



August 6, 2018

Mr. Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**Re: File No. SR-FINRA-2018-023 (Proposed Rule Change to Amend FINRA Rule 6730 Relating to ATS Reporting of Transactions to TRACE in U.S. Treasury Securities) – Response to Comments**

Dear Mr. Fields:

This letter is being submitted by Financial Industry Regulatory Authority, Inc. (“FINRA”) in response to comments submitted to the U.S. Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing.<sup>1</sup> The SEC received three comment letters in response to the Proposal, as discussed below.<sup>2</sup>

Execution Access stated that, while it generally supports the goal of increased transparency in the U.S. Treasury market and the Proposal is another welcome step in this regard, the Proposal does not do enough to achieve full transparency because it does not capture transactions between non-FINRA members.<sup>3</sup> FINRA acknowledges that a more

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<sup>1</sup> See Securities Exchange Act Release No. 83393 (June 7, 2018), 83 FR 27643 (June 13, 2018) (Notice of Filing of SR-FINRA-2018-023) (“Proposal”).

<sup>2</sup> See Letter to Robert W. Errett, Deputy Secretary, SEC, from Theodore Bragg, Chief Executive Officer, Execution Access, LLC, dated July 3, 2018 (“Execution Access”); Letter to Brent J. Fields, Secretary, SEC, from Tyler Gellasch, Executive Director, Healthy Markets Association, dated July 5, 2018 (“Healthy Markets”); and Letter to Secretary, SEC, from Stephen John Berger, Managing Director, Government & Regulatory Policy, Citadel, dated July 5, 2018 (“Citadel”).

<sup>3</sup> Execution Access also stated that any data gathering and dissemination initiative must be comprehensive and cover all Treasury market participants and venues or else the data collection will be incomplete, potentially misleading, and adversely affect transparency. FINRA notes that transactions in U.S. Treasury Securities are not currently disseminated by FINRA and the Proposal does not alter this framework. Therefore, the Proposal does not have any impact on transparency.

complete picture of Treasury market activity would be achieved if non-FINRA members also were required to report transactions in U.S. Treasury Securities. However, in light of the jurisdictional limits on FINRA's rulemaking authority, FINRA believes that the Proposal is an appropriate next step that represents an improvement on the usefulness of the information on U.S. Treasuries currently reported through TRACE. In addition, with respect to the transparency gap raised by the commenter, FINRA notes that the U.S. Department of the Treasury, the Commission, the Federal Reserve Bank of New York, and the CFTC have stated that they are assessing effective means to ensure the collection of data regarding Treasury cash securities market transactions is comprehensive and includes information from institutions that are not FINRA members.<sup>4</sup> Further, the Federal Reserve Board has announced that it plans to collect data from banks for secondary market transactions in US Treasury securities and is discussing with FINRA whether TRACE could be leveraged to potentially serve as the Board's collection agent for the data.<sup>5</sup> Healthy Markets noted that, while "banking regulators should be working towards their own disclosure reforms," FINRA's Proposal should not be "delayed or limited as a result of that not-yet-implemented objective."<sup>6</sup>

Execution Access also expressed concern that the Proposal may result in the unintended consequence of shifting trading in U.S. Treasury Securities from FINRA members to non-FINRA members and bank affiliates that are not subject to the Proposal. Similarly, the commenter stated that market participants may choose to avoid trading on ATSS to maintain anonymity and avoid regulatory oversight, which may place ATSS at a competitive disadvantage. Execution Access further suggests that Congress or the SEC should consider requiring non-FINRA member principal trading firms to register as broker-dealers and be subject directly to FINRA's TRACE reporting requirements. FINRA recognizes the possibility that the Proposal could result in a change in behavior by non-members, but, as noted above, FINRA's rulemaking authority is limited. Nevertheless, as stated in the Proposal, "... based on conversations with the industry, FINRA understands that most trading in this market is electronic and member firms and non-FINRA venues do not currently have the capability to facilitate the volume of orders and trades that FINRA-member ATSS can facilitate through electronic systems."<sup>7</sup> Accordingly, FINRA believes its proposal is designed to apply to those trading venues most likely not to see a shift in volume away to other venues. As noted in the Proposal, FINRA will monitor activity in U.S. Treasury Securities with respect to the operation of the Proposal.

