry participants to adjust policies and procedures and to make required technological changes.

TBA Transactions For Good Delivery. Proposed Rule 6730(a)(3)(D) sets forth the requirements to report TBA transactions GD. First, for a pilot program of approximately 180 days duration, the reporting period for TBA transactions GD would be reduced from no later than the close of the TRACE system on Trade Date to no later than 45 minutes from the Time of Execution (“TBA GD Pilot Program”), as set forth in proposed Rule 6730(a)(3)(D)(i).<sup>13</sup> Minor exceptions to the general requirements are set

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in Rule 6750(a). However, FINRA does not disseminate information on a transaction in a TRACE-Eligible Security that is (1) effected pursuant to Securities Act Rule 144A (17 CFR 239.144A) under Rule 6750(b)(1); (2) a transfer of proprietary securities positions where the transfer (A) is effected in connection with a merger or direct or indirect acquisition and (B) is not in furtherance of a trading or investment strategy under Rule 6750(b)(2); or (3) a List or Fixed Offering Price Transaction or a Takedown Transaction under Rule 6750(b)(3). The terms List or Fixed Offering Price Transaction and Takedown Transaction are defined in, respectively, Rule 6710(q) and Rule 6710(r).

<sup>13</sup> To accommodate member requests that rule changes requiring technology changes occur on a Friday, if possible, the proposed TBA GD Pilot Program and a similar pilot program for TBA transactions NGD will expire on a Friday (*i.e.*, on the 180<sup>th</sup> day, if a Friday, or, if the 180<sup>th</sup> day is not a Friday, on the Friday next occurring that the TRACE system is open).

forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d.<sup>14</sup> Second, after approximately 180 days, the TBA GD Pilot Program would expire and the reporting period would be reduced from no later than 45 minutes from the Time of Execution to no later than 15 minutes from the Time of Execution, as set forth in proposed Rule 6730(a)(3)(D)(ii). Again, FINRA proposes to include certain limited exceptions to the reporting time frames for TBA transactions executed shortly before the TRACE system closes and when the TRACE system is closed.<sup>15</sup>

TBA Transactions Not For Good Delivery. The proposed reporting requirements that would apply to TBA transactions NGD are set forth in proposed Rule 6730(a)(3)(E). FINRA has been informed that TBA transactions NGD are in certain cases less

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<sup>14</sup> Minor exceptions to the general requirement to report TBA transactions GD no later than 45 minutes from the Time of Execution are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d. Under proposed Rule 6730(a)(3)(D)(i)a., transactions executed on a business day at or after 12:00:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 45 minutes after the TRACE system opens. Under proposed Rule 6730(a)(3)(D)(i)c., transactions executed on a business day less than 45 minutes before 6:30:00 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 45 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated “as/of” and include the date of execution. Under proposed Rule 6730(a)(3)(D)(i)d., 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), no later than 45 minutes after the TRACE system opens, designated “as/of” and include the date of execution.

<sup>15</sup> After the TBA GD Pilot Program expires, proposed Rule 6730(a)(3)(D)(ii), which incorporates by reference Rule 6730(a)(1), requires generally that TBA transactions be reported no later than 15 minutes from the Time of Execution, with certain minor exceptions for transactions executed near the end of the TRACE System Hours, before and after TRACE System Hours, and on weekends and certain federal and religious holidays. See, e.g., Rule 6730(a)(1)(C) and Rule 6730(a)(1)(D). The exceptions are the same as those that apply to members reporting transactions in corporate bonds and Agency Debt Securities to TRACE.

automated and more operationally challenging, wherefore FINRA proposes a longer reporting time frame than for TBA transactions GD. First, for a pilot program of approximately 180 days duration, the reporting period for TBA transactions NGD would be reduced from no later than the close of the TRACE system on Trade Date to no later than 120 minutes from the Time of Execution (“TBA NGD Pilot Program”), as set forth in proposed Rule 6730(a)(3)(E)(i). Minor exceptions to the general requirements would be set forth in proposed Rule 6730(a)(3)(E)(i)a., c. and d.<sup>16</sup> Second, after approximately 180 days, the TBA NGD Pilot Program would expire and the reporting period would be reduced from no later than 120 minutes from the Time of Execution to no later than 60 minutes from the Time of Execution, as set forth in proposed Rule 6730(a)(3)(E)(ii). The provision also would include certain limited exceptions for TBA transactions executed shortly before the TRACE system closes and when the TRACE system is closed.<sup>17</sup> After

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<sup>16</sup> Minor exceptions to the general requirement to report TBA transactions NGD no later than 120 minutes from the Time of Execution are set forth in proposed Rule 6730(a)(3)(E)(i)a., c. and d. Under proposed Rule 6730(a)(3)(E)(i)a., transactions executed on a business day at or after 12:00:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 120 minutes after the TRACE system opens. Under proposed Rule 6730(a)(3)(E)(i)c., transactions executed on a business day less than 120 minutes before 6:30:00 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 120 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated “as/of” and include the date of execution. Under proposed Rule 6730(a)(3)(E)(i)d., 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), no later than 120 minutes after the TRACE system opens, designated “as/of” and include the date of execution.

<sup>17</sup> After the TBA NGD Pilot Program expires, there are minor exceptions to the 60-minute reporting time frame set forth in proposed Rule 6730(a)(3)(E)(ii) for TBA transactions NGD executed near the end of the TRACE System Hours, before and after TRACE System Hours, and on weekends and certain federal and religious

the 60-minute reporting requirement is implemented, FINRA will continue to review the reporting of TBA transactions NGD and may recommend further reductions in the reporting period.

TBA Definition. In connection with establishing separate reporting requirements, and as discussed infra, separate dissemination caps for TBA transactions GD and TBA transactions NGD, FINRA proposes to amend the definition of “TBA” in Rule 6710(u) to incorporate the concepts that TBA transactions may be traded GD or NGD. FINRA also incorporates minor, technical changes to the defined term. As amended, Rule 6710(u) would provide as follows:

“To Be Announced” (“TBA”) means a transaction in an Agency Pass-Through Mortgage-Backed Security as defined in paragraph (v) where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number), and includes TBA transactions “for good delivery” (“GD”) and TBA transactions “not for good delivery” (“NGD”).

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holidays. See proposed Rule 6730(a)(3)(E)(ii)a., c. and d. The exceptions are structured similarly to the exceptions to 15-minute reporting that FINRA proposes to apply to TBA transactions GD.

Guidance previously published regarding reporting transactions in Asset-Backed Securities as soon as practicable, rather than queuing such reports until the end of the reporting time period, applies to members’ reporting obligations under the time frames proposed herein. See Trade Reporting Notice, dated May 10, 2011.

Dissemination of TBA Transaction Data

Although members began reporting transactions in Asset-Backed Securities to TRACE on May 16, 2011, FINRA currently does not disseminate publicly any of the Asset-Backed Securities transaction data reported to TRACE. Specifically, Rule 6750(b)(4) provides that transaction information on TRACE-Eligible Securities that are Asset-Backed Securities will not be disseminated.

However, when FINRA proposed the dissemination restrictions in Rule 6750(b)(4) regarding Asset-Backed Securities, FINRA represented that it would study the Asset-Backed Securities data after transaction reporting began. In the Commission's order approving the proposed rule change to define Asset-Backed Securities as TRACE-Eligible Securities and require reporting of Asset-Backed Securities transactions, the Commission noted FINRA's intent to study Asset-Backed Securities dissemination issues prior to making any proposal to disseminate some or all of such information, and the Commission's historical support of efforts to improve post-trade transparency in the fixed income markets:

FINRA believes that information on Asset-Backed Securities transactions should be collected and analyzed before making any decision regarding the utility of such information for transparency purposes or the consequences of dissemination on this market. FINRA has stated that, after a period of study, it would file a proposed rule change if it determined that its study of the trading data provides a reasonable basis to seek dissemination of transaction

information on Asset-Backed Securities. The Commission has historically been supportive of efforts to improve post-trade transparency in the fixed income markets and encourages FINRA to carry out that study.<sup>18</sup>

Since reporting began on May 16, 2011, FINRA has reviewed Asset-Backed Securities transaction data. The reported Asset-Backed Securities transaction data, as well as input from market participants as FINRA prepared to expand TRACE to include Asset-Backed Securities, suggests that real-time disseminated TRACE transaction data should be expanded to include transaction information on TBA transactions.

First, at the launch of Asset-Backed Securities reporting, certain market participants noted that TBA transactions trade in a very liquid market and suggested that FINRA consider transparency in such transactions. Second, as FINRA reviewed and continues to review the data reported for Asset-Backed Securities, including TBA transactions, and studies the total volume of TBA transactions, the concentration of trading in such securities, and the pricing disparity among various types of Agency Pass-Through Mortgage-Backed Securities traded TBA to understand their liquidity and fungibility, the data supports FINRA's proposal to disseminate TBA transactions GD and TBA transactions NGD to increase transparency in this market.

The market activity reported and reviewed reveals that the TBA market is generally active and liquid. In addition, the degree of fungibility is high, with substantial trading concentrated among a relatively small universe of securities as identified by a unique CUSIP number (hereinafter, "CUSIP" means the specific security identified by

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<sup>18</sup> See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262, 9265 (March 1, 2010) (Order Approving File No. SR-FINRA-2009-065).

the unique CUSIP number). The TBA market has an average daily volume of \$248 billion traded in close to 8,000 average daily trades,<sup>19</sup> and the average daily volume of all TBA transactions is approximately ten times the average daily volume of the entire corporate bond market.<sup>20</sup> The vast majority of TBA transactions occur in TBA GD, accounting for 99.36 percent of all TBA transactions (correspondingly, TBA transactions NGD account for 0.64 percent of all TBA transactions). The correlation among the prices of various TBA CUSIPs is high, and the price of one TBA transaction may be derived using available prices for TBA transactions for a different issuer, a different coupon rate, maturity, or a combination thereof.<sup>21</sup>

FINRA Rule 6750

Rule 6750(b)(4) currently provides that transactions in Asset-Backed Securities are not subject to dissemination. FINRA proposes to amend the rule to disseminate information on TBA transactions GD and TBA transactions NGD, which would occur immediately upon receipt of a transaction report.<sup>22</sup> Thus, information would be

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<sup>19</sup> The information is based upon FINRA's review of all TBA transactions reported to TRACE from May 16, 2011 through October 28, 2011.

<sup>20</sup> The information is based upon FINRA's review of transactions in all TRACE-Eligible Securities, other than Agency Debt Securities, reported to TRACE from May 16, 2011 through October 28, 2011.

<sup>21</sup> From a review of all TBA transactions reported to TRACE from May 16, 2011 through July 31, 2011, the data shows that TBA transactions (with different issuers, different coupon rates, and different maturities) were priced consistently, relative to each other.

<sup>22</sup> Rule 6750(b) would be amended to provide that FINRA will not disseminate information on a transaction in a TRACE-Eligible Security that is

(4) an Asset-Backed Security, except an Agency Pass-Through Mortgage-Backed Security traded to be announced ("TBA") ("TBA transaction").

disseminated on TBA transactions GD within 45 minutes, or, after the expiration of the TBA GD Pilot Program, within 15 minutes of the Time of Execution, and, on TBA transactions NGD, within 120 minutes, or, after the expiration of the TBA NGD Pilot Program, within 60 minutes of the Time of Execution.<sup>23</sup>

#### Dissemination Caps

Currently, there are two TRACE dissemination protocols in place, referred to as dissemination caps, under which the actual size of a transaction over a certain par value is not displayed in disseminated TRACE transaction data. For TRACE-Eligible Securities that are rated Investment Grade, the dissemination cap is \$5 million (“\$5MM”), and the size of transactions in excess of \$5MM is displayed as “\$5MM+.” For TRACE-Eligible Securities that are rated Non-Investment Grade, the dissemination cap is \$1 million (“\$1MM”), and the size of a transaction in excess of \$1MM is displayed as “\$1MM+.”<sup>24</sup>

FINRA has analyzed the distribution of TBA transactions GD and TBA transactions NGD to determine an appropriate cap for these transactions. FINRA proposes to set a dissemination cap for a TBA transaction GD initially at \$25 million. Accordingly, the size of a TBA transaction GD greater than \$25 million would be displayed in disseminated data as “\$ 25MM+.” At this level, approximately 20 percent of trades in TBA transactions NG representing approximately 84 percent of total volume

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<sup>23</sup> FINRA continues to review Asset-Backed Security transaction information in other sectors of the Asset-Backed Securities market and, at a later date, may propose that transactions in other Asset-Backed Securities be disseminated.

<sup>24</sup> The terms Investment Grade and Non-Investment Grade are defined in, respectively, Rule 6710(h) and Rule 6710(i).



traded would be disseminated subject to the cap.<sup>25</sup> For a TBA transaction NGD, FINRA proposes to set a \$10 million dissemination cap initially, with size displayed in disseminated data as “\$10MM+,” if the size of the TBA transaction NGD exceeded \$10 million. At this level, approximately 42 percent of TBA transactions NGD representing approximately 85 percent of total volume traded would be disseminated subject to the cap.

The \$25 million dissemination cap for TBA transactions GD and the \$10 million dissemination cap for multiple types of less liquid and active TBA transactions are more conservative than the \$50 million dissemination cap FINRA initially considered.<sup>26</sup> FINRA believes that the more conservative caps will allow the marketplace time to adjust to the new levels of transparency. In setting these dissemination caps, FINRA took into account the liquidity and trading activity differences within each segments of TBA GD and TBA NGD. FINRA notes that most TBA transactions are for good delivery, and even with setting a dissemination cap at \$25 million for such transactions, and a \$10 million cap for a smaller and generally somewhat less liquid segment of the TBA market, price transparency in the TBA market will improve significantly.

As dissemination of TBA transactions GD and TBA transactions NGD is implemented, FINRA will continue to review the volume of and liquidity in TBA

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<sup>25</sup> In contrast, the existing caps for corporate Investment Grade bonds limit the display of actual size for approximately 1.6 percent of trades representing approximately 48 percent of total par value traded, and, for Agency Debt Securities, approximately six percent of trades representing approximately 74 percent of total par value traded. The information is based on a review of all TBA transactions, and transactions in Investment Grade corporate bonds and Agency Debt Securities reported to TRACE from May 16, 2011 through January 4, 2012. The term Agency Debt Security is defined in Rule 6710(l).

<sup>26</sup> See Item 5 of this filing for a discussion of SR-FINRA-2011-069.

transactions GD and TBA transactions NGD, and may recommend that the dissemination caps be set at higher levels to provide additional transparency to market participants.

Data and Fees

FINRA proposes to amend Rule 7730 to make available the real-time disseminated TBA transaction data and the Historic TRACE Data for TBA transactions, and to establish the fees for such TBA transaction data. First, FINRA proposes to amend Rule 7730(c) to establish the Asset-Backed Security data set (“ABS Data Set”) as the third Real-Time TRACE market data set. The ABS Data Set will be limited to information disseminated immediately upon receipt of a transaction report for either a TBA transaction GD or a TBA transaction NGD. The market data fee rates currently in effect for similar Real-Time TRACE market data sets (i.e., for the Corporate Bond Data Set and the Agency Data Set) in Rule 7730(c) would be extended to the ABS Data Set.

Second, FINRA proposes to amend Rule 7730(d) to establish a third historic data product for TBA transactions (“Historic ABS Data Set”) similar to the data sets for corporate bonds (“Historic Corporate Bond Data Set”) and Agency Debt Securities (“Historic Agency Data Set”) referenced in the rule. FINRA also proposes to establish fees for the Historic ABS Data Set at the same rates currently in effect in Rule 7730(d) for the Historic Corporate Bond Data Set and the Historic Agency Data Set. The Historic ABS Data Set would include all TBA transactions effected as of or after May 16, 2011, and, among other things, would include uncapped volume information. However, like all other Historic TRACE Data, TBA transaction data included in the Historic ABS Data Set

would be released subject to a delay of approximately 18 months from the date of the transaction.<sup>27</sup>

### Other Rule Changes

FINRA proposes to delete references to a pilot program that expired on November 18, 2011 in Rule 6730, and to incorporate other minor administrative, technical or clarifying changes in Rule 6730 and Rule 7730, as discussed below.

FINRA Rule 6730. FINRA proposes to add the sentence “Transactions in Asset-Backed Securities must be reported as provided in this paragraph (a)(3).” as the introductory sentence to Rule 6730(a)(3), and “General Reporting Requirements” as the caption for Rule 6730(a)(3)(A). FINRA also proposes to add the phrase, “Except as provided in paragraphs (a)(3)(C), (a)(3)(D) and (a)(3)(E),” as introductory text to Rule 6730(a)(3)(A), to indicate that Asset-Backed Securities must be reported as provided in subparagraph (A) of Rule 6730(a)(3), with the exceptions to the general requirements set forth in subparagraphs (C), (D) and (E) of Rule 6730(a)(3).

FINRA proposes to consolidate and otherwise amend Rule 6730(a)(3)(A) and (B) as follows: (a) to delete Rule 6730(a)(3)(A)(i), the pilot program for Asset-Backed Securities transaction reporting that expired on November 18, 2011 (“ABS Pilot Program”); (b) to delete a clause referencing the ABS Pilot Program and Rule 6730(a)(3)(C), and to delete “(ii)” and renumber the retained text as Rule 6730(a)(3)(A)(i); and (c) to delete the text in Rule 6730(a)(3)(B), except subparagraphs

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<sup>27</sup> Reporting of Asset-Backed Securities transactions began on May 16, 2011. Given the 18-month delayed release of Historic TRACE Data, Historic ABS Data would become available for the first time in early 2013.

(i) and (ii) of Rule 6730(a)(3)(B), and renumber Rule 6730(a)(3)(B)(i) and (ii) as Rule 6730(a)(3)(A)(ii) and (iii).

FINRA proposes to amend Rule 6730(a)(3)(C) as follows: (a) to add a caption, “Collateralized Mortgage Obligation and Real Estate Mortgage Investment Conduit Transactions;” (b) to delete the provisions relating to the ABS Pilot Program (i.e., Rule 6730(a)(3)(C)(i), including subparagraphs a. and b.); (c) to add an introductory clause providing: “Transactions in Asset-Backed Securities that are collateralized mortgage obligations (“CMOs”) or real estate mortgage investment conduits (“REMICS”) that are executed before the issuance of the security must be reported the earlier of:”; (d) to retain in Rule 6730(a)(3)(C)(ii) subparagraphs a. and b. and the final sentence of Rule 6730(a)(3)(C)(ii), and renumber subparagraphs a. and b. as subparagraphs (i) and (ii) of Rule 6730(a)(3)(C); and (e) to delete, in Rule 6730(a)(3)(C)(ii), “(ii)” and the phrase “After the expiration of the Pilot Program in paragraph (a)(3)(A)(i), such transactions must be reported the earlier of:.”

FINRA Rule 7730. In Rule 7730, FINRA proposes to add, in paragraphs (d)(1)(A)(ii) and (d)(1)(B)(ii) regarding Historic TRACE Data, a sentence to clarify that the 2011 Historic Agency Data Set also will include the 2010 Historic Agency Data Set, and the 2013 Historic ABS Data Set also will include the 2012 Historic ABS Data Set.<sup>28</sup> FINRA also proposes minor technical amendments to Rule 7730(c) and (d) to reflect that

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<sup>28</sup> FINRA proposes not to add the clarification to the fee chart in Rule 7730. Also, FINRA proposes to delete a similar statement— “The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set.”—in two sections of the fee chart in Rule 7730 summarizing Historic TRACE Data fees. Also, FINRA proposes to delete “BTDS” in two sections of the fee chart in Rule 7730 summarizing market data fees.

the number of Data Sets and Historic Data Sets will increase from two to three, and other minor technical amendments to Rule 7730(b)(1) and Rule 7730(c) and (d).

