



# BETTER MARKETS

September 27, 2022

Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Exemption for Certain Exchange Members (File No. S7-05-15, RIN 3235-AN17); 87 Fed. Reg. 49,930 (Aug. 12, 2022)

Dear Ms. Countryman:

Better Markets<sup>1</sup> appreciates the opportunity to comment on the above-captioned Proposed Rule (“Proposal” or “Release”).<sup>2</sup> The Proposal, if adopted, would modernize outdated Rule 15b9-1 by ensuring that those firms, specifically high-frequency trading firms, performing broker or dealer functions in our markets are required to become members of a national securities association, namely FINRA. To that end, it would amend Rule 15b9-1, replacing the de minimis and proprietary trading exclusions with a more limited exclusion. The Proposal is an appropriate and necessary step to modernize regulation of our capital markets in accordance with the Securities Exchange Act; ensure market participants performing similar functions are regulated similarly; and increase transparency within the U.S. equities and Treasury securities markets.

## **BACKGROUND**

The definition of the terms “broker” and “dealer” in the Securities Exchange Act of 1934 were thought to be two of the most important definitions in the Act at the time it was drafted, in large part because “many of the provisions of the act apply only to members of exchanges and brokers and dealers who do business through them.”<sup>3</sup> A dealer is defined by the Securities Exchange Act as “any person engaged in the business of buying and selling securities for such person’s own account,” excluding “a person that buys or sells securities...for such person’s own

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<sup>1</sup> Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans’ jobs, savings, retirements, and more.

<sup>2</sup> Exemption for Certain Exchange Members, 87 Fed. Reg. 49,930 (August 12, 2022).

<sup>3</sup> S. Rep. No. 73-792, at 13 (1934).

account...but not as a part of a regular business.”<sup>4</sup> A dealer is required to register with the Commission, join a registered securities association (i.e. FINRA) (or become a member of a national securities exchange if it only trades on that exchange); and adhere to a comprehensive regulatory regime.<sup>5</sup> However, the Commission was also granted the authority in the Exchange Act to exempt, by rule or order, the requirement for a dealer to join a registered securities association (or become a member of an exchange) “as it deems consistent with the public interest and the protection of investors.”<sup>6</sup>

The Commission exercised this exemptive authority when it adopted Rule 15b9-1 in 1965 and then amended it to include an exclusion for proprietary trading in 1976.<sup>7</sup> Rule 15b9-1 has remained largely unchanged to this day, exempting any broker or dealer from becoming a member of a registered securities association if it “(1) is a member of a national securities exchange, (2) carries no customer accounts, and (3) has annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount no greater than \$1,000.”<sup>8</sup> Additionally, the proprietary trading exclusion added in 1976 ensured that the \$1,000 gross income limitation did not apply to transactions “for the dealer’s own account with or through another registered broker or dealer.” This proprietary trading exemption has become a huge loophole in the modern trading era.<sup>9</sup>

At the time of Rule 15b9-1’s adoption in 1965 and its subsequent amendment in 1976, it was common for countless traders to physically trade stock certificates on the floors of U.S. exchanges.<sup>10</sup> The Commission adopted the exemption for membership of a national securities association to enable “exchange specialists and other floor members” to engage in limited off-exchange activities and to “lay off positions and hedge risk.”<sup>11</sup>

Today, the exemption in Rule 15b9-1 is used by an entirely different type of broker and dealer. Principal trading firms (“PTFs”), otherwise known as high-frequency trading firms, may avail themselves of the exemption in Rule 15b9-1, which relieves them from the obligation to

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<sup>4</sup> Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)5.

<sup>5</sup> 15 U.S.C. § 78o.

<sup>6</sup> 15 U.S.C. 78o(b)(9).

<sup>7</sup> See Qualifications and Fees Relating to Brokers or Dealers Who Are Not Members of National Security Association, 30 Fed. Reg. 11,673 (Sep. 11, 1965); Extension of Temporary Rules 23a-1(T) and 23a-2(T); Adoption of Amendments to SECO Rules (March 3, 1976), 41 Fed. Reg. 10,599 (March 12, 1976).

<sup>8</sup> 17 CFR § 240.15b9-1(a).

<sup>9</sup> 17 CFR § 240.15b9-1(b).