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<sup>4</sup> See Joint Press Release, U.S. Department of the Treasury, et. al., Statement Regarding Progress on the Review of the U.S. Treasury Market Structure since the July 2015 Joint Staff Report (August 2, 2016), available at <https://www.sec.gov/news/pressrelease/2016-155.html>; see also Joint Press Release, U.S. Department of the Treasury, et. al., Statement on Trade Reporting in the U.S. Treasury Market (May 16, 2016), available at <https://www.sec.gov/news/pressrelease/2016-90.html>.

<sup>5</sup> See Press Release, Board of Governors of the Federal Reserve System (October 21, 2016), available at <https://www.federalreserve.gov/newsevents/pressreleases/other20161021a.htm>.

<sup>6</sup> See Healthy Markets.

<sup>7</sup> See Proposal.

Execution Access also argued that it would be more equitable to require market participants to report than to impose requirements on the platforms on which they trade. FINRA notes that the Proposal does not require member ATSS to report any transactions not already reportable to TRACE, but rather would require ATSS to identify non-FINRA member subscribers using the FINRA-designated market participant identifier (MPID) rather than the generic “C” identifier used today. Healthy Markets noted that this generic customer identifier is a significant limitation for effective surveillance and oversight in light of the significant amount of trading in U.S. Treasury Securities that involves firms that are not FINRA members.<sup>8</sup>

Execution Access also stated that the Proposal would result in burdens and costs on ATSS that likely would be passed on to customers.<sup>9</sup> FINRA is sensitive to the need for balancing the regulatory objectives of proposed rule changes with the burdens and costs imposed on member firms. FINRA notes that firms currently must populate the counterparty field when they report transactions to TRACE; thus, the Proposal does not require firms to undertake programming related to populating a new field, but rather to use a FINRA-assigned MPID in place of the current contra-party identifier for “customer” or “non-member affiliate.” In addition, FINRA sought to narrowly tailor the Proposal by establishing a minimum volume threshold under which the proposed identification requirements would not apply. Where an ATSS’s volume exceeds the minimum, FINRA recognizes that there are additional steps the ATSS must undertake and that this imposes operational burdens.

To ease compliance burdens, if the Commission approves the Proposal, FINRA intends to set an effective date of approximately 180 days from the date of the *Regulatory Notice* announcing Commission approval, which would provide member ATSS with time to determine if, on the implementation date, they will fall within the scope of the proposed rule and, if so, to obtain a FINRA-designated MPID for each non-FINRA member subscriber and to make necessary programming changes to comply with the identification requirement.<sup>10</sup> On a going-forward basis, the Proposal also seeks to provide newly covered ATSS with ample time to prepare to comply with the identification requirement (*i.e.*, 60 calendar days from the end of the calendar quarter in which it becomes a covered ATSS). FINRA also notes that MPIDs will be designated for non-FINRA member ATSS subscribers at no cost to the ATSS. Thus, on balance, FINRA believes that the Proposal is appropriately designed to achieve the benefits sought to be achieved by the proposed requirement (*i.e.*, additional granularity that will enhance the quality of the information available to FINRA and the official sector on transactions in U.S. Treasury Securities) while balancing the burdens associated with complying with the proposed rule.

Citadel strongly supported the Proposal and stated that “enhanced reporting to the official sector, and the robust audit trail that is created, will improve general monitoring and surveillance capabilities, including those designed to detect prohibited trading practices and

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<sup>8</sup> See Healthy Markets.

<sup>9</sup> See Execution Access.

<sup>10</sup> ATSS would be required to submit a list of non-member subscribers to FINRA at least 60 days in advance of the effective date.

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potential risks to market stability.”<sup>11</sup> Healthy Markets also supported the Proposal and stated that “the approach taken in the Proposal is reasonable, and appropriately balances the need for underlying customer information for surveillance purposes with potential privacy concerns.”<sup>12</sup> Healthy Markets noted that it might prefer FINRA ultimately to require identification using the legal entity identifier (LEI) framework rather than the MPID framework and encouraged the SEC and FINRA to more fully embrace the LEI system and outline steps to transition from the MPID process to the more universal LEI process in the years ahead. FINRA believes that, at this time, MPIDs are the most appropriate identifier to request for inclusion in TRACE reports because MPIDs are an established method and widely used by members for purposes of reporting trades and counterparty information to FINRA.

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FINRA believes that the foregoing responds to the material issues raised by the commenters to the Proposal. If you have any questions, please contact the undersigned at 202-728-8363.

Best regards,  
Racquel Russell  
CEB  
Racquel L. Russell

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<sup>11</sup> See Citadel.

<sup>12</sup> See Healthy Markets.