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no earlier than August 1, 2012 and no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>29</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, and Section 15A(b)(5) of the Act,<sup>30</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change to increase fixed income market transparency is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, generally to protect investors and the public because transparency in TBA transactions will enhance the ability of investors and other market participants to identify and negotiate fair and competitive prices for Agency Pass-Through Mortgage-Backed Securities, and because

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<sup>29</sup> 15 U.S.C. 78o-3(b)(6).

<sup>30</sup> 15 U.S.C. 78o-3(b)(5).

the dissemination of price and other TBA transaction information publicly will promote just and equitable principles of trade among participants in the more transparent market, and will aid in the prevention of fraudulent and manipulative acts and practices in the TBA market.

**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.

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

On November 22, 2011, FINRA filed with the SEC SR-FINRA-2011-069 (“November 2011 Filing”), a proposed rule change to amend the Rule 6700 Series and TRACE dissemination protocols regarding the reporting and dissemination of TBA transactions. Specifically, FINRA proposed to disseminate TBA transactions immediately upon FINRA’s receipt of a TBA transaction report, and to establish a \$50 million dissemination cap such that when transactions over \$50 million were disseminated, the size displayed for such transactions would be capped at \$50 million and displayed as “\$50MM+.” In connection with proposing to disseminate TBA transactions, FINRA proposed to reduce the period to report TBA transactions to 15 minutes, in two stages. First, for a pilot period of approximately 180 days, FINRA proposed to require members to report TBA transactions no later than 45 minutes from the Time of Execution, and after the pilot period expired, to report no later than 15 minutes from the Time of Execution. FINRA proposed to announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following

Commission approval, and that the effective date would be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.<sup>31</sup> A copy of the Form 19b-4 and original Exhibit 5 of the November 2011 Filing is attached as Exhibit 2a.

On December 8, 2011, the November 2011 Filing was published for comment in the Federal Register.<sup>32</sup> A copy of the Federal Register release is attached as Exhibit 2b. The SEC received one comment letter in response,<sup>33</sup> a copy of which is attached as Exhibit 2c. The commenter raised concerns regarding: (1) the proposed \$50 million dissemination cap and its potential impact on various segments of the TBA market; (2) the proposed reporting time frames; and (3) the implementation time frame for the proposed rule change.

FINRA withdrew the November 2011 Filing on March 1, 2012, prior to filing a response to comments. Accordingly, the comments to the November 2011 Filing and FINRA's responses are discussed below.

### Dissemination Cap

The commenter states that the TBA market is a collection of distinct trading markets for distinct trading products, with material differences in liquidity. For example,

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<sup>31</sup> FINRA also proposed to amend Rule 7730 regarding TRACE fees to provide for data fees for TBA transaction data, Rule 6730 to delete references to a pilot program that expired on November 18, 2011, and Rule 6730 and Rule 7730 to incorporate other minor administrative, technical or clarifying changes.

<sup>32</sup> See Securities Exchange Act Release No. 65877 (December 2, 2011), 76 FR 76777 (December 8, 2011) (Notice of Filing of File No. SR-FINRA-2011-069). The comment period closed on December 29, 2011.

<sup>33</sup> See Letter from Chris Killian, Managing Director, Securitization, Securities Industry and Financial Markets Association ("SIFMA"), to Elizabeth M. Murphy, Secretary, SEC, dated December 22, 2011.

the commenter stated that in products such as ARMs, mortgages with 40-year maturities, and project loans, the volume issued is very low in comparison to standard 30-year fixed rate mortgages that trade for good delivery, and consequently, liquidity in TBA transactions backed by such products is lower. In addition, the commenter states that a volume cap of \$50 million is generally too high for even the most liquid segments of the TBA market, and recommends that FINRA adopt a \$25 million dissemination cap (or a lesser cap) for the most liquid TBA products (pools to be comprised of standard, 30-year, fixed rate mortgages for good delivery), a \$10 million dissemination cap for pools of 15-year mortgages, and a \$1 million to \$5 million cap for other products traded TBA (e.g., pools of high coupon fixed rate mortgages, ARMs, project loans, jumbo loans and reverse mortgages). The commenter notes that, in making its recommendations, it does not have access to the transaction data cited by FINRA regarding trading volume.

After careful consideration of the commenter's concerns, FINRA proposes two lower dissemination caps herein. Based on FINRA's review of the TBA trading data, discussions with member firms, and the commenter's concern that liquidity may be adversely affected if the originally proposed dissemination cap is adopted, FINRA has proposed to lower the dissemination cap to \$25 million for all TBA transactions GD and to \$10 million for all TBA transactions NGD. Although the commenter recommends multiple dissemination caps based upon factors such as mortgage maturity and coupon, FINRA believes that the commenter's approach would result in investor confusion and operational complexities that are unnecessary to address the issues raised by the commenter. FINRA's proposal to adopt a two-pronged approach to the dissemination caps for products traded TBA is much less complex and, at the same time, allows FINRA



to address most of the commenter's concerns regarding liquidity, providing a lower dissemination cap for those products that generally are the least liquid, without establishing multiple caps and standards. The reduction of the dissemination cap to \$25 million for TBA transactions GD, and for multiple types of less liquid TBA transactions NGD to \$10 million is a more conservative metric than initially proposed, which FINRA believes is appropriate at the onset. In setting these dissemination caps, FINRA took into account the liquidity and activity differences in coupons and maturities within each segment of TBA transactions GD and TBA transactions NGD.<sup>34</sup> FINRA notes that even with the reduction of the dissemination cap for TBA transactions GD from \$50 million to \$25 million for such transactions, and a \$10 million cap for a small and generally somewhat less liquid segment, price transparency in the TBA market will improve significantly.

#### Reporting Time Frames

The commenter states that the proposed time frames for reporting certain less liquid products, such as ARMs, project loans and reverse mortgages, within the proposed accelerated time frames will not be possible absent a cumbersome and potentially risky manual trade reporting process. The commenter notes that manual processing raises compliance, audit and workflow related concerns, and may result in additional TRACE

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<sup>34</sup> For example, at the proposed cap of \$25 million, approximately 21 percent of trades and approximately 85 percent of volume would be capped for transactions in TBA transactions GD backed by eligible 30-year mortgage loans, approximately 15 percent of trades and approximately 78 percent of volume would be capped for transactions in TBA transactions GD backed by eligible 15-year mortgage loans, and approximately 20 percent of trades and approximately 67 percent of volume would be capped for transactions in TBA transactions GD backed by other types of eligible loans having other maturities.

reporting errors. For these reasons, the commenter recommends that the reporting deadline for these products remain at the close of business on the date of execution.

In response to the commenter's concerns regarding reporting transactions in instruments such as certain ARMS, project loans and reverse mortgages, FINRA proposes to modify the reporting requirements herein. Specifically, for TBA transactions NGD, FINRA proposes to extend the previously proposed time frames to report (i.e., 45 minutes from the Time of Execution, then after expiration of a pilot program, 15 minutes from the Time of Execution). In this proposed rule change, FINRA proposes to require members to report such transactions initially no later than two hours from the Time of Execution, then, after expiration of the proposed TBA NGD Pilot Program, no later than one hour from the Time of Execution. FINRA retains the reporting time frame initially proposed for TBA transactions GD. FINRA believes that proposing the longer reporting time frames for TBA transactions NGD will facilitate timely trade reporting, and accommodate current differences in members' systems, trade processing and other work flows. However, given that more than half of TBA transactions NGD currently are reported within one hour from the time of execution, FINRA believes that in the long term members will be able to report all TBA transactions within 15 minutes from the Time of Execution.

#### Implementation

The commenter requested that the effective date of the November 2011 Filing be no earlier than August 1, 2012, to allow members to make necessary changes to internal systems, policies and procedures. FINRA intends to take into account the operational challenges associated with the proposal in establishing the effective date of this proposed

rule change and will work with members to minimize the operational burdens of implementation. FINRA also has amended the stated implementation period to provide that FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no earlier than August 1, 2012 and no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

**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>35</sup>

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

Not applicable.

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

Not applicable.

**9. Exhibits**

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

Exhibit 2.a. A copy of the November 2011 Filing's Form 19b-4 and Exhibit 5.

Exhibit 2.b. Federal Register Notice Requesting Comment on SR-FINRA-2011-069.

Exhibit 2.c. Comment letter from Christopher Killian, Managing Director, Securitization, Securities Industry and Financial Markets Association ("SIFMA"), to Elizabeth Murphy, Secretary, SEC, dated December 22, 2011.

Exhibit 5. Text of proposed rule change.

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<sup>35</sup> 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2012-020

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to TRACE Reporting and Dissemination of Transactions in Agency Pass-Through Mortgage-Backed Securities Traded To Be Announced

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 [leave space] , 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 amend the FINRA Rule 6700 Series and Trade Reporting and Compliance Engine (“TRACE”) dissemination protocols regarding the reporting and dissemination of transactions in TRACE-Eligible Securities that are Agency Pass-Through Mortgage-Backed Securities that are traded to be announced (“TBA”) (“TBA transactions”); to amend FINRA Rule 7730 regarding TRACE fees to provide for data fees for TBA transaction data; and to amend the FINRA Rule 6700 Series and FINRA

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

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

Rule 7730 to delete references to a pilot program that expired on November 18, 2011, and to incorporate other minor administrative, technical or clarifying changes.<sup>3</sup>

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

FINRA proposes amendments to the TRACE rules and dissemination protocols to provide greater transparency in TBA transactions. First, FINRA proposes to amend Rule 6730, to establish distinct requirements for reporting TBA transactions for which good delivery may be made ("TBA transactions GD") and for reporting TBA transactions in products that are not traded for good delivery ("TBA transactions NGD"), and, in two stages, to reduce the time frames to report each type of TBA transaction and to make a related amendment to Rule 6710(u), the definition of "TBA," to incorporate the concepts

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<sup>3</sup> The terms TRACE-Eligible Security, Agency Pass-Through Mortgage-Backed Security and TBA are defined in, respectively, Rule 6710(a), Rule 6710(v) and Rule 6710(u).

“for good delivery” and “not for good delivery.” Second, FINRA proposes to amend Rule 6750 to provide for the dissemination of TBA transactions and to establish, as part of TRACE dissemination protocols, a \$25 million dissemination cap for TBA transactions GD and a \$10 million dissemination cap for TBA transactions NGD. Third, FINRA proposes to amend Rule 7730 to establish fees for current market data for TBA transactions and aged TBA transaction data.<sup>4</sup> Finally, FINRA proposes to amend Rule 6730 to delete references to a pilot program that expired on November 18, 2011, and Rule 6730 and Rule 7730 to incorporate other minor administrative, technical or clarifying changes as described in greater detail below.

#### TBA Transactions

As provided in Rule 6710(u), TBA means

“to be announced” and refers to a transaction in an Agency Pass-Through Mortgage-Backed Security . . . where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number).<sup>5</sup>

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<sup>4</sup> The term Historic TRACE Data is defined in Rule 7730(f)(4) and refers to aged TRACE transaction data, which will include TBA transaction data.

<sup>5</sup> As defined in Rule 6710(v), an Agency Pass-Through Mortgage-Backed Security means

a mortgage-backed security issued by an Agency or a Government-Sponsored Enterprise, for which the timely payment of principal

In a TBA transaction, the parties agree on a price for delivering a given volume of Agency Pass-Through Mortgage-Backed Securities at a specified future date. The distinguishing feature of a TBA transaction is that the actual identity of the securities to be delivered at settlement is not specified on the date of execution (“Trade Date”). Instead, the parties to the trade agree on only five general parameters of the securities to be delivered: issuer, mortgage type, maturity, coupon, and month of settlement.

TBA transactions are “for good delivery” (“GD”) or “not for good delivery” (“NGD”). The GD and NGD distinctions and classifications are based on market standards and conventions that identify which mortgage pools (or combinations of mortgage pools) satisfy “good delivery” requirements, which were developed to facilitate the securitization of common mortgage products, and to enhance and maintain the liquidity in the TBA market for such mortgage-backed securities. The conventions and standards for TBA transactions GD are set forth in the “Uniform Practices for the Clearance and Settlement of Mortgage-Related Securities and Other Related Securities,” and particularly in Chapter 8 (“Standard Requirements for Delivery on Settlements of Fannie Mae, Freddie Mac and Ginnie Mae Securities”) (“Good Delivery Guidelines”).<sup>6</sup>

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and interest is guaranteed by an Agency or a Government-Sponsored Enterprise, representing ownership interests in a pool or pools of residential mortgage loans with the security structured to “pass through” the principal and interest payments made by the mortgagees to the owners of the pool(s) on a pro rata basis.

The terms Agency and Government-Sponsored Enterprise (“GSE”) are defined in, respectively, Rule 6710(k) and Rule 6710(n).

<sup>6</sup> “Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities” (“Uniform Practices Guidelines”) is published by the Securities Industry and Financial Markets Association (“SIFMA”).

For a TBA transaction to be GD, it must conform to certain GSE or Ginnie Mae program requirements regarding the mortgage loans and also meet certain other requirements, such as those regarding variance in the actual principal amount delivered compared to the principal amount of the trade, the number of pools that may be delivered at settlement, minimum original face amount of a pool, and final maturity guidelines regarding the maturity of the mortgage loans underlying the security, among others.<sup>7</sup> Products traded TBA but that are not eligible according to the Good Delivery Guidelines are considered “not for good delivery.”

The vast majority of loans eligible for inclusion in TBA-delivered pools traded GD are known as standard loans. They are 15- and 30-year fixed-rate single-family loans with certain general characteristics set forth in the Good Delivery Guidelines.<sup>8</sup> Other loans that are eligible for good delivery upon meeting specific criteria set forth in the Good Delivery Guidelines include Fannie Mae 11<sup>th</sup> District Cost of Funds Index (“COFI”) adjusted rate mortgages (“ARMs”) and Ginnie Mae ARMs. Also, TBA identification numbers assigned by the CUSIP Service Bureau distinguish the issuers and

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<sup>7</sup> Pooled mortgage loans that are traded GD include, but are not limited to, those conforming to the Fannie Mae and Freddie Mac “Single Family” programs (i.e., single family mortgages identified by coupon ranges and maturities), and certain other products conforming to Fannie Mae, Freddie Mac or GNMA programs (e.g., the Gold Single Family, Balloon, Gold Balloon and Jumbo programs). Most newly issued Agency Pass-Through Mortgage-Backed Securities are eligible to be sold as TBA transactions GD. Examples of mortgage products not eligible for good delivery to settle a TBA transaction include, but are not limited to, interest only mortgages, project/construction loans, and certain non-conforming mortgages on single family residences.

<sup>8</sup> See Good Delivery Guidelines, Section 11 (“General Characteristics of Standard Loans for 15 and 30yr Fixed-Rate Single-Family TBA-eligible Pools,” listing 14 general characteristics of standard 15-year or 30-year loans (e.g., fixed rate, first lien, and level payment).)



the various pool types, among other things, providing another means of identifying a transaction as a TBA transaction GD or a TBA transaction NGD.<sup>9</sup>

Together, the securitization process and the TBA market transform what is a fundamentally heterogeneous universe of individual mortgages and mortgage pools (with myriad credit and prepayment characteristics) into groups of fungible – and therefore liquid – fixed-income instruments.<sup>10</sup>

#### Reduction of TBA Transaction Reporting Period

Currently, Asset-Backed Securities transactions (except certain pre-issuance transactions in collateralized mortgage obligations (“CMOs”) and real estate mortgage investment conduits (“REMICs”)) that are executed on a business day through 5:00:00 p.m. Eastern Time must be reported to TRACE on the Trade Date during TRACE System Hours, as provided in Rule 6730(a)(3)(A)(ii).<sup>11</sup> In contrast, secondary market

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<sup>9</sup> CUSIP means Committee on Uniform Security Identification Procedures. A CUSIP consists of nine characters. Positions 1 and 2 denote the product type (for example, 01 refers to single family loans, 06 refers to balloon loans, and 16 refers to ARMs), and Position 3 identifies the Agency or GSE (F denotes Fannie Mae, R denotes Freddie Mac, N denotes GNMA I and H denotes GNMA II). Positions 4 through 8 are used to identify coupon, maturity in years and settlement month, and Position 9 is a check digit (*i.e.*, a mathematical formula that checks the accuracy of the previous 8 digits).

<sup>10</sup> James Vichery and Joshua Wright, TBA Trading and Liquidity in the Agency MBS Market, Federal Reserve Bank of New York Staff Reports, no. 468 (August 2010), available at [http://www.newyorkfed.org/research/staff\\_reports/sr468.pdf](http://www.newyorkfed.org/research/staff_reports/sr468.pdf).

<sup>11</sup> In general, Asset-Backed Securities must be reported to TRACE under Rules 6730(a)(3)(A) and (B). Rule 6730(a)(3)(B)(i) addresses reporting requirements for Asset-Backed Securities transactions executed after 5:00:00 p.m. Eastern Time on a business day, and Rule 6730(a)(3)(B)(ii) addresses reporting requirements for Asset-Backed Securities transactions executed after TRACE System Hours, or on a weekend or a holiday, or other day on which the TRACE system is not open at any time during that day. However, for certain pre-issuance transactions in CMOs and REMICs, the applicable reporting provisions are set

transactions in all other TRACE-Eligible Securities must be reported within 15 minutes of the Time of Execution.<sup>12</sup> With certain exceptions, transaction information on such TRACE-Eligible Securities is disseminated as soon as the transaction is reported, and the 15-minute reporting requirement results in meaningful price transparency for market participants trading such securities.<sup>13</sup>

In connection with proposing that TBA transactions be disseminated, FINRA proposes to reduce the reporting time frames for TBA transactions GD to provide market participants meaningful and timely price information about the more liquid and active TBA market segment. The proposed rule change also will reduce the reporting period for the less liquid and active TBA transactions NGD, but to a lesser extent, as discussed in greater detail below. In addition, FINRA proposes to reduce the reporting time frames proposed for TBA transactions GD and TBA transactions NGD in two stages to permit industry participants to adjust policies and procedures and to make required technological changes.

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forth in Rule 6730(a)(3)(C), and Rules 6730(a)(3)(A) and (B) do not apply. The terms Asset-Backed Security and TRACE System Hours are defined in, respectively, Rule 6710(m) and Rule 6710(t).

<sup>12</sup> The term Time of Execution is defined in Rule 6710(d).

<sup>13</sup> Currently, transaction information on all types of securities that are TRACE-Eligible Securities, except Asset-Backed Securities, is disseminated as provided in Rule 6750(a). However, FINRA does not disseminate information on a transaction in a TRACE-Eligible Security that is (1) effected pursuant to Securities Act Rule 144A (17 CFR 239.144A) under Rule 6750(b)(1); (2) a transfer of proprietary securities positions where the transfer (A) is effected in connection with a merger or direct or indirect acquisition and (B) is not in furtherance of a trading or investment strategy under Rule 6750(b)(2); or (3) a List or Fixed Offering Price Transaction or a Takedown Transaction under Rule 6750(b)(3). The terms List or Fixed Offering Price Transaction and Takedown Transaction are defined in, respectively, Rule 6710(q) and Rule 6710(r).