<sup>10</sup> See While not entirely extinct, the days of brokers and dealers on the floors of U.S. stock exchanges trading paper tickets has dramatically declined. John Aidan Byrne, *NYSE floor traders are facing job extinction*, N.Y. Post (Aug. 4, 2019), <https://nypost.com/2019/08/04/nyse-floor-traders-are-facing-job-extinction/> (“With the heyday of the human floor trader now ancient history, many observers say the bell now tolls for the few traders remaining. On a typical day, some 250 floor traders mill about — a far cry from the thousands who once traded securities on the venerable floor”).

<sup>11</sup> Release at 49,935.

become a member of a national securities association if they are required to register with the Commission as dealers or government securities dealers. These firms use algorithmic, electronic trading strategies to trade large volumes of securities in a matter of milliseconds. The trading strategies used by high-frequency trading firms have fundamentally changed how the markets operate. Today, this is one of the dominant forms of trading in our markets, representing roughly 50 percent of the trading volume in U.S. equities markets and 48 percent of the total U.S. Treasury securities interdealer market.<sup>12</sup>

While high-frequency trading is not clearly defined in law, the Commission has described it as “professional traders acting in a proprietary capacity that engage in strategies that generate a large number of trades on a daily basis.”<sup>13</sup> The Commission further described the characteristics of a high-frequency trading firm as:

1. the use of extraordinary high-speed and sophisticated computer programs for generating, routing, and executing orders;
2. the use of co-location services and individual data feeds offered by exchanges and others to minimize network and other types of latencies;
3. very short timeframes for establishing and liquidating positions;
4. the submission of numerous orders that are cancelled shortly after submission; and
5. ending the trading day in as close to a flat position as possible (that is, not carrying significant, unhedged positions overnight).<sup>14</sup>

While some have touted the benefits that high-frequency trading firms can bring to markets, namely liquidity and price discovery, others have criticized those same firms for raising prices on retail and institutional investors, engaging in market manipulation and frontrunning, and exacerbating market moves.<sup>15</sup> Recent liquidity crises in both the U.S. equities and Treasury

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<sup>12</sup> Johannes Breckenfelder, *Competition among high-frequency traders and market liquidity*, VoxEU (Dec. 17, 2020), <https://voxeu.org/article/competition-among-high-frequency-traders-and-market-liquidity>; Scott Patterson and Geoffrey Rogow, *What’s Behind High-Frequency Trading*, Wall St. J. (August 1, 2009), <https://www.wsj.com/articles/SB124908601669298293>; see also James Collin Harkrader and Michael Puglia, *Principal Trading Firm Activity in Treasury Cash Markets*, FEDS Notes (Aug. 4, 2020) (“when measured on the basis of trading volume, PTDs dominate activity on the electronic IDB platforms (61%)”).

<sup>13</sup> Concept Release on Equity Market Structure, Exchange Act Release No. 61358 (Jan. 14, 2010), 75 Fed. Reg. 3,594, 3,606 (Jan. 21, 2010).

<sup>14</sup> *Id.*

<sup>15</sup> See Bruno J. Navarro, *High-frequency trading benefits investors: Advocate*, CNBC (Apr. 2, 2014), <https://www.cnbc.com/2014/04/02/high-frequency-trading-benefits-investors-advocate.html>; Richard Finger, *High-frequency Trading: Is It A Dark Force Against Ordinary Human Traders and Investors?*, Forbes (Sep. 30, 2013), <https://www.forbes.com/sites/richardfinger/2013/09/30/high-frequency-trading-is-it-a-dark-force-against-ordinary-human-traders-and-investors/?sh=7ba86b456352> (“Things get dicey when a market dislocation occurs and then bids dry up. With no affirmative obligation to be buyers of last resort, if some big macro news event causes markets to shudder, then the HFT’s simply pack their bags and there are no underlying bids

securities markets have shown the effects on markets dominated by, and heavily reliant on, high-frequency trading firms. Despite the influence of high-frequency trading firms on the equities and Treasury securities markets, these firms have been able to avoid membership in a national securities association such as FINRA due to the exemption in Rule 15b9-1.

