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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77404; File No. SR-FINRA-2016-011]

March 18, 2016

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the Dissemination Protocols for TRACE-Eligible Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 9, 2016, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. 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 modify the dissemination protocols for TRACE-Eligible Securities to disseminate a new alternative trading system (“ATS”) contra-party type and ATS indicator. There are no changes to the text of a FINRA rule.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

On February 2, 2015, FINRA Rule 6720(c) (Alternative Trading Systems) went into effect to require TRACE participants that operate an alternative trading system (“ATS”) to use a separate Market Participant Identifier (“MPID”) to report all transactions that are executed within the ATS to TRACE. Where a member operates multiple ATSs, a unique, separate MPID must be used for reporting transactions within each respective ATS. Where a member operates a single ATS, but also engages in transactions otherwise than on the ATS (e.g., conducts both an ATS business and a “voice” business), the member must use the ATS MPID only for reporting transactions within the ATS.³

In light of the implementation of the separate MPID requirement for ATS reporting, FINRA now can conclusively identify transactions that occur within an ATS (as opposed to other areas of a member’s business). As discussed in the filing proposing the separate MPID requirement, FINRA believes that separate MPIDs will enhance FINRA’s ability to surveil for

³ In all cases, members must have policies and procedures in place to ensure that trades reported using the separate ATS MPID obtained in compliance with Rule 6720(c) are restricted to trades executed within the ATS. FINRA Rule 6720(c).

compliance with the requirements of Regulation ATS as well as other SEC rules, the federal securities laws, and FINRA rules.⁴ FINRA also believes that dissemination of an ATS contra-party type would provide useful, additional information regarding the market for TRACE-Eligible Securities and, therefore, improve transparency for such securities.⁵

At present, disseminated TRACE transactions indicate whether the reporting party or contra-party is a dealer (“D”), non-member affiliate of a member (“A”) or customer (“C”). FINRA is now proposing another new identifier for purposes of dissemination to indicate when the reporting party or contra-party is an ATS. Specifically, where a reporting party or contra-party is identified with a unique ATS MPID, or where an ATS is exempt from TRACE reporting pursuant to FINRA Rule 6732 and a member that is a party to the exempt transaction on the ATS enters the ATS’s unique MPID pursuant to FINRA Rule 6730(c)(13),⁶ FINRA will disseminate the ATS indicator.

The proposal will not necessitate that members change their TRACE trade reporting practices. As noted above, FINRA will use information already required to be reported to TRACE to identify transactions involving an ATS and append the ATS indicator for dissemination, as appropriate. Importantly, FINRA will not disclose any identifying information regarding the particular ATS involved in the transaction. All ATSs will be generically identified

⁴ See Securities Exchange Act Release No. 70676 (October 11, 2013), 78 FR 62862 (October 22, 2013) (Notice of Filing of File No. SR-FINRA-2013-042).

⁵ Rule 6710 generally defines a “TRACE-Eligible Security” as: (1) a debt security that is U.S. dollar-denominated and issued by a U.S. or foreign private issuer (and, if a “restricted security” as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A); or (2) a debt security that is U.S. dollar-denominated and issued or guaranteed by an “Agency” as defined in Rule 6710(k) or a “Government-Sponsored Enterprise” as defined in Rule 6710(n).

⁶ See Securities Exchange Act Release No. 76677 (December 17, 2015), 80 FR 79966 (December 23, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-055).

by FINRA using the same new contra-party type and the ATS indicator also will be generic. However, FINRA will not identify ATSs for transactions in “to be announced” or “TBA”⁷ transactions in Agency Pass-Through Mortgage-Backed Securities⁸ and SBA-Backed ABSs,⁹ which, today, trade primarily on a single ATS. Thus, to preserve any anonymity that exists regarding the identity of the particular ATS on which a transaction in these types of TRACE-Eligible Securities occurred, FINRA will continue to identify all dealers, whether or not an ATS, as a “dealer,” for TBA transactions (for dissemination purposes).¹⁰

⁷ “To Be Announced” means a transaction in an Agency Pass-Through Mortgage-Backed Security as defined in Rule 6710(v) or an SBA-Backed ABS as defined in Rule 6710(bb) where the parties agree that the seller will deliver to the buyer a pool or pools of a specified face amount and meeting certain other criteria but the specific pool or pools to be delivered at settlement is not specified at the Time of Execution, and includes TBA transactions “for good delivery” (“GD”) and TBA transactions “not for good delivery” (“NGD”). See Rule 6710(u).

⁸ “Agency Pass-Through Mortgage-Backed Security” means a type of Securitized Product issued in conformity with a program of an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise (“GSE”) as defined in paragraph (n), for which the timely payment of principal and interest is guaranteed by the Agency or GSE, representing ownership interest in a pool (or pools) of mortgage loans structured to “pass through” the principal and interest payments to the holders of the security on a pro rata basis. See Rule 6710(v).

⁹ “SBA-Backed ABS” means a Securitized Product issued in conformity with a program of the Small Business Administration (“SBA”), for which the timely payment of principal and interest is guaranteed by the SBA, representing ownership interest in a pool (or pools) of loans or debentures and structured to “pass through” the principal and interest payments made by the borrowers in such loans or debentures to the holders of the security on a pro rata basis. See Rule 6710(bb).

¹⁰ FINRA also analyzed a sample of corporate and agency bond trades that occurred between February 2, 2015 and February 5, 2016, to investigate whether the dissemination of the ATS indicator may potentially cause anonymity concerns for those securities. Of the 50,579 CUSIPs in the sample, only 17,896 had trades reported by an ATS. None of the 17,896 CUSIPs are traded solely on ATSs. A single ATS may represent between 0.04% and 66.67% of total trades in a given CUSIP. The average of the top market share on ATSs across CUSIPs is 4.7%. Therefore, the dissemination of the ATS indicator is not likely to pose anonymity concerns for corporates and agencies.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change will be July 18, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ 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. As discussed above, in light of the implementation of the separate MPID requirement, FINRA now is able to conclusively identify transactions that occur within an ATS, and believe that this additional piece of information would be useful to the market. ATSs will be identified generically using a single new reporting and contra-party type and ATS indicator, except that transactions in TBAs, which, today, are concentrated on a particular ATS, will continue to be identified as “dealer” transactions and will not carry the ATS indicator to help preserve anonymity with respect to that ATS.

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. FINRA will use information currently reported to TRACE for the new reporting and contra-party types as well as the ATS indicator; therefore, the proposed rule change does not require changes in trade reporting practices by members. The proposed rule also does not identify particular ATSs – all ATSs will be identified generically using the same ATS reporting party and contra-

¹¹ 15 U.S.C. 78o-3(b)(6).

party type and ATS indicator. Thus, there will be no impact relating to disclosure that may result directly or indirectly in an impact on competition.

In the case of TRACE-Eligible Securities that are traded TBA, due to the high concentration of TBA transactions on a single ATS, transactions in these types of TRACE-Eligible Securities will not be subject to the new reporting and contra-party type and ATS indicator, and will continue to be identified as a transaction by a “dealer,” even reported by or against an ATS. FINRA believes that excepting transactions in TBAs from the ATS contra-party type will ensure that the proposed rule change will not have a disparate impact on competition for members that engage in transactions in such securities.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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. Please include File Number SR-FINRA-2016-011 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2016-011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2016-011, and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

Robert W. Errett,
Deputy Secretary.

¹⁴ 17 CFR 200.30-3(a)(12).

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