TBA Transactions For Good Delivery. Proposed Rule 6730(a)(3)(D) sets forth the requirements to report TBA transactions GD. First, for a pilot program of approximately 180 days duration, the reporting period for TBA transactions GD would be reduced from no later than the close of the TRACE system on Trade Date to no later than 45 minutes from the Time of Execution (“TBA GD Pilot Program”), as set forth in proposed Rule 6730(a)(3)(D)(i).<sup>14</sup> Minor exceptions to the general requirements are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d.<sup>15</sup> Second, after approximately 180 days, the TBA GD Pilot Program would expire and the reporting period would be reduced from no later than 45 minutes from the Time of Execution to no later than 15 minutes from the Time of Execution, as set forth in proposed Rule 6730(a)(3)(D)(ii).

Again, FINRA proposes to include certain limited exceptions to the reporting time frames

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<sup>14</sup> To accommodate member requests that rule changes requiring technology changes occur on a Friday, if possible, the proposed TBA GD Pilot Program and a similar pilot program for TBA transactions NGD will expire on a Friday (i.e., on the 180<sup>th</sup> day, if a Friday, or, if the 180<sup>th</sup> day is not a Friday, on the Friday next occurring that the TRACE system is open).

<sup>15</sup> Minor exceptions to the general requirement to report TBA transactions GD no later than 45 minutes from the Time of Execution are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d. Under proposed Rule 6730(a)(3)(D)(i)a., transactions executed on a business day at or after 12:00:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 45 minutes after the TRACE system opens. Under proposed Rule 6730(a)(3)(D)(i)c., transactions executed on a business day less than 45 minutes before 6:30:00 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 45 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated “as/of” and include the date of execution. Under proposed Rule 6730(a)(3)(D)(i)d., 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), no later than 45 minutes after the TRACE system opens, designated “as/of” and include the date of execution.

for TBA transactions executed shortly before the TRACE system closes and when the TRACE system is closed.<sup>16</sup>

TBA Transactions Not For Good Delivery. The proposed reporting requirements that would apply to TBA transactions NGD are set forth in proposed Rule 6730(a)(3)(E). FINRA has been informed that TBA transactions NGD are in certain cases less automated and more operationally challenging, wherefore FINRA proposes a longer reporting time frame than for TBA transactions GD. First, for a pilot program of approximately 180 days duration, the reporting period for TBA transactions NGD would be reduced from no later than the close of the TRACE system on Trade Date to no later than 120 minutes from the Time of Execution (“TBA NGD Pilot Program”), as set forth in proposed Rule 6730(a)(3)(E)(i). Minor exceptions to the general requirements would be set forth in proposed Rule 6730(a)(3)(E)(i)a., c. and d.<sup>17</sup> Second, after approximately

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<sup>16</sup> After the TBA GD Pilot Program expires, proposed Rule 6730(a)(3)(D)(ii), which incorporates by reference Rule 6730(a)(1), requires generally that TBA transactions be reported no later than 15 minutes from the Time of Execution, with certain minor exceptions for transactions executed near the end of the TRACE System Hours, before and after TRACE System Hours, and on weekends and certain federal and religious holidays. See, e.g., Rule 6730(a)(1)(C) and Rule 6730(a)(1)(D). The exceptions are the same as those that apply to members reporting transactions in corporate bonds and Agency Debt Securities to TRACE.

<sup>17</sup> Minor exceptions to the general requirement to report TBA transactions NGD no later than 120 minutes from the Time of Execution are set forth in proposed Rule 6730(a)(3)(E)(i)a., c. and d. Under proposed Rule 6730(a)(3)(E)(i)a., transactions executed on a business day at or after 12:00:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 120 minutes after the TRACE system opens. Under proposed Rule 6730(a)(3)(E)(i)c., transactions executed on a business day less than 120 minutes before 6:30:00 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 120 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated “as/of” and include the date of execution. Under proposed Rule 6730(a)(3)(E)(i)d., 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

180 days, the TBA NGD Pilot Program would expire and the reporting period would be reduced from no later than 120 minutes from the Time of Execution to no later than 60 minutes from the Time of Execution, as set forth in proposed Rule 6730(a)(3)(E)(ii). The provision also would include certain limited exceptions for TBA transactions executed shortly before the TRACE system closes and when the TRACE system is closed.<sup>18</sup> After the 60-minute reporting requirement is implemented, FINRA will continue to review the reporting of TBA transactions NGD and may recommend further reductions in the reporting period.

TBA Definition. In connection with establishing separate reporting requirements, and as discussed infra, separate dissemination caps for TBA transactions GD and TBA transactions NGD, FINRA proposes to amend the definition of “TBA” in Rule 6710(u) to incorporate the concepts that TBA transactions may be traded GD or NGD. FINRA also incorporates minor, technical changes to the defined term. As amended, Rule 6710(u) would provide as follows:

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TRACE system is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T + 1), no later than 120 minutes after the TRACE system opens, designated “as/of” and include the date of execution.

<sup>18</sup> After the TBA NGD Pilot Program expires, there are minor exceptions to the 60-minute reporting time frame set forth in proposed Rule 6730(a)(3)(E)(ii) for TBA transactions NGD executed near the end of the TRACE System Hours, before and after TRACE System Hours, and on weekends and certain federal and religious holidays. See proposed Rule 6730(a)(3)(E)(ii)a., c. and d. The exceptions are structured similarly to the exceptions to 15-minute reporting that FINRA proposes to apply to TBA transactions GD.

Guidance previously published regarding reporting transactions in Asset-Backed Securities as soon as practicable, rather than queuing such reports until the end of the reporting time period, applies to members’ reporting obligations under the time frames proposed herein. See Trade Reporting Notice, dated May 10, 2011.

“To Be Announced” (“TBA”) means a transaction in an Agency Pass-Through Mortgage-Backed Security as defined in paragraph (v) where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number), and includes TBA transactions “for good delivery” (“GD”) and TBA transactions “not for good delivery” (“NGD”).

Dissemination of TBA Transaction Data

Although members began reporting transactions in Asset-Backed Securities to TRACE on May 16, 2011, FINRA currently does not disseminate publicly any of the Asset-Backed Securities transaction data reported to TRACE. Specifically, Rule 6750(b)(4) provides that transaction information on TRACE-Eligible Securities that are Asset-Backed Securities will not be disseminated.

However, when FINRA proposed the dissemination restrictions in Rule 6750(b)(4) regarding Asset-Backed Securities, FINRA represented that it would study the Asset-Backed Securities data after transaction reporting began. In the Commission’s order approving the proposed rule change to define Asset-Backed Securities as TRACE-Eligible Securities and require reporting of Asset-Backed Securities transactions, the Commission noted FINRA’s intent to study Asset-Backed Securities dissemination issues prior to making any proposal to disseminate some or all of such information, and the

Commission's historical support of efforts to improve post-trade transparency in the fixed income markets:

FINRA believes that information on Asset-Backed Securities transactions should be collected and analyzed before making any decision regarding the utility of such information for transparency purposes or the consequences of dissemination on this market. FINRA has stated that, after a period of study, it would file a proposed rule change if it determined that its study of the trading data provides a reasonable basis to seek dissemination of transaction information on Asset-Backed Securities. The Commission has historically been supportive of efforts to improve post-trade transparency in the fixed income markets and encourages FINRA to carry out that study.<sup>19</sup>

Since reporting began on May 16, 2011, FINRA has reviewed Asset-Backed Securities transaction data. The reported Asset-Backed Securities transaction data, as well as input from market participants as FINRA prepared to expand TRACE to include Asset-Backed Securities, suggests that real-time disseminated TRACE transaction data should be expanded to include transaction information on TBA transactions.

First, at the launch of Asset-Backed Securities reporting, certain market participants noted that TBA transactions trade in a very liquid market and suggested that FINRA consider transparency in such transactions. Second, as FINRA reviewed and

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<sup>19</sup> See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262, 9265 (March 1, 2010) (Order Approving File No. SR-FINRA-2009-065).

continues to review the data reported for Asset-Backed Securities, including TBA transactions, and studies the total volume of TBA transactions, the concentration of trading in such securities, and the pricing disparity among various types of Agency Pass-Through Mortgage-Backed Securities traded TBA to understand their liquidity and fungibility, the data supports FINRA's proposal to disseminate TBA transactions GD and TBA transactions NGD to increase transparency in this market.

The market activity reported and reviewed reveals that the TBA market is generally active and liquid. In addition, the degree of fungibility is high, with substantial trading concentrated among a relatively small universe of securities as identified by a unique CUSIP number (hereinafter, "CUSIP" means the specific security identified by the unique CUSIP number). The TBA market has an average daily volume of \$248 billion traded in close to 8,000 average daily trades,<sup>20</sup> and the average daily volume of all TBA transactions is approximately ten times the average daily volume of the entire corporate bond market.<sup>21</sup> The vast majority of TBA transactions occur in TBA GD, accounting for 99.36 percent of all TBA transactions (correspondingly, TBA transactions NGD account for 0.64 percent of all TBA transactions). The correlation among the prices of various TBA CUSIPs is high, and the price of one TBA transaction may be

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<sup>20</sup> The information is based upon FINRA's review of all TBA transactions reported to TRACE from May 16, 2011 through October 28, 2011.

<sup>21</sup> The information is based upon FINRA's review of transactions in all TRACE-Eligible Securities, other than Agency Debt Securities, reported to TRACE from May 16, 2011 through October 28, 2011.



derived using available prices for TBA transactions for a different issuer, a different coupon rate, maturity, or a combination thereof.<sup>22</sup>

#### FINRA Rule 6750

Rule 6750(b)(4) currently provides that transactions in Asset-Backed Securities are not subject to dissemination. FINRA proposes to amend the rule to disseminate information on TBA transactions GD and TBA transactions NGD, which would occur immediately upon receipt of a transaction report.<sup>23</sup> Thus, information would be disseminated on TBA transactions GD within 45 minutes, or, after the expiration of the TBA GD Pilot Program, within 15 minutes of the Time of Execution, and, on TBA transactions NGD, within 120 minutes, or, after the expiration of the TBA NGD Pilot Program, within 60 minutes of the Time of Execution.<sup>24</sup>

#### Dissemination Caps

Currently, there are two TRACE dissemination protocols in place, referred to as dissemination caps, under which the actual size of a transaction over a certain par value is not displayed in disseminated TRACE transaction data. For TRACE-Eligible Securities

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<sup>22</sup> From a review of all TBA transactions reported to TRACE from May 16, 2011 through July 31, 2011, the data shows that TBA transactions (with different issuers, different coupon rates, and different maturities) were priced consistently, relative to each other.

<sup>23</sup> Rule 6750(b) would be amended to provide that FINRA will not disseminate information on a transaction in a TRACE-Eligible Security that is

(4) an Asset-Backed Security, except an Agency Pass-Through Mortgage-Backed Security traded to be announced (“TBA”) (“TBA transaction”).

<sup>24</sup> FINRA continues to review Asset-Backed Security transaction information in other sectors of the Asset-Backed Securities market and, at a later date, may propose that transactions in other Asset-Backed Securities be disseminated.

that are rated Investment Grade, the dissemination cap is \$5 million (“\$5MM”), and the size of transactions in excess of \$5MM is displayed as “\$5MM+.” For TRACE-Eligible Securities that are rated Non-Investment Grade, the dissemination cap is \$1 million (“\$1MM”), and the size of a transaction in excess of \$1MM is displayed as “\$1MM+.”<sup>25</sup>

FINRA has analyzed the distribution of TBA transactions GD and TBA transactions NGD to determine an appropriate cap for these transactions. FINRA proposes to set a dissemination cap for a TBA transaction GD initially at \$25 million. Accordingly, the size of a TBA transaction GD greater than \$25 million would be displayed in disseminated data as “\$ 25MM+.” At this level, approximately 20 percent of trades in TBA transactions NG representing approximately 84 percent of total volume traded would be disseminated subject to the cap.<sup>26</sup> For a TBA transaction NGD, FINRA proposes to set a \$10 million dissemination cap initially, with size displayed in disseminated data as “\$10MM+,” if the size of the TBA transaction NGD exceeded \$10 million. At this level, approximately 42 percent of TBA transactions NGD representing approximately 85 percent of total volume traded would be disseminated subject to the cap.

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<sup>25</sup> The terms Investment Grade and Non-Investment Grade are defined in, respectively, Rule 6710(h) and Rule 6710(i).

<sup>26</sup> In contrast, the existing caps for corporate Investment Grade bonds limit the display of actual size for approximately 1.6 percent of trades representing approximately 48 percent of total par value traded, and, for Agency Debt Securities, approximately six percent of trades representing approximately 74 percent of total par value traded. The information is based on a review of all TBA transactions, and transactions in Investment Grade corporate bonds and Agency Debt Securities reported to TRACE from May 16, 2011 through January 4, 2012. The term Agency Debt Security is defined in Rule 6710(l).

The \$25 million dissemination cap for TBA transactions GD and the \$10 million dissemination cap for multiple types of less liquid and active TBA transactions are more conservative than the \$50 million dissemination cap FINRA initially considered.<sup>27</sup>

FINRA believes that the more conservative caps will allow the marketplace time to adjust to the new levels of transparency. In setting these dissemination caps, FINRA took into account the liquidity and trading activity differences within each segments of TBA GD and TBA NGD. FINRA notes that most TBA transactions are for good delivery, and even with setting a dissemination cap at \$25 million for such transactions, and a \$10 million cap for a smaller and generally somewhat less liquid segment of the TBA market, price transparency in the TBA market will improve significantly.

As dissemination of TBA transactions GD and TBA transactions NGD is implemented, FINRA will continue to review the volume of and liquidity in TBA transactions GD and TBA transactions NGD, and may recommend that the dissemination caps be set at higher levels to provide additional transparency to market participants.

#### Data and Fees

FINRA proposes to amend Rule 7730 to make available the real-time disseminated TBA transaction data and the Historic TRACE Data for TBA transactions, and to establish the fees for such TBA transaction data. First, FINRA proposes to amend Rule 7730(c) to establish the Asset-Backed Security data set (“ABS Data Set”) as the third Real-Time TRACE market data set. The ABS Data Set will be limited to information disseminated immediately upon receipt of a transaction report for either a TBA transaction GD or a TBA transaction NGD. The market data fee rates currently in

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<sup>27</sup> See Item II.C. for a discussion of SR-FINRA-2011-069.

effect for similar Real-Time TRACE market data sets (i.e., for the Corporate Bond Data Set and the Agency Data Set) in Rule 7730(c) would be extended to the ABS Data Set.

Second, FINRA proposes to amend Rule 7730(d) to establish a third historic data product for TBA transactions (“Historic ABS Data Set”) similar to the data sets for corporate bonds (“Historic Corporate Bond Data Set”) and Agency Debt Securities (“Historic Agency Data Set”) referenced in the rule. FINRA also proposes to establish fees for the Historic ABS Data Set at the same rates currently in effect in Rule 7730(d) for the Historic Corporate Bond Data Set and the Historic Agency Data Set. The Historic ABS Data Set would include all TBA transactions effected as of or after May 16, 2011, and, among other things, would include uncapped volume information. However, like all other Historic TRACE Data, TBA transaction data included in the Historic ABS Data Set would be released subject to a delay of approximately 18 months from the date of the transaction.<sup>28</sup>

#### Other Rule Changes

FINRA proposes to delete references to a pilot program that expired on November 18, 2011 in Rule 6730, and to incorporate other minor administrative, technical or clarifying changes in Rule 6730 and Rule 7730, as discussed below.

FINRA Rule 6730. FINRA proposes to add the sentence “Transactions in Asset-Backed Securities must be reported as provided in this paragraph (a)(3).” as the introductory sentence to Rule 6730(a)(3), and “General Reporting Requirements” as the caption for Rule 6730(a)(3)(A). FINRA also proposes to add the phrase, “Except as

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<sup>28</sup> Reporting of Asset-Backed Securities transactions began on May 16, 2011. Given the 18-month delayed release of Historic TRACE Data, Historic ABS Data would become available for the first time in early 2013.

provided in paragraphs (a)(3)(C), (a)(3)(D) and (a)(3)(E),” as introductory text to Rule 6730(a)(3)(A), to indicate that Asset-Backed Securities must be reported as provided in subparagraph (A) of Rule 6730(a)(3), with the exceptions to the general requirements set forth in subparagraphs (C), (D) and (E) of Rule 6730(a)(3).

FINRA proposes to consolidate and otherwise amend Rule 6730(a)(3)(A) and (B) as follows: (a) to delete Rule 6730(a)(3)(A)(i), the pilot program for Asset-Backed Securities transaction reporting that expired on November 18, 2011 (“ABS Pilot Program”); (b) to delete a clause referencing the ABS Pilot Program and Rule 6730(a)(3)(C), and to delete “(ii)” and renumber the retained text as Rule 6730(a)(3)(A)(i); and (c) to delete the text in Rule 6730(a)(3)(B), except subparagraphs (i) and (ii) of Rule 6730(a)(3)(B), and renumber Rule 6730(a)(3)(B)(i) and (ii) as Rule 6730(a)(3)(A)(ii) and (iii).

FINRA proposes to amend Rule 6730(a)(3)(C) as follows: (a) to add a caption, “Collateralized Mortgage Obligation and Real Estate Mortgage Investment Conduit Transactions;” (b) to delete the provisions relating to the ABS Pilot Program (i.e., Rule 6730(a)(3)(C)(i), including subparagraphs a. and b.); (c) to add an introductory clause providing: “Transactions in Asset-Backed Securities that are collateralized mortgage obligations (“CMOs”) or real estate mortgage investment conduits (“REMICS”) that are executed before the issuance of the security must be reported the earlier of:”; (d) to retain in Rule 6730(a)(3)(C)(ii) subparagraphs a. and b. and the final sentence of Rule 6730(a)(3)(C)(ii), and renumber subparagraphs a. and b. as subparagraphs (i) and (ii) of Rule 6730(a)(3)(C); and (e) to delete, in Rule 6730(a)(3)(C)(ii), “(ii)” and the phrase

“After the expiration of the Pilot Program in paragraph (a)(3)(A)(i), such transactions must be reported the earlier of:”

FINRA Rule 7730. In Rule 7730, FINRA proposes to add, in paragraphs (d)(1)(A)(ii) and (d)(1)(B)(ii) regarding Historic TRACE Data, a sentence to clarify that the 2011 Historic Agency Data Set also will include the 2010 Historic Agency Data Set, and the 2013 Historic ABS Data Set also will include the 2012 Historic ABS Data Set.<sup>29</sup> FINRA also proposes minor technical amendments to Rule 7730(c) and (d) to reflect that the number of Data Sets and Historic Data Sets will increase from two to three, and other minor technical amendments to Rule 7730(b)(1) and Rule 7730(c) and (d).

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no earlier than August 1, 2012 and no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>30</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

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<sup>29</sup> FINRA proposes not to add the clarification to the fee chart in Rule 7730. Also, FINRA proposes to delete a similar statement— “The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set.”—in two sections of the fee chart in Rule 7730 summarizing Historic TRACE Data fees. Also, FINRA proposes to delete “BTDS” in two sections of the fee chart in Rule 7730 summarizing market data fees.