## **OVERVIEW OF THE PROPOSAL**

The Commission has re-proposed amendments to the exemption from Section 15(b)(8) of the Securities Exchange Act. Section 15(b)(8) of the Securities Exchange Act essentially requires registered brokers and dealers to become a member of a registered national securities association. Today, the only registered national securities association is FINRA. Rule 15b9-1 exempts certain brokers and dealers from the requirements of registering with a national securities association if they are:

- 1) a member of a national securities exchange;
- 2) carry no customer accounts; and
- 3) have no more than \$1,000 in annual gross income derived from purchases and sales of securities other than on a national securities exchange of which they are a member. This provision has become known as the de minimis allowance. And under the “proprietary trading exclusion,” the de minimis allowance does not apply to income derived from transactions for a registered dealer’s own account with or through another registered broker or dealer, regardless of amount.

These exemptions essentially allow a registered dealer to remain exempt from association membership while engaging in unlimited proprietary trading on any national securities exchange of which it is *not* a member or in the off-exchange market, so long as it is a member of a national securities exchange, carries no customer accounts, and its proprietary trading is conducted with or through another registered broker-dealer.

The re-proposed amendments would ***eliminate both the de minimis allowance and proprietary trading exclusion in Rule 15b9-1***. The Proposal would ***replace*** the de minimis allowance and proprietary trading exclusion ***with more limited circumstances*** under which a registered broker or dealer may be exempted from becoming a member of a registered national securities association. The effect of the Proposal would be that a registered broker or dealer would need to become a member of a registered national securities association (FINRA) unless:

- 1) it is a member of a national securities exchange;
- 2) it carries no customer accounts; and
- 3) such transactions

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in the markets”); *US Equity Market Structure: An Investor Perspective*, BlackRock (Apr. 2014), <https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-us-equity-market-structure-april-2014.pdf> (“BlackRock is firmly opposed to predatory High-frequency Trading (HFT) practices which seek to manipulate the market or disadvantage end-investors. These practices constitute market abuse and should be treated as such in law”).

- i. result solely from orders that are routed by a national securities exchange of which the broker or dealer is a member to comply with Rule 611 of Regulation NMS or the Options Order Protection and Locked/Crossed Market Plan; or
- ii. are solely for the purpose of executing the stock leg of a stock-option order.

The Proposal helps ensure that dealers such as high-frequency trading firms, which conduct an enormous volume of trading, are subject to consistent and robust oversight through FINRA, not only the more narrow regulatory requirements that are specific to each exchange. As explained by the Commission in the Release:

In light of the extent to which off-member exchange proprietary trading occurs today, the Commission believes that the SRO layer of oversight should be enhanced by ensuring, as mandated by Section 15(b)(8) of the Act, that an Association generally has direct, membership-based oversight over broker-dealers that effect securities transactions elsewhere than on an exchange where they are a member and the jurisdiction to directly enforce their compliance with Federal securities laws, Commission rules, and Association rules.<sup>16</sup>

## **COMMENTS**

### **I. The Proposal is appropriate and necessary to modernize Rule 15b9-1, to account for major changes in the market since 1976, and to re-align the rule with the public interest requirements in the Exchange Act.**

The financial markets have changed dramatically since Rule 15b9-1 was originally adopted in 1965 and amended in 1976, including how brokers and dealers interact with the markets. As technology changes the way markets operate and the manner in which people trade, the regulations that govern our capital markets must evolve accordingly. Rule 15b9-1 was conceived and amended prior to the widespread use of algorithmic, electronic trading strategies and at a time when physical trading on the floor of the exchanges still dominated the markets. As an example of the infant role technology played in society at large when Rule 15b9-1 was last amended, the most powerful supercomputer released in 1976 had less computing power than the original iPhone.<sup>17</sup>

Over the intervening four decades since Rule 15b9-1 was amended, the U.S. equities and bonds markets have changed dramatically thanks to technological innovations. Not only has a majority of equity and bond trading shifted from the floor of stock exchanges to electronic-based trading, but market fragmentation has increased the available channels for trading on platforms

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<sup>16</sup> Release at 49,932.