<sup>30</sup> 15 U.S.C. 78o-3(b)(6).

interest, and Section 15A(b)(5) of the Act,<sup>31</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change to increase fixed income market transparency is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, generally to protect investors and the public because transparency in TBA transactions will enhance the ability of investors and other market participants to identify and negotiate fair and competitive prices for Agency Pass-Through Mortgage-Backed Securities, and because the dissemination of price and other TBA transaction information publicly will promote just and equitable principles of trade among participants in the more transparent market, and will aid in the prevention of fraudulent and manipulative acts and practices in the TBA market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

On November 22, 2011, FINRA filed with the SEC SR-FINRA-2011-069 ("November 2011 Filing"), a proposed rule change to amend the Rule 6700 Series and TRACE dissemination protocols regarding the reporting and dissemination of TBA transactions. Specifically, FINRA proposed to disseminate TBA transactions

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<sup>31</sup> 15 U.S.C. 78q-3(b)(5).

immediately upon FINRA's receipt of a TBA transaction report, and to establish a \$50 million dissemination cap such that when transactions over \$50 million were disseminated, the size displayed for such transactions would be capped at \$50 million and displayed as "\$50MM+." In connection with proposing to disseminate TBA transactions, FINRA proposed to reduce the period to report TBA transactions to 15 minutes, in two stages. First, for a pilot period of approximately 180 days, FINRA proposed to require members to report TBA transactions no later than 45 minutes from the Time of Execution, and after the pilot period expired, to report no later than 15 minutes from the Time of Execution. FINRA proposed to announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval, and that the effective date would be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.<sup>32</sup> A copy of the Form 19b-4 and original Exhibit 5 of the November 2011 Filing is attached as Exhibit 2a.

On December 8, 2011, the November 2011 Filing was published for comment in the Federal Register.<sup>33</sup> A copy of the Federal Register release is attached as Exhibit 2b. The SEC received one comment letter in response,<sup>34</sup> a copy of which is attached as Exhibit 2c. The commenter raised concerns regarding: (1) the proposed \$50 million

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<sup>32</sup> FINRA also proposed to amend Rule 7730 regarding TRACE fees to provide for data fees for TBA transaction data, Rule 6730 to delete references to a pilot program that expired on November 18, 2011, and Rule 6730 and Rule 7730 to incorporate other minor administrative, technical or clarifying changes.

<sup>33</sup> See Securities Exchange Act Release No. 65877 (December 2, 2011), 76 FR 76777 (December 8, 2011) (Notice of Filing of File No. SR-FINRA-2011-069). The comment period closed on December 29, 2011.



dissemination cap and its potential impact on various segments of the TBA market; (2) the proposed reporting time frames; and (3) the implementation time frame for the proposed rule change.

FINRA withdrew the November 2011 Filing on March 1, 2012, prior to filing a response to comments. Accordingly, the comments to the November 2011 Filing and FINRA's responses are discussed below.

### Dissemination Cap

The commenter states that the TBA market is a collection of distinct trading markets for distinct trading products, with material differences in liquidity. For example, the commenter stated that in products such as ARMs, mortgages with 40-year maturities, and project loans, the volume issued is very low in comparison to standard 30-year fixed rate mortgages that trade for good delivery, and consequently, liquidity in TBA transactions backed by such products is lower. In addition, the commenter states that a volume cap of \$50 million is generally too high for even the most liquid segments of the TBA market, and recommends that FINRA adopt a \$25 million dissemination cap (or a lesser cap) for the most liquid TBA products (pools to be comprised of standard, 30-year, fixed rate mortgages for good delivery), a \$10 million dissemination cap for pools of 15-year mortgages, and a \$1 million to \$5 million cap for other products traded TBA (e.g., pools of high coupon fixed rate mortgages, ARMs, project loans, jumbo loans and reverse mortgages). The commenter notes that, in making its recommendations, it does not have access to the transaction data cited by FINRA regarding trading volume.

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<sup>34</sup> See Letter from Chris Killian, Managing Director, Securitization, Securities Industry and Financial Markets Association ("SIFMA"), to Elizabeth M. Murphy, Secretary, SEC, dated December 22, 2011.

After careful consideration of the commenter's concerns, FINRA proposes two lower dissemination caps herein. Based on FINRA's review of the TBA trading data, discussions with member firms, and the commenter's concern that liquidity may be adversely affected if the originally proposed dissemination cap is adopted, FINRA has proposed to lower the dissemination cap to \$25 million for all TBA transactions GD and to \$10 million for all TBA transactions NGD. Although the commenter recommends multiple dissemination caps based upon factors such as mortgage maturity and coupon, FINRA believes that the commenter's approach would result in investor confusion and operational complexities that are unnecessary to address the issues raised by the commenter. FINRA's proposal to adopt a two-pronged approach to the dissemination caps for products traded TBA is much less complex and, at the same time, allows FINRA to address most of the commenter's concerns regarding liquidity, providing a lower dissemination cap for those products that generally are the least liquid, without establishing multiple caps and standards. The reduction of the dissemination cap to \$25 million for TBA transactions GD, and for multiple types of less liquid TBA transactions NGD to \$10 million is a more conservative metric than initially proposed, which FINRA believes is appropriate at the onset. In setting these dissemination caps, FINRA took into account the liquidity and activity differences in coupons and maturities within each segment of TBA transactions GD and TBA transactions NGD.<sup>35</sup> FINRA notes that even

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<sup>35</sup> For example, at the proposed cap of \$25 million, approximately 21 percent of trades and approximately 85 percent of volume would be capped for transactions in TBA transactions GD backed by eligible 30-year mortgage loans, approximately 15 percent of trades and approximately 78 percent of volume would be capped for transactions in TBA transactions GD backed by eligible 15-year mortgage loans, and approximately 20 percent of trades and approximately

with the reduction of the dissemination cap for TBA transactions GD from \$50 million to \$25 million for such transactions, and a \$10 million cap for a small and generally somewhat less liquid segment, price transparency in the TBA market will improve significantly.

### Reporting Time Frames

The commenter states that the proposed time frames for reporting certain less liquid products, such as ARMs, project loans and reverse mortgages, within the proposed accelerated time frames will not be possible absent a cumbersome and potentially risky manual trade reporting process. The commenter notes that manual processing raises compliance, audit and workflow related concerns, and may result in additional TRACE reporting errors. For these reasons, the commenter recommends that the reporting deadline for these products remain at the close of business on the date of execution.

In response to the commenter's concerns regarding reporting transactions in instruments such as certain ARMS, project loans and reverse mortgages, FINRA proposes to modify the reporting requirements herein. Specifically, for TBA transactions NGD, FINRA proposes to extend the previously proposed time frames to report (i.e., 45 minutes from the Time of Execution, then after expiration of a pilot program, 15 minutes from the Time of Execution). In this proposed rule change, FINRA proposes to require members to report such transactions initially no later than two hours from the Time of Execution, then, after expiration of the proposed TBA NGD Pilot Program, no later than one hour from the Time of Execution. FINRA retains the reporting time frame initially proposed for TBA transactions GD. FINRA believes that proposing the longer reporting

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67 percent of volume would be capped for transactions in TBA transactions GD backed by other types of eligible loans having other maturities.

time frames for TBA transactions NGD will facilitate timely trade reporting, and accommodate current differences in members' systems, trade processing and other work flows. However, given that more than half of TBA transactions NGD currently are reported within one hour from the time of execution, FINRA believes that in the long term members will be able to report all TBA transactions within 15 minutes from the Time of Execution.

### Implementation

The commenter requested that the effective date of the November 2011 Filing be no earlier than August 1, 2012, to allow members to make necessary changes to internal systems, policies and procedures. FINRA intends to take into account the operational challenges associated with the proposal in establishing the effective date of this proposed rule change and will work with members to minimize the operational burdens of implementation. FINRA also has amended the stated implementation period to provide that FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no earlier than August 1, 2012 and no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

### 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 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-2012-2012-020 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2012-2012-020. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld

from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 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-2012-2012-020 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>36</sup>

Elizabeth M. Murphy

Secretary

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<sup>36</sup> 17 CFR 200.30-3(a)(12).

OMB APPROVAL	
OMB Number:	3235-0045
Estimated average burden hours per response:	38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input style="width: 40px;" type="text" value="51"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input style="width: 40px;" type="text" value="2011"/> - * <input style="width: 40px;" type="text" value="069"/> Amendment No. (req. for Amendments *) <input style="width: 40px;" type="text"/>						
Proposed Rule Change by Financial Industry Regulatory Authority Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934								
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>						
Section 19(b)(2) * <input checked="" type="checkbox"/> Section 19(b)(3)(A) * <input type="checkbox"/> Section 19(b)(3)(B) * <input type="checkbox"/>								
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Exhibit 2 Sent As Paper Document <input type="checkbox"/> Exhibit 3 Sent As Paper Document <input type="checkbox"/>								
<b>Description</b> Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). <div style="border: 1px solid black; padding: 5px; min-height: 40px;">                     Proposed Rule Change Relating to TRACE Reporting and Dissemination of Transactions in Agency Pass-Through Mortgage-Backed Securities Traded To Be Announced                 </div>								
<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 proposed rule change. First Name * <input style="width: 200px;" type="text" value="Sharon"/> Last Name * <input style="width: 200px;" type="text" value="Zackula"/> Title * <input style="width: 500px;" type="text" value="Associate Vice President and Associate General Counsel"/> E-mail * <input style="width: 500px;" type="text" value="sharon.zackula@finra.org"/> Telephone * <input style="width: 100px;" type="text" value="(202) 728-8985"/> Fax <input style="width: 100px;" 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 officer. Date <input style="width: 100px;" type="text" value="11/22/2011"/> By <input style="width: 200px;" type="text" value="Marc Menchel"/> <input style="width: 250px;" type="text" value="Executive Vice President and General Counsel"/> <div style="text-align: center; margin-top: 10px;"> <input style="width: 150px; height: 20px;" type="text" value="Marc Menchel, marc.menchel@finra.org"/> </div>								
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.								

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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 (required)**

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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 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 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 amend FINRA Rule 6730 to reduce the period to report TRACE-Eligible Asset-Backed Securities that are Agency Pass-Through Mortgage-Backed Securities traded to be announced (“TBA”) (“TBA transactions”) in two stages; FINRA Rule 6750, to provide for the dissemination of TBA transactions; FINRA Rule 7730, to establish fees for real-time TBA transaction data and historical TBA transaction data; and FINRA Rule 6730 and FINRA Rule 7730, to delete references to a pilot program that is no longer in effect and to incorporate other minor administrative, technical or clarifying changes. FINRA also proposes to establish a dissemination protocol providing that, for a TBA transaction in excess of \$50 million, the size (volume) of the transaction would be displayed in disseminated TRACE data as \$50 million plus.

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 September 22, 2011, 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.

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

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

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

(a) Purpose

FINRA proposes amendments to the Rule 6700 Series (the Trade Reporting and Compliance Engine ("TRACE") rules) to provide greater transparency in transactions in Asset-Backed Securities that are TBA transactions.<sup>2</sup> First, FINRA proposes to amend Rule 6730 to reduce the reporting period for TBA transactions in two phases. Second, FINRA proposes to amend Rule 6750 to provide for the dissemination of information on TBA transactions in real-time (*i.e.*, immediately upon FINRA's receipt of the transaction report). Third, in Rule 7730, FINRA proposes to establish fees: (i) for a data set of real-time TRACE disseminated TBA transaction data at the same rates currently in effect for similar real-time TRACE disseminated data sets, and (ii) for a data set of historic TRACE TBA transaction data at the same rates currently in effect for similar Historic TRACE Data sets.<sup>3</sup> FINRA also proposes to delete references to a pilot program that is no longer in effect and make other minor technical, administrative or clarifying amendments to Rule 6730 and Rule 7730. Finally, FINRA proposes to establish a limit or "cap" of \$50 million for disseminated TBA transactions as part of FINRA's dissemination policies and

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<sup>2</sup> A TBA transaction is a transaction in a specific type of Asset-Backed Security, an Agency Pass-Through Mortgage-Backed Security as defined in Rule 6710(v), traded "to be announced" as defined in Rule 6710(u).

<sup>3</sup> The term Historic TRACE Data is defined in Rule 7730(f)(4).

protocols, so that the actual size of a TBA transaction in excess of \$50 million would be displayed as "\$50MM+" in disseminated TRACE data.

TBA Transactions

As defined in Rule 6710(v), an Agency Pass-Through Mortgage-Backed Security means

a mortgage-backed security issued by an Agency or a Government-Sponsored Enterprise, for which the timely payment of principal and interest is guaranteed by an Agency or a Government-Sponsored Enterprise, representing ownership interests in a pool or pools of residential mortgage loans with the security structured to "pass through" the principal and interest payments made by the mortgagees to the owners of the pool(s) on a pro rata basis.<sup>4</sup>

As provided in Rule 6710(u), TBA means

"to be announced" and refers to a transaction in an Agency Pass-Through Mortgage-Backed Security . . . where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing

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<sup>4</sup> The terms Agency and Government-Sponsored Enterprise (GSE) are defined in, respectively, Rule 6710(k) and Rule 6710(n).

a pool (or pools) of mortgages (that are not specified by unique pool number).

In a TBA transaction, the parties agree on a price for delivering a given volume of Agency Pass-Through Mortgage-Backed Securities at a specified future date. The distinguishing feature of a TBA transaction is that the actual identity of the securities to be delivered at settlement is not specified on the date of execution (“Trade Date”). Instead, the parties to the trade agree on only five general parameters of the securities to be delivered: issuer, mortgage type, maturity, coupon, and month of settlement. Together, the securitization process and the TBA market transform what is a fundamentally heterogeneous universe of individual mortgages and mortgage pools (with myriad credit and prepayment characteristics) into groups of fungible – and therefore liquid – fixed-income instruments.<sup>5</sup>

#### Reduction of TBA Transaction Reporting Period

Currently, Asset-Backed Securities transactions (except certain pre-issuance transactions in collateralized mortgage obligations (“CMOs”) and real estate mortgage investment conduits (“REMICs”)) that are executed on a business day through 5:00 p.m. Eastern Time must be reported to TRACE on the Trade Date during TRACE System Hours, as provided in Rule 6730(a)(3)(A)(ii).<sup>6</sup> In contrast, secondary market transactions

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<sup>5</sup> James Vichery and Joshua Wright, TBA Trading and Liquidity in the Agency MBS Market, Federal Reserve Bank of New York Staff Reports, no. 468 (August 2010), available at [http://www.newyorkfed.org/research/staff\\_reports/sr468.pdf](http://www.newyorkfed.org/research/staff_reports/sr468.pdf).

<sup>6</sup> The terms Asset-Backed Security and TRACE System Hours are defined in, respectively, Rule 6710(m) and Rule 6710(t). Rule 6730(a)(3)(B)(i) addresses reporting requirements for Asset-Backed Securities transactions executed after 5:00 p.m. Eastern Time on a business day, and Rule 6730(a)(3)(B)(ii) addresses reporting requirements for Asset-Backed Securities transactions executed after

in all other TRACE-Eligible Securities must be reported within 15 minutes of the Time of Execution.<sup>7</sup> With certain exceptions, transaction information on such TRACE-Eligible Securities is disseminated as soon as the transaction is reported, and the 15-minute reporting requirement results in meaningful price transparency for market participants trading such securities.<sup>8</sup>

In connection with proposing that TBA transactions be disseminated real-time to the public and the market, FINRA proposes to reduce the reporting period for TBA transactions to 15 minutes to provide market participants meaningful and timely price information.

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TRACE System Hours, or on a weekend or a holiday, or other day on which the TRACE system is not open at any time during that day.

In general, Asset-Backed Securities must be reported to TRACE under Rules 6730(a)(3)(A) and (B). Although CMOs and REMICs are Asset-Backed Securities, for certain pre-issuance transactions in CMOs and REMICs, the applicable reporting provisions are set forth in Rule 6730(a)(3)(C), and Rules 6730(a)(3)(A) and (B) do not apply.

As discussed, infra, FINRA proposes to renumber Rule 6730(a)(3)(A)(ii) as Rule 6730(a)(3)(A).

<sup>7</sup> The terms TRACE-Eligible Security and Time of Execution are defined in, respectively, Rule 6710(a) and Rule 6710(d).

<sup>8</sup> Currently, transaction information on all types of securities that are TRACE-Eligible Securities, except Asset-Backed Securities, is disseminated as provided in Rule 6750(a). However, FINRA does not disseminate information on a transaction in a TRACE-Eligible Security that is effected pursuant to Securities Act Rule 144A (17 CFR 239.144A) under Rule 6750(b)(1), certain transfers of proprietary securities positions between a member and another member or non-member broker-dealer where the transfer is effected in connection with a merger of one broker-dealer with the other broker-dealer or a direct or indirect acquisition of one broker-dealer by the other broker-dealer or the other broker-dealer's parent under Rule 6750(b)(2), or transactions that are List or Fixed Offering Price Transactions or Takedown Transactions under Rule 6750(b)(3). The terms List or Fixed Offering Price Transaction and Takedown Transaction are defined in, respectively, Rule 6710(q) and Rule 6710(r).

However, reduction of the reporting period for TBA transactions would occur in two stages to permit industry participants to adjust policies and procedures, and to make required technological changes. First, for a pilot program of approximately 180 days duration, FINRA proposes to reduce the reporting period for TBA transactions from no later than the close of the TRACE system on Trade Date to no later than 45 minutes from the Time of Execution (“TBA Transaction Pilot Program”), as set forth in proposed Rule 6730(a)(3)(D)(i).<sup>9</sup> Minor exceptions to the general requirements are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d.<sup>10</sup> Second, after approximately 180 days, the TBA Transaction Pilot Program would expire and the reporting period would be reduced from no later than 45 minutes from the Time of Execution to 15 minutes from the Time of Execution, as set forth in proposed Rule 6730(a)(3)(D)(ii). Again, the proposed rule

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<sup>9</sup> To accommodate member requests that rule changes requiring technology changes occur on a Friday, if possible, the TBA Transaction Pilot Program providing for 45-minute reporting may be in effect for 180 days or for a few additional days to fix the termination date of the TBA Transaction Pilot Program on a Friday (*i.e.*, if the 180<sup>th</sup> day is not a Friday, the 45-minute requirement will expire on the Friday next occurring that the TRACE system is open).

<sup>10</sup> Minor exceptions to the general requirement to report TBA transactions no later than 45 minutes from the Time of Execution are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d. Under proposed Rule 6730(a)(3)(D)(i)a., transactions executed on a business day at or after 12:00:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 45 minutes after the TRACE system opens. Under proposed Rule 6730(a)(3)(D)(i)c., transactions executed on a business day less than 45 minutes before 6:30:00 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 45 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated “as/of” and include the date of execution. Under proposed Rule 6730(a)(3)(D)(i)d., 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), no later than 45 minutes after the TRACE system opens, designated “as/of” and include the date of execution.

change includes certain limited exceptions for TBA transactions executed shortly before the TRACE system closes and when the TRACE system is closed.<sup>11</sup> FINRA would also incorporate cross references to the proposed reporting requirements applicable solely to TBA transactions in the reporting requirements applicable generally to Asset-Backed Securities in Rule 6730(a)(3)(A) and (B).

#### Dissemination of TBA Transaction Data

Although members began reporting transactions in Asset-Backed Securities to TRACE on May 16, 2011, FINRA currently does not disseminate publicly any of the Asset-Backed Securities transaction data reported to TRACE. Specifically, Rule 6750(b)(4) provides that transaction information on TRACE-Eligible Securities that are Asset-Backed Securities will not be disseminated.

However, when FINRA proposed the dissemination restrictions in Rule 6750(b)(4) regarding Asset-Backed Securities, FINRA represented that it would study the Asset-Backed Securities data after transaction reporting began. In the Commission's order approving the proposed rule change to define Asset-Backed Securities as TRACE-Eligible Securities and require reporting of Asset-Backed Securities transactions, the

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<sup>11</sup> After the TBA Transaction Pilot Program expires, Rule 6730(a)(3)(D)(ii), which incorporates by reference Rule 6730(a)(1), requires generally that TBA transactions be reported no later than 15 minutes from the Time of Execution, with certain minor exceptions for transactions executed near the end of the TRACE System Hours, before and after TRACE System Hours, and on weekends and certain federal and religious holidays. See, e.g., Rule 6730(a)(1)(C). The exceptions are the same as those that apply to members reporting transactions in corporate bonds and Agency Debt Securities to TRACE. (The SEC recently approved a proposed rule change, which included reorganizing, without substantive amendment, the provisions set forth in current Rule 6730(a)(1)(C) as Rule 6730(a)(1)(A). See Securities Exchange Act Release No. 65791 (November 18, 2011) (Order Approving File No. SR-FINRA-2011-053). The rule change becomes effective on February 6, 2012. See Regulatory Notice 11-53 (November 21, 2011).)

Commission noted FINRA's intent to study Asset-Backed Securities dissemination issues prior to making any proposal to disseminate some or all of such information, and the Commission's historical support of efforts to improve post-trade transparency in the fixed income markets:

FINRA believes that information on Asset-Backed Securities transactions should be collected and analyzed before making any decision regarding the utility of such information for transparency purposes or the consequences of dissemination on this market. FINRA has stated that, after a period of study, it would file a proposed rule change if it determined that its study of the trading data provides a reasonable basis to seek dissemination of transaction information on Asset-Backed Securities. The Commission has historically been supportive of efforts to improve post-trade transparency in the fixed income markets and encourages FINRA to carry out that study.<sup>12</sup>

Since reporting began on May 16, 2011, FINRA has reviewed Asset-Backed Securities transaction data. The reported Asset-Backed Securities transaction data, as well as input from market participants as FINRA prepared to expand TRACE to include Asset-Backed Securities, suggests that real-time disseminated TRACE transaction data should be expanded to include transaction information on TBA transactions.

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<sup>12</sup> See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262, 9265 (March 1, 2010) (Order Approving File No. SR-FINRA-2009-065).



First, at the launch of Asset-Backed Securities reporting, certain market participants noted that TBA transactions trade in a very liquid market and suggested that FINRA consider transparency in such transactions. Second, as FINRA reviewed and continues to review the data reported for Asset-Backed Securities, including TBA transactions, and studies the total volume of TBA transactions, the concentration of trading in such securities, and the pricing disparity among various types of Agency Pass-Through Mortgage-Backed Securities traded TBA to understand their liquidity and fungibility, the data supports FINRA's proposal to disseminate TBA transactions and increase transparency in this market.

The market activity reported and reviewed reveals that the TBA market is generally active and liquid. In addition, the degree of fungibility is high, with substantial trading concentrated among a relatively small universe of securities as identified by a unique CUSIP number (hereinafter, "CUSIP" means the specific security identified by the unique CUSIP number).<sup>13</sup> The TBA market has an average daily volume of \$248 billion traded in close to 8,000 average daily trades,<sup>14</sup> and the average daily volume of all TBA transactions is approximately ten times the average daily volume of the entire corporate bond market.<sup>15</sup> The correlation between various TBA CUSIPs is high, and the

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<sup>13</sup> CUSIP means Committee on Uniform Security Identification Procedures.

<sup>14</sup> The information is based upon FINRA's review of all TBA transactions reported to TRACE from May 16, 2011 through October 28, 2011.

<sup>15</sup> The information is based upon FINRA's review of transactions in all TRACE-Eligible Securities, other than Agency Debt Securities, reported to TRACE from May 16, 2011 through October 28, 2011.

price of one TBA transaction may be derived using available prices for TBA transactions for a different issuer, a different coupon rate, maturity, or a combination thereof.<sup>16</sup>

Accordingly, FINRA proposes to disseminate TBA transaction information reported to TRACE in real-time.<sup>17</sup> Specifically, Rule 6750(b)(4) would be amended to provide that FINRA will not disseminate information on a transaction in an Asset-Backed Security, except a transaction in an Agency Pass-Through Mortgage-Backed Security traded TBA.

#### Data and Fees

FINRA proposes to amend Rule 7730 to make available the real-time disseminated TBA transaction data and the historic TRACE data for TBA transactions, and to establish the fees for such TBA transaction data. First, FINRA proposes to amend Rule 7730(c) to establish the Asset-Backed Security data set (“ABS Data Set”) as the third Real-Time TRACE market data set. The ABS Data Set will be limited to real-time disseminated TBA transaction data initially. The market data fee rates currently in effect for similar Real-Time TRACE market data sets (i.e., for the Corporate Bond Data Set and the Agency Data Set) in Rule 7730(c) would be extended to the ABS Data Set.

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<sup>16</sup> From a review of all TBA transactions reported to TRACE from May 16, 2011 through July 31, 2011, the data shows that TBA transactions (with different issuers, different coupon rates, and different maturities) were priced consistently, relative to each other.

<sup>17</sup> FINRA’s TRACE system would disseminate transaction information immediately upon receipt of a transaction report.

FINRA continues to review Asset-Backed Security transaction information in other sectors of the Asset-Backed Securities market and, at a later date, may propose that transactions in other Asset-Backed Securities be subject to dissemination.

Second, FINRA proposes to amend Rule 7730(d) to establish a third historic data product for TBA transactions (“Historic ABS Data Set”) similar to the data sets for corporate bonds (“Historic Corporate Bond Data Set”) and Agency Debt Securities (“Historic Agency Data Set”) listed therein. FINRA also proposes to establish fees for the Historic ABS Data Set at the same rates currently in effect in Rule 7730(d) for the Historic Corporate Bond Data Set and the Historic Agency Data Set. The Historic ABS Data Set would include all TBA transactions effected as of or after May 16, 2011, and, among other things, would include uncapped volume information. However, like all other Historic TRACE Data, TBA transaction data to be included in the Historic ABS Data Set would be released subject to a delay of approximately 18 months from the date of the transaction.<sup>18</sup>

#### Other Rule Changes

FINRA proposes to delete provisions regarding an expired pilot program, and to incorporate other minor administrative, technical or clarifying changes in Rule 6730 and Rule 7730.

FINRA proposes to delete Rule 6730(a)(3)(A)(i), the pilot program for Asset-Backed Securities transaction reporting that expired on November 18, 2011 (“Pilot Program”), Rule 6730(a)(3)(C)(i), which references the Pilot Program and applies to certain pre-issuance CMOs and REMICs, and all cross references to the two provisions in

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<sup>18</sup> Asset-Backed Securities transactions first began to be reported to TRACE on May 16, 2011; thus, the first Historic ABS Data Set would be available for release approximately 18 months later, in early 2013.

Rule 6730(a)(3)(A), (B) and (C).<sup>19</sup> In addition, FINRA would incorporate technical amendments to Rule 6730(a)(3)(C)(ii), and renumber Rule 6730(a)(3)(A)(ii) and Rule 6730(a)(3)(C)(ii) as, respectively, Rule 6730(a)(3)(A) and Rule 6730(a)(3)(C).<sup>20</sup>

Also in Rule 6730, FINRA proposes to incorporate an introductory sentence in Rule 6730(a)(3), stating that Asset-Backed Securities transactions must be reported as provided in that subparagraph, and a caption to Rule 6730(a)(3)(C), regarding the reporting requirements that apply to certain pre-issuance transactions involving CMOs and REMICs. In addition, FINRA proposes a technical amendment to incorporate references in Rule 6730(a)(3)(A) and (B) to the proposed reporting requirements for TBA transactions in proposed Rule 6730(a)(3)(D).

In Rule 7730, FINRA proposes to add, in paragraphs (d)(1)(A)(ii) and (d)(1)(B)(ii) regarding Historic TRACE Data, a sentence to clarify that the 2011 Historic Agency Data Set also will include the 2010 Historic Agency Data Set, and the 2013 Historic ABS Data Set also will include the 2012 Historic ABS Data Set.<sup>21</sup> FINRA also

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<sup>19</sup> Cross references to the Pilot Program would be deleted in Rule 6730(a)(3)(A)(ii) (proposed renumbered Rule 6730(a)(3)(A)), Rule 6730(a)(3)(B) and Rule 6730(a)(3)(C)(ii) (proposed renumbered Rule 6730(a)(3)(C)).

<sup>20</sup> In Rule 6730(a)(3)(C)(ii) (proposed renumbered Rule 6730(a)(3)(C)), FINRA proposes to delete the words “After the expiration of the Pilot Program in paragraph (a)(3)(A)(i), such transactions must be reported the earlier of:” and add the following text in the same place: “Transactions in Asset-Backed Securities that are collateralized mortgage obligations (CMOs) or real estate mortgage investment conduits (REMICs) that are executed before the issuance of the security must be reported the earlier of:.”

<sup>21</sup> FINRA proposes not to add the clarification to the fee chart in Rule 7730. Also, FINRA proposes to delete a similar statement— “The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set.”—in two sections of the fee chart in Rule 7730 summarizing Historic TRACE Data fees. Also, FINRA proposes to delete “BTDS” in two sections of the fee chart in Rule 7730 summarizing market data fees.

proposes minor technical amendments to Rule 7730(c) and (d) to reflect that the number of Data Sets and Historic Data Sets will increase from two to three, and other minor technical amendments to Rule 7730(b)(1) and Rule 7730(c) and (d).

#### Dissemination Cap

Currently, there are two TRACE dissemination protocols in place, referred to as dissemination caps, under which the actual size (volume) of a transaction over a certain par value is not displayed in disseminated TRACE transaction data. For TRACE-Eligible Securities that are rated Investment Grade, the dissemination cap is \$5 million (\$5MM), and the size of transactions in excess of \$5MM is displayed as “\$5MM+.” For TRACE-Eligible Securities that are rated Non-Investment Grade, the dissemination cap is \$1 million (\$1MM), and the size of a transaction in excess of \$1MM is displayed as “\$1MM+.”<sup>22</sup>

FINRA has analyzed the distribution of TBA trades to determine an appropriate cap for these securities. FINRA proposes initially to set a dissemination cap for a TBA transaction at \$50 million (a “\$50 million dissemination cap”). Accordingly, TBA transactions greater than \$50 million would be displayed as “\$50MM+.” At this level, approximately 12 percent of TBA transactions and approximately 63 percent of TBA transaction volume will be subject to the \$50 million dissemination cap.<sup>23</sup>

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<sup>22</sup> The terms Investment Grade and Non-Investment Grade are defined in, respectively, Rule 6710(h) and Rule 6710(i).

<sup>23</sup> In contrast, the existing caps for corporate Investment Grade bonds limit the display of actual size for approximately 1.6 percent of trades representing 48 percent of par value traded, and, for Agency Debt Securities, 6 percent of trades and 74 percent of par value. The information is based on a review of all TBA transactions, and transactions in Investment Grade corporate bonds and Agency Debt Securities reported to TRACE from May 16, 2011 through September 30, 2011.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the Regulatory Notice announcing Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>24</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, and Section 15A(b)(5) of the Act,<sup>25</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change to increase fixed income market transparency is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, generally to protect investors and the public, because transparency in TBA transactions will enhance the ability of investors and other market participants to identify and negotiate fair and competitive prices for Agency Pass-Through Mortgage-Backed Securities; and because the dissemination of price and other TBA transaction information publicly will promote just and equitable principles of trade among participants in the more transparent market, and will aid in the prevention of fraudulent and manipulative acts and practices in the

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<sup>24</sup> 15 U.S.C. 78o-3(b)(6).

<sup>25</sup> 15 U.S.C. 78o-3(b)(5).

TBA market. In addition, FINRA believes that the proposed data fees for the ABS Data Set (TBA transaction data disseminated immediately upon receipt by FINRA) and the Historic ABS Data Set (TBA transaction data delayed for 18 months), which are proposed at the same rates currently in effect for similar TRACE corporate bond and Agency Debt Securities data products, are reasonable fees that are equitably allocated among members, data vendors, qualifying Tax-Exempt Organizations and other TRACE data consumers.

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.

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

Written comments were neither solicited nor received.

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>26</sup>

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

Not applicable.

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

Not applicable.

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<sup>26</sup> 15 U.S.C. 78s(b)(2).

**9. Exhibits**

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

Exhibit 5. Text of proposed rule change.



**EXHIBIT 5**

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

\* \* \* \* \*

**6000. QUOTATION AND TRANSACTION REPORTING FACILITIES**

\* \* \* \* \*

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

\* \* \* \* \*

**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 within 15 minutes of the Time of Execution, except as otherwise specifically provided below, or the transaction report will be "late." A member must transmit the report to TRACE during TRACE System Hours.

(1) through (2) No Change.

**(3) Reporting Requirements — Asset-Backed Securities Transactions**

Transactions in Asset-Backed Securities must be reported as provided in this paragraph (a)(3).

(A) [(i) During a pilot program (Pilot Program), which shall expire on November 18, 2011, transactions in Asset-Backed Securities executed on a business day at or after 12:00:00 a.m. Eastern Time through 11:59:59 p.m. Eastern Time 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, except as provided in paragraph (a)(3)(C).]

[(ii)] Transactions in Asset-Backed 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, except as provided in paragraphs [(a)(3)(A)(i) (the Pilot Program) and] (a)(3)(C) and (a)(3)(D).

(B) Except as provided in paragraphs [(a)(3)(A)(i) (the Pilot Program) and] (a)(3)(C)[,] and (a)(3)(D), transactions in Asset-Backed Securities executed on:

(i) through (ii) No Change.

**(C) Collateralized Mortgage Obligation (CMO) and Real Estate Mortgage Investment Conduit (REMIC) Transactions Before Issuance**

[(i) During the Pilot Program in paragraph (a)(3)(i), transactions in Asset-Backed Securities that are collateralized mortgage obligations (CMOs) or real estate mortgage investment conduits (REMICs) that are executed before the issuance of the security must be reported the earlier of:]

[a. the business day following the business day that the security is assigned a CUSIP, a similar numeric identifier or a FINRA symbol during TRACE System

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Hours, or]

[b. the business day following the date of issuance of the security during TRACE System Hours.]

[In either case, if the transaction is reported other than on the date of execution, the transaction report must be designated “as/of” and include the date of execution.]

[(ii)] [After the expiration of the Pilot Program in paragraph (a)(3)(i), such transactions must be reported the earlier of:] Transactions in Asset-Backed Securities that are collateralized mortgage obligations (CMOs) or real estate mortgage investment conduits (REMICs) that are executed before the issuance of the security must be reported the earlier of:

a. the business day that the security is assigned a CUSIP, a similar numeric identifier or a FINRA symbol during TRACE System Hours (unless such identifier is assigned after 1:00:00 p.m. Eastern Time, and in such case, such transactions must be reported no later than the next business day during TRACE System Hours), or

b. the date of issuance of the security during TRACE System Hours.

In either case, if the transaction is reported other than on the date of execution, the transaction report must be designated “as/of” and include the date of execution.

**(D) TBA Transactions – Agency Pass-Through Mortgage-Backed Securities Traded To Be Announced**

Transactions in Asset-Backed Securities that are Agency Pass-Through Mortgage-Backed Securities traded to be announced (TBA) (TBA transactions) must be reported as provided in this paragraph (a)(3)(D).

(i) During a TBA transaction pilot program (TBA Transaction Pilot Program), which shall expire at 11:59:59 p.m. Eastern Time [insert date that is 180 days following the effective date of the TBA Transaction Pilot Program (provided that if the 180<sup>th</sup> day is not a Friday, insert date of the Friday next occurring (that the TRACE system is open) after the 180<sup>th</sup> day], TBA transactions, as defined in this Rule 6730(a)(3)(D), must be reported as follows:

a. Transactions executed on a business day at or after 12:00:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 45 minutes after the TRACE system opens;

b. Transactions executed on a business day at or after 8:00:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time (standard TRACE System Hours) must be reported within 45 minutes of the Time of Execution, except as provided in paragraph (a)(3)(D)c. below.

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c. Transactions executed on a business day less than 45 minutes before 6:30:00 p.m. Eastern Time must be reported no later than 45 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated “as/of” and include the date of execution.

d. 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), no later than 45 minutes after the TRACE system opens, designated “as/of” and include the date of execution.

(ii) After the TBA Transaction Pilot Program expires, TBA transactions must be reported as provided in paragraph (a)(1)(A) through paragraph (a)(1)(D).

(4) through (6) No Change.

(b) through (f) No Change.

\* \* \* \* \*

**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 (3) No Change.

(4) an Asset-Backed Security, except an Agency Pass-Through Mortgage-Backed Security traded to be announced (TBA) (a TBA transaction).

\* \* \* \* \*

**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)**

The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine (“TRACE”):

<b>Systems Fees</b>	<b>Transaction Reporting Fees</b>	<b>Data Fees</b>
Level I Trade Report Only Web Browser Access — \$20/month per user ID	Trades up to and including \$200,000 par value — \$0.475/trade. (For Asset-Backed Securities where par value is not used to	Market Data: [BTDS] Professional Real-Time Data Display — \$60/month per terminal per Data Set of Real-

<p>Level II Full Service Web Browser Access — Subscription for a single user ID or the first user ID — \$50/month (includes one Data Set); \$80/month (includes two Data Sets) Subscription for additional user IDs — \$80/month per user ID (includes one Data Set); \$140/month per user ID (includes two Data Sets)</p>	<p>determine the size (volume) of a transaction, for purposes of trade reporting fees, size (volume) is the lesser of original face value or Remaining Principal Balance (or the equivalent) at the Time of Execution of the transaction.) Trades over \$200,000 and up to and including \$999,999.99 par value — \$0.000002375 times the par value of the transaction (i.e., \$0.002375/\$1000). (See note above regarding certain Asset-Backed Securities.) Trades of \$1,000,000 par value or more — \$2.375/trade. (See note above regarding certain</p>	<p>Time TRACE transaction data, or a flat fee of \$7,500/month per Data Set of Real-Time TRACE transaction data, entitling Professionals to make unlimited internal use of such Data Set(s) on any number of interrogation or display devices.</p>
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	<p>Asset-Backed Securities.)                  All transactions in Asset-Backed Securities that are Agency Pass-Through Mortgage-Backed Securities traded to be announced (“TBA”) (“TBA transactions”) — \$1.50/trade.</p>	
<p>CTCI/FIX/Third Party                  — \$25/month/per firm</p>	<p>Cancel/Correct —                  \$1.50/trade</p>	<p>Market Data: Vendor                  Real-Time Data Feed                  — \$1,500/month per                  Data Set of Real-Time                  TRACE transaction                  data for receipt of                  continuous Real-Time                  TRACE transaction                  data in such Data Sets,                  except for qualifying                  Tax-Exempt                  Organizations, or                  \$250/month per Data                  Set of Snapshot Real-                  Time TRACE</p>



		transaction data for daily receipt of such Data Set(s).
	“As/of” Trade Late — \$3/trade	Market Data: Vendor Real-Time Data Feed — \$400/month per Data Set of Real-Time TRACE transaction data for such Data Set(s) for qualifying Tax-Exempt Organizations.
		Market Data: [BTDS] Non-Professional Real-Time Data Display — No charge.
		Historic TRACE Data: Set-Up Fee — a single fee of \$2,000 for development and set-up to receive Historic TRACE Data, except for qualifying Tax-

		Exempt Organizations.
		<p>Historic TRACE Data:                  Set-Up Fee — a single fee of \$1,000 for development and set-up to receive Historic TRACE Data for qualifying Tax-Exempt Organizations.</p>
		<p>Historic TRACE Data:                  Fee — \$2,000/calendar year per Data Set for receipt of Historic TRACE Data, except for qualifying Tax-Exempt Organizations.                  [The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set.] The data is enabled for internal use</p>

		<p>and internal and/or external desktop display distribution. Bulk re-distribution of data is not permitted.</p>
		<p>Historic TRACE Data: Bulk Re-Distribution Fee — except for qualifying Tax-Exempt Organizations, \$1/CUSIP per calendar year (or part thereof) within a single Data Set of Historic TRACE Data per each recipient of re-distributed data; maximum fee per Data Set of \$1,000/calendar year (or part thereof) per each recipient of re-distributed data.</p>
		<p>Historic TRACE Data: Bulk Re-Distribution</p>

		<p>Fee — for qualifying Tax-Exempt Organizations, \$500/calendar year per Data Set for receipt of Historic TRACE Data. [The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set.] The data is enabled for internal use and internal and/or external desktop display. Bulk re-distribution of data is permitted with certain restrictions.</p>
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(a) No Change.

**(b) Transaction Reporting Fees**

For each transaction in a TRACE-Eligible Security that is reportable to FINRA pursuant to the Rule 6700 Series, the following charges shall be assessed against each

member responsible for reporting the transaction:

**(1) Trade Reporting Fee**

(A) Except for a transaction in an Asset-Backed Security, as defined in Rule 6710(m), that is an Agency Pass-Through Mortgage-Backed Security, as defined in Rule 6710(v), traded to be announced (“TBA”), as defined in Rule 6710(u) (“TBA transaction”), a member shall be charged a [T]trade [R]eporting [F]ee based upon a sliding scale ranging from \$0.475 to \$2.375 per transaction based on the size of the reported transaction. For Asset-Backed Securities where par value is not used to determine the size (volume) of a transaction, for purposes of trade reporting fees, the size (volume) of a transaction is the lesser of the original face value or the Remaining Principal Balance, as defined in Rule 6710(aa).

(B) through (C) No Change.

(2) through (3) No Change.

**(c) Market Data Fees**

Real-Time TRACE transaction data disseminated by FINRA comprises the following databases (“Data Set(s)”): corporate bonds (“Corporate Bond[s] Data Set”), [and] Agency Debt Securities (“Agency Data Set”) and Asset-Backed Securities (“ABS Data Set”). Market data fees are charged for each Data Set. Professionals and Non-Professionals may subscribe to receive one or [both] more Data Sets of Real-Time TRACE transaction data disseminated by FINRA in one or more of the following ways

for the charges specified, as applicable. Members, vendors and other redistributors shall be required to execute appropriate agreements with FINRA.

(1) No Change.

**(2) Non-Professional Fees**

There shall be no charge paid by a Non-Professional for receiving all or any portion of one or [both] more Data Sets of Real-Time TRACE transaction data disseminated through TRACE.

**(d) Historic TRACE Data**

Historic TRACE Data comprises the following Data Set(s): corporate bonds (“Historic Corporate Bond[s] Data Set”), [and] Agency Debt Securities (“Historic Agency Data Set”) and Asset-Backed Securities (“Historic ABS Data Set”). Historic TRACE Data fees, except the Set-Up Fee, are charged for each Data Set. Professionals and Non-Professionals may receive Historic TRACE Data provided by FINRA in one or more of the following ways for the charges specified, as applicable. Recipients of Historic TRACE Data shall be required to execute appropriate agreements with FINRA.

**(1) Professional Fees**

Professionals may subscribe for the following:

(A) Persons or Organizations Other Than Qualifying Tax-Exempt Organizations

(i) No Change.

(ii) Data Fee – \$2,000 per calendar year per Data Set for receipt of Historic TRACE Data. (The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond

Data Set[.], the 2011 Historic Agency Data Set also includes the 2010 Historic Agency Data Set, and the 2013 Historic ABS Data Set also includes the 2012 Historic ABS Data Set.) Historic TRACE Data is enabled for internal use and internal and/or external desktop display distribution. Bulk re-distribution of such data is not permitted.

(iii) No Change.

(B) Qualifying Tax-Exempt Organizations

A Tax-Exempt Organization qualifies for development and set-up and to receive Historic TRACE Data under this paragraph (d)(1)(B) if it does not re-distribute such data in bulk, or it re-distributes such data in bulk or otherwise at no charge solely to Non-Professionals or other Tax-Exempt Organizations that agree to be subject to the same restrictions.

(i) No Change.

(ii) Data and Bulk Re-Distribution Fee – \$500 per calendar year per Data Set for receipt of Historic TRACE Data. (The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set[.], the 2011 Historic Agency Data Set also includes the 2010 Historic Agency Data Set, and the 2013 Historic ABS Data Set also includes the 2012 Historic ABS Data Set.) Historic TRACE Data is enabled for internal use and internal and/or external desktop display, and bulk redistribution, and may be re-distributed subject to the restrictions in paragraph (d)(1)(B).

**(2) Non-Professional Fees**

If FINRA provides all or any portion of one or [both] more Data Sets of Historic TRACE Data to a Non-Professional, FINRA will charge a cost-neutral fee under Rule 7730(e) comprised solely of the cost of the media and the cost of delivery (e.g., U.S. Postal Service or other requested delivery service).

(e) through (f) No Change.

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<sup>1</sup> No Change.

<sup>2</sup> No Change.

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available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at <http://www.nyse.com>. 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 publicly available. All submissions should refer to File Number SR-NYSEAMEX-2011-90 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2011-31473 Filed 12-7-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65877; File No. SR-FINRA-2011-069]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating To Post-Trade Transparency for Agency Pass-Through Mortgage-Backed Securities Traded TBA

December 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 22, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission (the "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 amend FINRA Rule 6730 to reduce the period to report TRACE-Eligible Asset-Backed

Securities that are Agency Pass-Through Mortgage-Backed Securities traded to be announced ("TBA") ("TBA transactions") in two stages; FINRA Rule 6750, to provide for the dissemination of TBA transactions; FINRA Rule 7730, to establish fees for real-time TBA transaction data and historical TBA transaction data; and FINRA Rule 6730 and FINRA Rule 7730, to delete references to a pilot program that is no longer in effect and to incorporate other minor administrative, technical or clarifying changes. FINRA also proposes to establish a dissemination protocol providing that, for a TBA transaction in excess of \$50 million, the size (volume) of the transaction would be displayed in disseminated TRACE data as \$50 million plus.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

FINRA proposes amendments to the Rule 6700 Series (the Trade Reporting and Compliance Engine ("TRACE") rules) to provide greater transparency in transactions in Asset-Backed Securities that are TBA transactions.<sup>3</sup> First, FINRA proposes to amend Rule 6730 to reduce the reporting period for TBA transactions in two phases. Second, FINRA proposes to amend Rule 6750 to provide for the dissemination of information on TBA transactions in real-time (*i.e.*, immediately upon FINRA's receipt of the transaction report). Third, in Rule 7730, FINRA proposes to

establish fees: (i) For a data set of real-time TRACE disseminated TBA transaction data at the same rates currently in effect for similar real-time TRACE disseminated data sets, and (ii) for a data set of historic TRACE TBA transaction data at the same rates currently in effect for similar Historic TRACE Data sets.<sup>4</sup> FINRA also proposes to delete references to a pilot program that is no longer in effect and make other minor technical, administrative or clarifying amendments to Rule 6730 and Rule 7730. Finally, FINRA proposes to establish a limit or "cap" of \$50 million for disseminated TBA transactions as part of FINRA's dissemination policies and protocols, so that the actual size of a TBA transaction in excess of \$50 million would be displayed as "\$50MM+" in disseminated TRACE data.

##### TBA Transactions

As defined in Rule 6710(v), an Agency Pass-Through Mortgage-Backed Security means:

a mortgage-backed security issued by an Agency or a Government-Sponsored Enterprise, for which the timely payment of principal and interest is guaranteed by an Agency or a Government-Sponsored Enterprise, representing ownership interests in a pool or pools of residential mortgage loans with the security structured to "pass through" the principal and interest payments made by the mortgagees to the owners of the pool(s) on a pro rata basis.<sup>5</sup>

As provided in Rule 6710(u), TBA means:

"to be announced" and refers to a transaction in an Agency Pass-Through Mortgage-Backed Security \* \* \* where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number).

In a TBA transaction, the parties agree on a price for delivering a given volume of Agency Pass-Through Mortgage-Backed Securities at a specified future date. The distinguishing feature of a TBA transaction is that the actual identity of the securities to be delivered at settlement is not specified on the date of execution ("Trade Date"). Instead, the parties to the trade agree on only five general parameters of the securities to be delivered: issuer, mortgage type, maturity, coupon, and month of

<sup>3</sup> A TBA transaction is a transaction in a specific type of Asset-Backed Security, an Agency Pass-Through Mortgage-Backed Security as defined in Rule 6710(v), traded "to be announced" as defined in Rule 6710(u).

<sup>4</sup> The term Historic TRACE Data is defined in Rule 7730(f)(4).

<sup>5</sup> The terms Agency and Government-Sponsored Enterprise (GSE) are defined in, respectively, Rule 6710(k) and Rule 6710(n).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

settlement. Together, the securitization process and the TBA market transform what is a fundamentally heterogeneous universe of individual mortgages and mortgage pools (with myriad credit and prepayment characteristics) into groups of fungible—and therefore liquid—fixed-income instruments.<sup>6</sup>

#### *Reduction of TBA Transaction Reporting Period*

Currently, Asset-Backed Securities transactions (except certain pre-issuance transactions in collateralized mortgage obligations (“CMOs”) and real estate mortgage investment conduits (“REMICs”)) that are executed on a business day through 5 p.m. Eastern Time must be reported to TRACE on the Trade Date during TRACE System Hours, as provided in Rule 6730(a)(3)(A)(ii).<sup>7</sup> In contrast, secondary market transactions in all other TRACE-Eligible Securities must be reported within 15 minutes of the Time of Execution.<sup>8</sup> With certain exceptions, transaction information on such TRACE-Eligible Securities is disseminated as soon as the transaction is reported, and the 15-minute reporting requirement results in meaningful price transparency for market participants trading such securities.<sup>9</sup>

<sup>6</sup> James Vichery and Joshua Wright, *TBA Trading and Liquidity in the Agency MBS Market*, Federal Reserve Bank of New York Staff Reports, no. 468 (August 2010), available at [http://www.newyorkfed.org/research/staff\\_reports/sr468.pdf](http://www.newyorkfed.org/research/staff_reports/sr468.pdf).

<sup>7</sup> The terms Asset-Backed Security and TRACE System Hours are defined in, respectively, Rule 6710(m) and Rule 6710(f). Rule 6730(a)(3)(B)(i) addresses reporting requirements for Asset-Backed Securities transactions executed after 5 p.m. Eastern Time on a business day, and Rule 6730(a)(3)(B)(ii) addresses reporting requirements for Asset-Backed Securities transactions executed after TRACE System Hours, or on a weekend or a holiday, or other day on which the TRACE system is not open at any time during that day.

In general, Asset-Backed Securities must be reported to TRACE under Rules 6730(a)(3)(A) and (B). Although CMOs and REMICs are Asset-Backed Securities, for certain pre-issuance transactions in CMOs and REMICs, the applicable reporting provisions are set forth in Rule 6730(a)(3)(C), and Rules 6730(a)(3)(A) and (B) do not apply.

As discussed, *infra*, FINRA proposes to renumber Rule 6730(a)(3)(A)(ii) as Rule 6730(a)(3)(A).

<sup>8</sup> The terms TRACE-Eligible Security and Time of Execution are defined in, respectively, Rule 6710(a) and Rule 6710(d).

<sup>9</sup> Currently, transaction information on all types of securities that are TRACE-Eligible Securities, except Asset-Backed Securities, is disseminated as provided in Rule 6750(a). However, FINRA does not disseminate information on a transaction in a TRACE-Eligible Security that is effected pursuant to Securities Act Rule 144A (17 CFR 239.144A) under Rule 6750(b)(1), certain transfers of proprietary securities positions between a member and another member or non-member broker-dealer where the transfer is effected in connection with a merger of one broker-dealer with the other broker-dealer or a direct or indirect acquisition of one broker-dealer by the other broker-dealer or the other

In connection with proposing that TBA transactions be disseminated real-time to the public and the market, FINRA proposes to reduce the reporting period for TBA transactions to 15 minutes to provide market participants meaningful and timely price information.

However, reduction of the reporting period for TBA transactions would occur in two stages to permit industry participants to adjust policies and procedures, and to make required technological changes. First, for a pilot program of approximately 180 days duration, FINRA proposes to reduce the reporting period for TBA transactions from no later than the close of the TRACE system on Trade Date to no later than 45 minutes from the Time of Execution (“TBA Transaction Pilot Program”), as set forth in proposed Rule 6730(a)(3)(D)(i).<sup>10</sup> Minor exceptions to the general requirements are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d.<sup>11</sup> Second, after approximately 180 days, the TBA Transaction Pilot Program would expire and the reporting period would be reduced from no later than 45 minutes from the Time of Execution to 15 minutes from the Time of Execution, as set forth in proposed Rule 6730(a)(3)(D)(ii). Again, the

broker-dealer’s parent under Rule 6750(b)(2), or transactions that are List or Fixed Offering Price Transactions or Takedown Transactions under Rule 6750(b)(3). The terms List or Fixed Offering Price Transaction and Takedown Transaction are defined in, respectively, Rule 6710(q) and Rule 6710(r).

<sup>10</sup> To accommodate member requests that rule changes requiring technology changes occur on a Friday, if possible, the TBA Transaction Pilot Program providing for 45-minute reporting may be in effect for 180 days or for a few additional days to fix the termination date of the TBA Transaction Pilot Program on a Friday (*i.e.*, if the 180th day is not a Friday, the 45-minute requirement will expire on the Friday next occurring that the TRACE system is open).

<sup>11</sup> Minor exceptions to the general requirement to report TBA transactions no later than 45 minutes from the Time of Execution are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d. Under proposed Rule 6730(a)(3)(D)(i)a., transactions executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 45 minutes after the TRACE system opens. Under proposed Rule 6730(a)(3)(D)(i)c., transactions executed on a business day less than 45 minutes before 6:30 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 45 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated “as/of” and include the date of execution. Under proposed Rule 6730(a)(3)(D)(i)d., transactions executed on a business day at or after 6:30 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), no later than 45 minutes after the TRACE system opens, designated “as/of” and include the date of execution.

proposed rule change includes certain limited exceptions for TBA transactions executed shortly before the TRACE system closes and when the TRACE system is closed.<sup>12</sup> FINRA would also incorporate cross references to the proposed reporting requirements applicable solely to TBA transactions in the reporting requirements applicable generally to Asset-Backed Securities in Rule 6730(a)(3)(A) and (B).

#### *Dissemination of TBA Transaction Data*

Although members began reporting transactions in Asset-Backed Securities to TRACE on May 16, 2011, FINRA currently does not disseminate publicly any of the Asset-Backed Securities transaction data reported to TRACE. Specifically, Rule 6750(b)(4) provides that transaction information on TRACE-Eligible Securities that are Asset-Backed Securities will not be disseminated.

However, when FINRA proposed the dissemination restrictions in Rule 6750(b)(4) regarding Asset-Backed Securities, FINRA represented that it would study the Asset-Backed Securities data after transaction reporting began. In the Commission’s order approving the proposed rule change to define Asset-Backed Securities as TRACE-Eligible Securities and require reporting of Asset-Backed Securities transactions, the Commission noted FINRA’s intent to study Asset-Backed Securities dissemination issues prior to making any proposal to disseminate some or all of such information, and the Commission’s historical support of efforts to improve post-trade transparency in the fixed income markets:

FINRA believes that information on Asset-Backed Securities transactions should be collected and analyzed before making any decision regarding the utility of such information for transparency purposes or the consequences of dissemination on this market. FINRA has stated that, after a period of study, it would file a proposed rule change

<sup>12</sup> After the TBA Transaction Pilot Program expires, Rule 6730(a)(3)(D)(ii), which incorporates by reference Rule 6730(a)(1), requires generally that TBA transactions be reported no later than 15 minutes from the Time of Execution, with certain minor exceptions for transactions executed near the end of the TRACE System Hours, before and after TRACE System Hours, and on weekends and certain federal and religious holidays. *See, e.g.*, Rule 6730(a)(1)(C). The exceptions are the same as those that apply to members reporting transactions in corporate bonds and Agency Debt Securities to TRACE. (The SEC recently approved a proposed rule change, which included reorganizing, without substantive amendment, the provisions set forth in current Rule 6730(a)(1)(C) as Rule 6730(a)(1)(A). *See* Securities Exchange Act Release No. 65791 (November 18, 2011) (Order Approving File No. SR-FINRA-2011-053). The rule change becomes effective on February 6, 2012. *See Regulatory Notice* 11-53 (November 21, 2011).)

if it determined that its study of the trading data provides a reasonable basis to seek dissemination of transaction information on Asset-Backed Securities. The Commission has historically been supportive of efforts to improve post-trade transparency in the fixed income markets and encourages FINRA to carry out that study.<sup>13</sup>

Since reporting began on May 16, 2011, FINRA has reviewed Asset-Backed Securities transaction data. The reported Asset-Backed Securities transaction data, as well as input from market participants as FINRA prepared to expand TRACE to include Asset-Backed Securities, suggests that real-time disseminated TRACE transaction data should be expanded to include transaction information on TBA transactions.

First, at the launch of Asset-Backed Securities reporting, certain market participants noted that TBA transactions trade in a very liquid market and suggested that FINRA consider transparency in such transactions. Second, as FINRA reviewed and continues to review the data reported for Asset-Backed Securities, including TBA transactions, and studies the total volume of TBA transactions, the concentration of trading in such securities, and the pricing disparity among various types of Agency Pass-Through Mortgage-Backed Securities traded TBA to understand their liquidity and fungibility, the data supports FINRA's proposal to disseminate TBA transactions and increase transparency in this market.

The market activity reported and reviewed reveals that the TBA market is generally active and liquid. In addition, the degree of fungibility is high, with substantial trading concentrated among a relatively small universe of securities as identified by a unique CUSIP number (hereinafter, "CUSIP" means the specific security identified by the unique CUSIP number).<sup>14</sup> The TBA market has an average daily volume of \$248 billion traded in close to 8,000 average daily trades,<sup>15</sup> and the average daily volume of all TBA transactions is approximately ten times the average daily volume of the entire corporate bond market.<sup>16</sup> The correlation between

various TBA CUSIPs is high, and the price of one TBA transaction may be derived using available prices for TBA transactions for a different issuer, a different coupon rate, maturity, or a combination thereof.<sup>17</sup>

Accordingly, FINRA proposes to disseminate TBA transaction information reported to TRACE in real-time.<sup>18</sup> Specifically, Rule 6750(b)(4) would be amended to provide that FINRA will not disseminate information on a transaction in an Asset-Backed Security, *except* a transaction in an Agency Pass-Through Mortgage-Backed Security traded TBA.

#### Data and Fees

FINRA proposes to amend Rule 7730 to make available the real-time disseminated TBA transaction data and the historic TRACE data for TBA transactions, and to establish the fees for such TBA transaction data. First, FINRA proposes to amend Rule 7730(c) to establish the Asset-Backed Security data set ("ABS Data Set") as the third Real-Time TRACE market data set. The ABS Data Set will be limited to real-time disseminated TBA transaction data initially. The market data fee rates currently in effect for similar Real-Time TRACE market data sets (*i.e.*, for the Corporate Bond Data Set and the Agency Data Set) in Rule 7730(c) would be extended to the ABS Data Set.

Second, FINRA proposes to amend Rule 7730(d) to establish a third historic data product for TBA transactions ("Historic ABS Data Set") similar to the data sets for corporate bonds ("Historic Corporate Bond Data Set") and Agency Debt Securities ("Historic Agency Data Set") listed therein. FINRA also proposes to establish fees for the Historic ABS Data Set at the same rates currently in effect in Rule 7730(d) for the Historic Corporate Bond Data Set and the Historic Agency Data Set. The Historic ABS Data Set would include all TBA transactions effected as of or after May 16, 2011, and, among other things, would include uncapped volume information. However, like all other Historic TRACE Data, TBA transaction data to be included in the Historic ABS

Data Set would be released subject to a delay of approximately 18 months from the date of the transaction.<sup>19</sup>

#### Other Rule Changes

FINRA proposes to delete provisions regarding an expired pilot program, and to incorporate other minor administrative, technical or clarifying changes in Rule 6730 and Rule 7730.

FINRA proposes to delete Rule 6730(a)(3)(A)(i), the pilot program for Asset-Backed Securities transaction reporting that expired on November 18, 2011 ("Pilot Program"), Rule 6730(a)(3)(C)(i), which references the Pilot Program and applies to certain pre-issuance CMOs and REMICs, and all cross references to the two provisions in Rule 6730(a)(3)(A), (B) and (C).<sup>20</sup> In addition, FINRA would incorporate technical amendments to Rule 6730(a)(3)(C)(ii), and renumber Rule 6730(a)(3)(A)(ii) and Rule 6730(a)(3)(C)(ii) as, respectively, Rule 6730(a)(3)(A) and Rule 6730(a)(3)(C).<sup>21</sup>

Also in Rule 6730, FINRA proposes to incorporate an introductory sentence in Rule 6730(a)(3), stating that Asset-Backed Securities transactions must be reported as provided in that subparagraph, and a caption to Rule 6730(a)(3)(C), regarding the reporting requirements that apply to certain pre-issuance transactions involving CMOs and REMICs. In addition, FINRA proposes a technical amendment to incorporate references in Rule 6730(a)(3)(A) and (B) to the proposed reporting requirements for TBA transactions in proposed Rule 6730(a)(3)(D).

In Rule 7730, FINRA proposes to add, in paragraphs (d)(1)(A)(ii) and (d)(1)(B)(ii) regarding Historic TRACE Data, a sentence to clarify that the 2011 Historic Agency Data Set also will include the 2010 Historic Agency Data Set, and the 2013 Historic ABS Data Set also will include the 2012 Historic ABS

<sup>19</sup> Asset-Backed Securities transactions first began to be reported to TRACE on May 16, 2011; thus, the first Historic ABS Data Set would be available for release approximately 18 months later, in early 2013.

<sup>20</sup> Cross references to the Pilot Program would be deleted in Rule 6730(a)(3)(A)(ii) (proposed renumbered Rule 6730(a)(3)(A)), Rule 6730(a)(3)(B) and Rule 6730(a)(3)(C)(i) (proposed renumbered Rule 6730(a)(3)(C)).

<sup>21</sup> In Rule 6730(a)(3)(C)(ii) (proposed renumbered Rule 6730(a)(3)(C)), FINRA proposes to delete the words "After the expiration of the Pilot Program in paragraph (a)(3)(A)(i), such transactions must be reported the earlier of:" and add the following text in the same place: "Transactions in Asset-Backed Securities that are collateralized mortgage obligations (CMOs) or real estate mortgage investment conduits (REMICs) that are executed before the issuance of the security must be reported the earlier of:"

<sup>13</sup> See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262, 9265 (March 1, 2010) (Order Approving File No. SR-FINRA-2009-065).

<sup>14</sup> CUSIP means Committee on Uniform Security Identification Procedures.

<sup>15</sup> The information is based upon FINRA's review of all TBA transactions reported to TRACE from May 16, 2011 through October 28, 2011.

<sup>16</sup> The information is based upon FINRA's review of transactions in all TRACE-Eligible Securities, other than Agency Debt Securities, reported to TRACE from May 16, 2011 through October 28, 2011.

<sup>17</sup> From a review of all TBA transactions reported to TRACE from May 16, 2011 through July 31, 2011, the data shows that TBA transactions (with different issuers, different coupon rates, and different maturities) were priced consistently, relative to each other.

<sup>18</sup> FINRA's TRACE system would disseminate transaction information immediately upon receipt of a transaction report.

FINRA continues to review Asset-Backed Security transaction information in other sectors of the Asset-Backed Securities market and, at a later date, may propose that transactions in other Asset-Backed Securities be subject to dissemination.

Data Set.<sup>22</sup> FINRA also proposes minor technical amendments to Rule 7730(c) and (d) to reflect that the number of Data Sets and Historic Data Sets will increase from two to three, and other minor technical amendments to Rule 7730(b)(1) and Rule 7730(c) and (d).

#### *Dissemination Cap*

Currently, there are two TRACE dissemination protocols in place, referred to as dissemination caps, under which the actual size (volume) of a transaction over a certain par value is not displayed in disseminated TRACE transaction data. For TRACE-Eligible Securities that are rated Investment Grade, the dissemination cap is \$5 million (\$5MM), and the size of transactions in excess of \$5MM is displayed as "\$5MM+." For TRACE-Eligible Securities that are rated Non-Investment Grade, the dissemination cap is \$1 million (\$1MM), and the size of a transaction in excess of \$1MM is displayed as "\$1MM+."<sup>23</sup>

FINRA has analyzed the distribution of TBA trades to determine an appropriate cap for these securities. FINRA proposes initially to set a dissemination cap for a TBA transaction at \$50 million (a "\$50 million dissemination cap"). Accordingly, TBA transactions greater than \$50 million would be displayed as "\$50MM+." At this level, approximately 12 percent of TBA transactions and approximately 63 percent of TBA transaction volume will be subject to the \$50 million dissemination cap.<sup>24</sup>

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

<sup>22</sup> FINRA proposes not to add the clarification to the fee chart in Rule 7730. Also, FINRA proposes to delete a similar statement—"The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set."—in two sections of the fee chart in Rule 7730 summarizing Historic TRACE Data fees. Also, FINRA proposes to delete "BTDS" in two sections of the fee chart in Rule 7730 summarizing market data fees.

<sup>23</sup> The terms Investment Grade and Non-Investment Grade are defined in, respectively, Rule 6710(h) and Rule 6710(i).

<sup>24</sup> In contrast, the existing caps for corporate Investment Grade bonds limit the display of actual size for approximately 1.6 percent of trades representing 48 percent of par value traded, and, for Agency Debt Securities, 6 percent of trades and 74 percent of par value. The information is based on a review of all TBA transactions, and transactions in Investment Grade corporate bonds and Agency Debt Securities reported to TRACE from May 16, 2011 through September 30, 2011.

#### *2. Statutory Basis*

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>25</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, and Section 15A(b)(5) of the Act,<sup>26</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change to increase fixed income market transparency is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, generally to protect investors and the public, because transparency in TBA transactions will enhance the ability of investors and other market participants to identify and negotiate fair and competitive prices for Agency Pass-Through Mortgage-Backed Securities; and because the dissemination of price and other TBA transaction information publicly will promote just and equitable principles of trade among participants in the more transparent market, and will aid in the prevention of fraudulent and manipulative acts and practices in the TBA market. In addition, FINRA believes that the proposed data fees for the ABS Data Set (TBA transaction data disseminated immediately upon receipt by FINRA) and the Historic ABS Data Set (TBA transaction data delayed for 18 months), which are proposed at the same rates currently in effect for similar TRACE corporate bond and Agency Debt Securities data products, are reasonable fees that are equitably allocated among members, data vendors, qualifying Tax-Exempt Organizations and other TRACE data consumers.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

<sup>25</sup> 15 U.S.C. 78o-3(b)(6).

<sup>26</sup> 15 U.S.C. 78o-3(b)(5).

#### **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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2011-069 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2011-069. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official

business days between the hours of 10 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-2011-069 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

Kevin M. O'Neill,  
Deputy Secretary.

[FR Doc. 2011-31524 Filed 12-7-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65876; File No. SR-BX-2011-078]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees for BX

December 2, 2011.

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 November 22, 2011, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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

BX is filing with the Commission a proposed rule change to modify pricing for BX members using the NASDAQ OMX BX Equities System. The new pricing will take effect immediately. The text of the proposed rule change is available at BX's principal office, at <http://nasdaqomxbx.cchwallstreet.com/>, at the Commission's Public Reference Room, and at <http://www.sec.gov>.

<sup>27</sup> 17 CFR 200.30-3(a)(12).

<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, the Exchange 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. The Exchange 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

The purpose of the proposed rule change is to adopt fees applicable to the new routing services on the NASDAQ OMX BX Equities Market.<sup>3</sup> BX has a pricing model under which members are charged for the execution of quotes/orders posted on the BX book (*i.e.*, quotes/orders that provide liquidity), while members receive a rebate for orders that access liquidity; this is not changing. The proposed fees, because they apply to routed orders, will apply only to orders executed at venues other than the NASDAQ OMX BX Equities Market.

BX proposes to amend BX Rule 7018(a) to adopt fees for the execution of routed orders in securities priced at \$1 or more per share and BX Rule 7018(b) to adopt fees for routing of securities priced at less than \$1 per share. In BX Rule 7018(a), the charges depend on both where the order was executed and the order's routing strategy, which is similar to NASDAQ Rule 7018(a).<sup>4</sup> The different routing strategies, BSTG,<sup>5</sup> BSCN,<sup>6</sup> BMOP,<sup>7</sup> BTFY<sup>8</sup> and BCRT,<sup>9</sup> are defined in BX Rule 4758 and correlate to some of the routing strategies of NASDAQ, as

<sup>3</sup> Securities Exchange Act Release No. 65470 (October 3, 2011), 76 FR 62489 (October 7, 2011) (SR-BX-2011-048).

<sup>4</sup> Similar to the fees proposed here, NASDAQ bases the charge on the type of routing strategy employed and where the order was executed, because routing fees are generally intended to the recoup the cost of routing the order to another venue for execution. However, unlike BX, NASDAQ also bases its routing fees on where the security is listed. This is not a significant difference because the proposed fees include a separate charge for execution on the NYSE.

<sup>5</sup> See BX Rule 4758(a)(1)(A)(iii).

<sup>6</sup> See BX Rule 4758(a)(1)(A)(iv).

<sup>7</sup> See BX Rule 4758(a)(1)(A)(vi).

<sup>8</sup> See BX Rule 4758(a)(1)(A)(v).

<sup>9</sup> See BX Rule 4758(a)(1)(A)(vii).

explained below. The proposed BX routing fees are the same as or less than NASDAQ's, which is also explained further below.<sup>10</sup>

Respecting BSTG and BSCN orders, the charge is \$0.0023 per share executed at NYSE and \$0.0030 per share executed at venues other than NYSE. Respecting NASDAQ's comparable STGY and SCAN orders,<sup>11</sup> this charge is the same for shares executed on NYSE and also the same as what NASDAQ charges for routed executions at other venues in NASDAQ-listed securities, NYSE-listed securities and for securities listed on exchanges other than NASDAQ or NYSE (\$0.0030 per share).<sup>12</sup> The Exchange believes that charging the same routing fees as NASDAQ should attract users to its new routing program.

Respecting BMOP orders, the charge is \$0.0025 per share executed at NYSE and \$0.0035 per share executed at venues other than NYSE. This is the same as what NASDAQ charges for its comparable MOPP orders,<sup>13</sup> which is, following the format of the NASDAQ fee schedule: (i) for NASDAQ-listed securities, \$0.0035 per share; (ii) for NYSE-listed securities, \$0.0035 per share executed at venues other than NYSE or \$0.0025 per share executed at NYSE; and (iii) for securities listed on exchanges other than NASDAQ or NYSE, \$0.0035 per share. The Exchange has determined that this is the appropriate charge to attract BMOP orders to BX.

Respecting BTFY orders, the charge is \$0.0022 per share executed at NYSE and \$0.0005 per share executed at venues other than NYSE, NASDAQ or PSX. For orders that execute at PSX, BX will pass through all fees assessed and rebates offered by PSX and for orders that execute at NASDAQ, BX will pass through all fees assessed and rebates offered by NASDAQ. BX, PSX and NASDAQ are affiliates. This is the same as what NASDAQ charges for its comparable TTTY orders,<sup>14</sup> which is \$0.0022 per share executed at NYSE and \$0.0005 per share executed at venues other than NYSE, BX or PSX, regardless of where the security is listed. For orders that execute at BX, NASDAQ gives a credit of \$0.0014 for orders that

<sup>10</sup> Pursuant to a November 28, 2011 conference call with Commission staff, Edith Hallahan,

Principal Associate General Counsel, the NASDAQ OMX Group, Inc., confirmed that the proposed BX routing fees are the same as (not less than) NASDAQ's existing routing fees.

<sup>11</sup> See NASDAQ Rule 4758(a)(1)(A)(iii) and (iv).

<sup>12</sup> For NASDAQ-listed securities, there is no separate, lower fee for orders executed at NYSE, because NASDAQ-listed securities do not trade on NYSE and thus would not route there.

<sup>13</sup> See NASDAQ Rule 4758(a)(1)(A)(vi).

<sup>14</sup> See NASDAQ Rule 4758(a)(1)(A)(v).



December 22, 2011

Submitted Via Email to [Rule-Comments@SEC.gov](mailto:Rule-Comments@SEC.gov)

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street NE., Washington, DC 20549-1090

**Re: Release No. 34-65877; File No. SR-FINRA-2011-069 / Notice of Filing of Proposed Rule Change Relating To Post-Trade Transparency for Agency Pass-Through Mortgage-Backed Securities Traded TBA**

Ladies and Gentlemen,

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> is pleased to respond to the SEC’s request for comment on FINRA’s proposed rule (the “**Proposal**”) to begin dissemination of data for Agency mortgage-backed securities (“**MBS**”) traded on a to-be-announced (“**TBA**”) basis<sup>2</sup>. SIFMA’s comments on this proposal are narrowly tailored and focused on two aspects of the proposal. The first area is the cap on disseminated volume, and the second regards certain implementation considerations for the rule proposal. The root of the majority of the issues discussed in this letter is a mistaken characterization of TBA trading corresponding to a unitary TBA market. In reality, there are a number of MBS markets where securities are traded TBA, each with different liquidity and operational realities that should be reflected in the TRACE reporting regime.

#### ***Summary of the Proposal***

The Proposal would implement shorter reporting timeframes for TBA transactions (45min, then 15min), as well as real-time dissemination of trade information. Volume information would be capped at \$50MM. Trades above that amount would be displayed as “50+”. We understand that FINRA intends that all products reported under a generic TBA CUSIP would be subject to this accelerated reporting and dissemination. The proposal would also implement changes regarding dissemination and data fees and other minor issues.

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<sup>1</sup> SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit [www.sifma.org](http://www.sifma.org).

<sup>2</sup> 76 FR 236 (December 8, 2011) pp. 76777-76781.

### *Summary of SIFMA Views*

- FINRA should institute volume caps for each TBA CUSIP that are more reflective of the liquidity of the various markets that utilize TBA trading techniques.
- Certain less liquid products that trade on a TBA basis do not lend themselves to accelerated reporting and should not be subject to such requirements at this time.
- The effective date of the proposed rules as they relate to changes to reporting requirements should be no earlier than August 1, 2012.

### *Dissemination of TBA MBS Trade Volume Information*

- *Sensitivity of Volume Information, and the Importance of TBA Market Liquidity*

The TBA market is an institutional market, where the major participants (money managers, foreign central banks and sovereign funds, bank portfolios, mortgage originators, and market makers) are attracted to the market in large measure because of, and depend on, its liquidity and the ability it creates for them to transact quickly, anonymously and in large volumes without unduly impacting market pricing. Furthermore, these participants in TBA trading highly value their ability to keep their strategies and activities confidential for competitive and other reasons. Knowledge of specific sizes of trades – i.e. position transparency -- is therefore very sensitive information, as is the ability to reverse engineer net flows to/from customers or market makers.

This sensitivity is not unique to TBA MBS – it exists in all OTC markets. However given the hugely important role the TBA market plays in today's housing market, it is of utmost importance. The Agencies, through the MBS they issue or guarantee, fund over 90% of the mortgage lending in the U.S. We cannot overstate the downside risk of disruptions to liquidity in the TBA market, and the direct impact such an unfortunate event would have on the cost of mortgage credit to consumers.<sup>3</sup>

FINRA has previously recognized the sensitivity of volume information through their implementation of dissemination caps for corporate and agency trade data, and through their proposal to implement similar caps for TBAs. However SIFMA members, both dealers and investors, believe that the proposed arrangement for TBAs is too broad and treats distinct TBA markets as a monolithic whole.

- *There is no Single TBA Market – It is a Trading Practice Applied to Many Markets*

What is commonly referred to as 'the' TBA market is actually a collection of distinct trading markets for distinct products. They share a common trading practice (i.e., TBA), but the dynamics of each market differ materially, especially with respect to liquidity. The greatest liquidity is found in the "on the run" sector, which generally speaking involves coupon/issuer/maturity combinations closest to the currently-originated fixed-rate mortgage product – these areas are where MBS to deliver into TBA trades are produced in the greatest volumes, promoting liquidity. There are a number of other distinct markets such as TBA markets for adjustable rate mortgages ("ARMs"), 40-year maturity mortgage pools, and project loans, among others, where issuance of MBS is orders of magnitude lower, and consequently liquidity is orders of magnitude lower. It follows that FINRA should institute volume caps for each TBA CUSIP that are more reflective of the liquidity of the various markets that feature TBA trading.

<sup>3</sup>For a more in-depth discussion of the TBA markets, please see pages 4-20 of this document: <http://www.sifma.org/issues/item.aspx?id=8589935933>.



- *Volume Caps Should be Tailored to Distinct Markets*

FINRA implemented corporate bond dissemination thresholds according to the nature of the market (\$1MM for high yield, \$5MM for investment grade) and should likewise more carefully tailor the caps for TBAs. SIFMA strongly believes that FINRA should implement volume dissemination caps by TBA CUSIP that are tailored to the liquidity characteristics of the TBA CUSIP. In each case, FINRA should review the data it has received since May 2011 and set caps according to the liquidity of each TBA CUSIP that will be subject to dissemination. FINRA cites percentages of disseminated trades that would have their volume capped under this proposal.<sup>4</sup> However (even though we do not have access to the data which FINRA cites) we believe that the gross percentages are skewed by the extremely high volume of trading in the “on the run” TBA sectors, and are not reflective of the reality of much lower liquidity in the “off the run” TBA sectors, such as high coupons, ARMS, project loans, and other small volume programs. In other words, when viewed at a more granular level, we expect the \$50MM cap would not have the same impact it would appear to have when a multitude of distinct markets are inappropriately viewed as a whole.

- *Specific Recommendations or Volume Caps:*

As a general matter, SIFMA members believe the \$50MM cap is too high, and may distort trading and liquidity in even the most liquid TBA markets, with the consequence of higher mortgage rates for consumers. For the most liquid, standard 30-year, good-delivery fixed rate products, we recommend a maximum cap of \$25MM.

Caps for 15yr good-delivery eligible should be lower than those for 30yr good-delivery eligible MBS, reflecting the lower liquidity of that market. SIFMA recommends a cap of \$10MM for 15year product, based on the smaller size of that market and lower liquidity.

For other products traded TBA, such as high coupon fixed-rate pools, ARMs, project loans, and jumbo loans, reverse mortgage pools, DUS and project loans, liquidity is far lower than for traditional good-delivery product and closer to the liquidity of corporate or agency markets, and therefore volume caps should similarly be at those levels, in a range of \$1-\$5MM.<sup>5</sup>

In sum, the proposed approach of a flat \$50MM volume cap for all products traded TBA is overly broad, potentially harmful to liquidity and therefore consumers, and should be re-examined.

#### *Operational Considerations for Implementation*

- *Certain Non-Standard TBA Products Present Critical Challenges and Should Not Be Subject to Accelerated Reporting at this Time*

As discussed above, what is referred to as the TBA market in this Proposal does not correspond to a single, uniform market. Instead, there are a number of markets which utilize a TBA trading practice. For certain of these markets, including ARMs, project loans, and reverse mortgage (HECM) MBS, SIFMA members have determined that meeting the proposed accelerated reporting

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<sup>4</sup> Proposal at 15.

<sup>5</sup> We also note that because there is a one-to-many relationship between many traded products and the TBA CUSIPs they are reported under, users may become confused or misled by a literal review of the dissemination feed. There may be a very large dispersion in prices between, for example, two ARM trades that roll up into the same TBA CUSIP, but where the pools have different margins, reset periods or coupons, for example. This is also true where any number of TBA stipulations may have significant, and different, impact on pricing, but all of the trades are simply reported as the same generic TBA with a stipulation indicator.



timeframes would not be possible absent a cumbersome, and potentially risky, manual trade reporting process. The reason for this lies with the nature of the trading itself and TRACE reporting regime for these securities.

We will use an ARM pool as an example but the principles of this discussion also apply to project loan/DUS pool trades and HECM trades. The information conveyed in the generic ARM identifier (i.e., TBA CUSIP) for a TRACE report is as follows: issuer, product type, coupon (rounded to ¼% increments), maturity and settlement month. This information is less granular than that which would uniquely identify the security. For example, caps, resets, and exact coupons are also relevant to the pricing of an ARM trade. As we understand from our members, the TBA CUSIP (reported to TRACE) is typically derived from the totality of the granular information about the trade (all of which is not reported to TRACE). In other words, firms work from the more granular information to the less granular information, and TRACE reports are sent at the end of this process.

This creates a conundrum for accelerated reporting of these trades. Given the flow from more granular to less granular to derive the TRACE-reportable TBA CUSIP, each TRACE report essentially requires all information for the trade to be set up on an internal system so that the TBA CUSIP may be derived. This is similar to a new security set up, and it takes some amount of time to obtain all of the granular information needed for such set up, and to actually set up the security (generally longer than 15 minutes in any case). Many different securities are traded under the same TBA CUSIP – different collateral structures, different coupons, margins, reset dates, etc. A given ARM, HECM, project loan or DUS security will likely differ on a number of data points from another ARM, HECM, project loan or DUS security, unlike a 40-year pool or specified pool, each of which will likely have many similar securities but for the specific CUSIP.

The only way a firm would be able to report a trade in an ARM or similar security before the trade information was loaded and the security had been set up internally would be for the firm to have a manual process to derive the TBA CUSIP and report the trade to TRACE outside of its traditional TRACE reporting workflow. Such a manual process raises a host of compliance, audit, and workflow related concerns, all of which are negative to the firm, to FINRA, and to the market more generally given the potential for errors. SIFMA members believe that TRACE reporting should be to every extent possible a straight-through processing (“STP”) event, so that disseminated data is accurate and complete.

For these reasons, SIFMA members strongly request that trades of ARM, project loan/DUS, and HECM pools should remain end-of-day reporting events, at least for the time being. The alternative is for a risky manual process to occur, or for all trades to be late. We recognize, however, that FINRA may desire to reduce reporting timeframes more generally, and plan to work with our members to determine if changes can be made to the current identification system for these types of trades that would allow for a more STP and timely reporting regime. However, this will take some time.

- *Effective Date*

SIFMA members have considered the necessary changes to their internal systems, policies, and procedures and request that the effective date of this change to TRACE reporting requirements be no earlier than August 1, 2012.

For some participants, the system changes to implement 45 minute reporting may be significant. The spring of 2012 is already quite full of initiatives, regulatory and otherwise, that are likely to require significant information technology resources, including but not limited to the MPP

conversion for corporate and agency debt TRACE reporting, and the implementation of the Treasury Market Practices Group Fail Charge. Additionally, the implementation of changes to front-office procedures may be required in some instances, particularly with respect to off-the-run TBA products, to insure timely reporting at the 45 minute level, and especially at the 15 minute level.

***Conclusion***

SIFMA appreciates the opportunity to comment on this rule proposal and hopes our comments are helpful. We would be pleased to discuss any questions or comments. Please contact Chris Killian at 212-313-1126 or [ckillian@sifma.org](mailto:ckillian@sifma.org) with any questions or comments.

Sincerely,



Chris Killian  
Managing Director, Securitization

**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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**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) through (t) No Change.

(u) “To Be Announced” (“TBA”) [“TBA” means “to be announced” and] means [refers to] a transaction in an Agency Pass-Through Mortgage-Backed Security as defined in paragraph (v) where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number), and includes TBA transactions “for good delivery” (“GD”) and TBA transactions “not for good delivery” (“NGD”).

(v) through (aa) No Change.

\* \* \* \* \*

## **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 within 15 minutes of the Time of Execution, except as otherwise specifically provided below, or the transaction report will be “late.” A member must transmit the report to TRACE during TRACE System Hours.

(1) through (2) No Change.

### **(3) Reporting Requirements — Asset-Backed Securities Transactions**

Transactions in Asset-Backed Securities must be reported as provided in this paragraph (a)(3).

(A) General Reporting Requirements [(i) During a pilot program (Pilot Program), which shall expire on November 18, 2011, transactions in Asset-Backed Securities executed on a business day at or after 12:00:00 a.m. Eastern Time through 11:59:59 p.m. Eastern Time 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, except as provided in paragraph (a)(3)(C).]

[(ii)]Except as provided in paragraphs (a)(3)(C), (a)(3)(D) and (a)(3)(E), [T]transactions in Asset-Backed 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; [, except as provided in paragraphs (a)(3)(A)(i) (the Pilot Program) and (a)(3)(C).]

(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.

(B) Reserved. [Except as provided in paragraphs (a)(3)(A)(i) (the Pilot Program) and (a)(3)(C), transactions in Asset-Backed Securities executed on:]

[ (i) 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.]

[(ii) 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.]

(C) Collateralized Mortgage Obligation and Real Estate Mortgage Investment Conduit Transactions Before Issuance

[(i) During the Pilot Program in paragraph (a)(3)(A)(i), transactions in Asset-Backed Securities that are collateralized mortgage obligations (CMOs) or real estate mortgage investment conduits (REMICs) that are executed before the issuance of the security must be reported the earlier of:]

[a. the business day following the business day that the security is assigned a CUSIP, a similar numeric identifier or a FINRA symbol during TRACE System Hours, or]

[b. the business day following the date of issuance of the security during TRACE System Hours.]

[In either case, if the transaction is reported other than on the date of execution, the transaction report must be designated “as/of” and include the date of execution.]

[(ii) After the expiration of the Pilot Program in paragraph (a)(3)(A)(i), such transactions must be reported the earlier of:]

Transactions in Asset-Backed Securities that are collateralized mortgage obligations (“CMOs”) or real estate mortgage investment conduits (“REMICs”) that are executed before the issuance of the security must be reported the earlier of:

[a.](i) the business day that the security is assigned a CUSIP, a similar numeric identifier or a FINRA symbol during TRACE System Hours (unless such identifier is assigned after 1:00:00 p.m. Eastern Time, and in such case, such transactions must be reported no later than the next business day during TRACE System Hours), or

[b.](ii) the date of issuance of the security during TRACE System Hours.

In either case, if the transaction is reported other than on the date of execution, the transaction report must be designated “as/of” and include the date of execution.

(D) Agency Pass-Through Mortgage-Backed Securities Traded To Be Announced For Good Delivery

Transactions in Asset-Backed Securities that are Agency Pass-Through Mortgage-Backed Securities traded to be announced (“TBA”) for good delivery (“GD”) (“TBA transactions GD”) must be reported as provided in this paragraph (a)(3)(D).

(i) During a pilot program for TBA transactions GD (“TBA GD Pilot Program”), which shall expire at 11:59:59 p.m. Eastern Time [insert date that is 180 days following the effective date of the TBA GD Pilot Program (provided that if the 180<sup>th</sup> day is not a Friday, insert date of the Friday next occurring (that the TRACE system is open) after the 180<sup>th</sup> day], TBA transactions GD must be reported as follows:

a. Transactions executed on a business day at or after 12:00:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 45 minutes after the TRACE system opens.

b. Transactions executed on a business day at or after 8:00:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time (standard TRACE System Hours) must be reported within 45 minutes of the Time of Execution, except as provided in paragraph (a)(3)(D)(i)c. below.

c. Transactions executed on a business day less than 45 minutes before 6:30:00 p.m. Eastern Time must be reported no later than 45 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated “as/of” and include the date of execution.

d. 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), no later than 45 minutes after the TRACE system opens, designated “as/of” and include the date of execution.

(ii) After the TBA GD Pilot Program expires, TBA transactions GD must be reported as provided in paragraph (a)(1)(A) through paragraph (a)(1)(D).

(E) Agency Pass-Through Mortgage-Backed Securities Traded To Be Announced Not For Good Delivery (“TBA Transactions NGD”) Transactions in Asset-Backed Securities that are Agency Pass-Through Mortgage-Backed Securities traded to be announced (“TBA”) not for good delivery (“NGD”) (“TBA transactions NGD”) must be reported as provided in this paragraph (a)(3)(E).

(i) During a pilot program for TBA transactions NGD (“TBA NGD Pilot Program”), which shall expire at 11:59:59 p.m. Eastern Time [insert date that is 180 days following the effective date of the TBA NGD Pilot Program (provided that if the 180<sup>th</sup> day is not a Friday, insert date of the Friday next occurring (that the TRACE system is open) after the 180<sup>th</sup> day], TBA transactions NGD must be reported as follows:

a. Transactions executed on a business day at or after 12:00:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 120 minutes after the TRACE system opens.

b. Transactions executed on a business day at or after 8:00:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time (standard TRACE System Hours) must be reported within 120 minutes of the Time of Execution, except as provided in paragraph (a)(3)(E)(i)c. below.

c. Transactions executed on a business day less than 120 minutes before 6:30:00 p.m. Eastern Time must be reported no later than 120 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated “as/of” and include the date of execution.

d. 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), no later than 120 minutes after the TRACE system opens, designated “as/of” and include the date of execution.

(ii) After the TBA NGD Pilot Program expires, TBA transactions NGD must be reported as follows:

a. Transactions executed on a business day at or after 12:00:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 60 minutes after the TRACE system opens.

b. Transactions executed on a business day at or after 8:00:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time (standard TRACE System Hours) must be reported within 60 minutes of the Time of Execution, except as provided in paragraph (a)(3)(E)(ii)c. below.

c. Transactions executed on a business day less than 60 minutes before 6:30:00 p.m. Eastern Time must be reported no later than 60 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated “as/of” and include the date of execution.

d. 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), no later than 60 minutes after the TRACE system opens,  
designated “as/of” and include the date of execution.

(4) through (6) No Change.

(b) through (f) No Change.

\* \* \* \* \*

**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 (3) No Change.

(4) an Asset-Backed Security, except an Agency Pass-Through Mortgage-Backed Security traded to be announced (“TBA”) (“TBA transaction”).

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

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

\* \* \* \* \*

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

The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine (“TRACE”):

Systems Fees	Transaction Reporting Fees	Data Fees
Level I Trade Report Only Web Browser Access — \$20/month per user ID	Trades up to and including \$200,000 par value — \$0.475/trade. (For Asset- Backed Securities where par value is not used to	Market Data: [BTDS] Professional Real-Time Data Display — \$60/month per terminal per Data Set of Real-
Level II Full Service Web Browser Access — Subscription for a single user ID or the first user ID — \$50/month (includes one Data Set); \$80/month (includes two Data Sets)	determine the size (volume) of a transaction, for purposes of trade reporting fees, size (volume) is the lesser of original face value or Remaining Principal Balance (or the equivalent) at the Time of Execution of the transaction.)	Time TRACE transaction data, or a flat fee of \$7,500/month per Data Set of Real-Time TRACE transaction data, entitling Professionals to make unlimited internal use
Subscription for additional user IDs — \$80/month per user ID (includes one Data Set); \$140/month per user ID (includes two	Trades over \$200,000 and up to and including \$999,999.99 par value — \$0.000002375 times the par value of the transaction (i.e., \$0.002375/\$1000). (See note	any number of interrogation or display devices.

<p>Data Sets)</p>	<p>above regarding certain Asset-Backed Securities.)</p> <p>Trades of \$1,000,000 par value or more — \$2.375/trade. (See note above regarding certain Asset-Backed Securities.)</p> <p>All transactions in Asset-Backed Securities that are Agency Pass-Through Mortgage-Backed Securities traded to be announced (“TBA”) (“TBA transactions”) — \$1.50/trade.</p>	
<p>CTCI/FIX/Third Party — \$25/month/per firm</p>	<p>Cancel/Correct — \$1.50/trade</p>	<p>Market Data: Vendor Real-Time Data Feed — \$1,500/month per Data Set of Real-Time TRACE transaction data for receipt of continuous Real-Time TRACE transaction</p>

		<p>data in such Data Sets, except for qualifying Tax-Exempt Organizations, or \$250/month per Data Set of Snapshot Real-Time TRACE transaction data for daily receipt of such Data Set(s).</p>
	<p>“As/of” Trade Late — \$3/trade</p>	<p>Market Data: Vendor Real-Time Data Feed — \$400/month per Data Set of Real-Time TRACE transaction data for such Data Set(s) for qualifying Tax-Exempt Organizations.</p>
		<p>Market Data: [BTDS] Non-Professional Real-Time Data Display — No charge.</p>

		Historic TRACE Data: Set-Up Fee — a single fee of \$2,000 for development and set-up to receive Historic TRACE Data, except for qualifying Tax-Exempt Organizations.
		Historic TRACE Data: Set-Up Fee — a single fee of \$1,000 for development and set-up to receive Historic TRACE Data for qualifying Tax-Exempt Organizations.
		Historic TRACE Data: Fee — \$2,000/calendar year per Data Set for receipt of Historic TRACE Data, except for qualifying Tax-Exempt Organizations.



		<p>[The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set.] The data is enabled for internal use and internal and/or external desktop display distribution. Bulk re-distribution of data is not permitted.</p>
		<p>Historic TRACE Data: Bulk Re-Distribution Fee — except for qualifying Tax-Exempt Organizations, \$1/CUSIP per calendar year (or part thereof) within a single Data Set of Historic TRACE Data per each recipient of re-distributed data;</p>

		<p>maximum fee per Data Set of \$1,000/calendar year (or part thereof) per each recipient of re-distributed data.</p>
		<p>Historic TRACE Data: Bulk Re-Distribution Fee — for qualifying Tax-Exempt Organizations, \$500/calendar year per Data Set for receipt of Historic TRACE Data. [The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set.] The data is enabled for internal use and internal and/or external desktop display. Bulk re-</p>

		distribution of data is permitted with certain restrictions.
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(a) No Change.

**(b) Transaction Reporting Fees**

For each transaction in a TRACE-Eligible Security that is reportable to FINRA pursuant to the Rule 6700 Series, the following charges shall be assessed against each member responsible for reporting the transaction:

**(1) Trade Reporting Fee**

(A) Except for a transaction in an Asset-Backed Security, as defined in Rule 6710(m), that is an Agency Pass-Through Mortgage-Backed Security, as defined in Rule 6710(v), traded to be announced (“TBA”), as defined in Rule 6710(u) (“TBA transaction”), a member shall be charged a [T]trade [R]eporting [F]ee based upon a sliding scale ranging from \$0.475 to \$2.375 per transaction based on the size of the reported transaction. For Asset-Backed Securities where par value is not used to determine the size (volume) of a transaction, for purposes of trade reporting fees, the size (volume) of a transaction is the lesser of the original face value or the Remaining Principal Balance, as defined in Rule 6710(aa).

(B) through (C) No Change.

(2) through (3) No Change.

**(c) Market Data Fees**

Real-Time TRACE transaction data disseminated by FINRA comprises the following databases (“Data Set(s)”): corporate bonds (“Corporate Bond[s] Data Set”), [and] Agency Debt Securities (“Agency Data Set”) and Asset-Backed Securities (“ABS Data Set”). Market data fees are charged for each Data Set. Professionals and Non-Professionals may subscribe to receive one or [both] more Data Sets of Real-Time TRACE transaction data disseminated by FINRA in one or more of the following ways for the charges specified, as applicable. Members, vendors and other redistributors shall be required to execute appropriate agreements with FINRA.

(1) No Change.

**(2) Non-Professional Fees**

There shall be no charge paid by a Non-Professional for receiving all or any portion of one or [both] more Data Sets of Real-Time TRACE transaction data disseminated through TRACE.

**(d) Historic TRACE Data**

Historic TRACE Data comprises the following Data Set(s): corporate bonds (“Historic Corporate Bond[s] Data Set”), [and] Agency Debt Securities (“Historic Agency Data Set”) and Asset-Backed Securities (“Historic ABS Data Set”). Historic TRACE Data fees, except the Set-Up Fee, are charged for each Data Set. Professionals and Non-Professionals may receive Historic TRACE Data provided by FINRA in one or more of the following ways for the charges specified, as applicable. Recipients of Historic TRACE Data shall be required to execute appropriate agreements with FINRA.

**(1) Professional Fees**

Professionals may subscribe for the following:

(A) Persons or Organizations Other Than Qualifying Tax-Exempt Organizations

(i) No Change.

(ii) Data Fee – \$2,000 per calendar year per Data Set for receipt of Historic TRACE Data. (The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set[.], the 2011 Historic Agency Data Set also includes the 2010 Historic Agency Data Set, and the 2013 Historic ABS Data Set also includes the 2012 Historic ABS Data Set.) Historic TRACE Data is enabled for internal use and internal and/or external desktop display distribution. Bulk re-distribution of such data is not permitted.

(iii) No Change.

(B) Qualifying Tax-Exempt Organizations

A Tax-Exempt Organization qualifies for development and set-up and to receive Historic TRACE Data under this paragraph (d)(1)(B) if it does not re-distribute such data in bulk, or it re-distributes such data in bulk or otherwise at no charge solely to Non-Professionals or other Tax-Exempt Organizations that agree to be subject to the same restrictions.

(i) No Change.

(ii) Data and Bulk Re-Distribution Fee – \$500 per calendar year per Data Set for receipt of Historic TRACE Data. (The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic

Corporate Bond Data Set[.], the 2011 Historic Agency Data Set also includes the 2010 Historic Agency Data Set, and the 2013 Historic ABS Data Set also includes the 2012 Historic ABS Data Set.) Historic TRACE Data is enabled for internal use and internal and/or external desktop display, and bulk redistribution, and may be re-distributed subject to the restrictions in paragraph (d)(1)(B).

**(2) Non-Professional Fees**

If FINRA provides all or any portion of one or [both] more Data Sets of Historic TRACE Data to a Non-Professional, FINRA will charge a cost-neutral fee under Rule 7730(e) comprised solely of the cost of the media and the cost of delivery (e.g., U.S. Postal Service or other requested delivery service).

(e) through (f) No Change.

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<sup>1</sup> No Change.

<sup>2</sup> No Change.

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