<sup>17</sup> Patrick McCarthy, Infographic: The Growth of Computer Processing Power (May 2, 2017) <https://www.offgridweb.com/preparation/infographic-the-growth-of-computer-processing-power/>.

such as alternative trading systems (“ATs”).<sup>18</sup> Additionally, market participants are using algorithmic, electronic trading strategies to trade in a matter of milliseconds across dozens of exchanges and ATs. In order to maintain fair, orderly, and efficient markets that protect investors while facilitating capital formation, the Commission must ensure that outdated regulations of the past do not evolve into loopholes in today’s capital markets. Rule 15b9-1 clearly falls into this category, as the markets have outgrown the exclusion.

The de minimis allowance and proprietary trading exclusions in Rule 15b9-1 were originally adopted to accommodate on-floor trading activities of specialized brokers and dealers. The Proposal lays out in great detail the original intent for the adoption of Rule 15b9-1, including the 1976 amendment that included the proprietary trading exclusion stating:

Taken together, the historical purpose of Rule 15b9-1’s de minimis allowance and proprietary trading exclusion was to accommodate limited broker-dealer trading activities that were ancillary to a floor-based business on a single exchange while preserving the traditional role of the exchange as the entity best suited to regulate member conduct on the exchange.<sup>19</sup>

The reasons for granting Commission-registered brokers and dealers an exemption from membership in a national securities association in 1976 via Rule 15b9-1 are inconsistent with how brokers and dealers take advantage of that exemption in today’s markets. Specifically, the rise of high-frequency trading firms who use algorithmic, electronic trading strategies may utilize the exemption in Rule 15b9-1 to evade membership in a national trading association despite their predominant role in the U.S. equities and Treasury securities markets.

Unlike in 1976, the majority of trading in today’s markets occurs electronically, as opposed to through brokers and dealers trading on the floors of exchanges. Specifically, high-frequency trading firms use algorithmic, electronic trading strategies that enable them to buy and sell large volumes of securities for their own accounts, while arbitraging equity and bond spreads for profit. As noted above, these firms make up a significant portion of trading volume in both the U.S. equities markets and U.S. Treasury interdealers markets, representing 50 percent and 48 percent of all trading volume, respectively.<sup>20</sup>

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<sup>18</sup> Release at 49,935 (“Trading is spread among a number of highly automated trading centers – 24 registered exchanges, 33 ATs that trade NMS stocks, at least 2 ATs that trade U.S. Treasury securities, and nearly 200 OTC market-makers – and the routing and re-routing of orders to multiple venues is common”).

<sup>19</sup> Release at 49,935.

<sup>20</sup> Johannes Breckenfelder, *Competition among high-frequency traders and market liquidity*, VoxEU (Dec. 17, 2020), <https://voxeu.org/article/competition-among-high-frequency-traders-and-market-liquidity>; Scott Patterson and Geoffrey Rogow, *What’s Behind High-Frequency Trading*, Wall St. J. (August 1, 2009), <https://www.wsj.com/articles/SB124908601669298293>; see also James Collin Harkrader and Michael Puglia, *Principal Trading Firm Activity in Treasury Cash Markets*, FEDS Notes (Aug. 4, 2020) (“when measured on the basis of trading volume, PTDs dominate activity on the electronic IDB platforms (61%)”).

However, despite the sheer volume of trading these firms conduct on a daily basis, including their cross and off-exchange trading activity, they are able to rely on the de minimis allowance and proprietary trading exclusion in Rule 15b9-1 to avoid registration with FINRA, because they do not hold customer accounts but instead trade for their own accounts. Hence, the exemptions in Rule 15b9-1, which were originally created in 1976 to “accommodate limited broker-dealer trading activities that were ancillary to a floor-based business on a single exchange,” have become the vehicle through which high-frequency trading firms engaged in significant cross-exchange and off-exchange trading activities can avoid membership in a national securities association and the important oversight and transparency that comes with it. Therefore, it is necessary and appropriate for the Commission to modernize Rule 15b9-1 and narrow the exemption to account for the fundamental changes that have occurred over the decades since the rule was last amended.

Finally, the Proposal is necessary to bring the exemption back into alignment with the statutory proviso governing exemptions under the Exchange Act. In legal terms, the exemption is no longer “consistent with the public interest and the protection of investors,” as required under the Exchange Act.<sup>21</sup> The Exchange Act delegates to the Commission the authority to exempt brokers and dealers from the requirement of becoming a member of a national securities association “as it deems consistent with the public interest and the protection of investors.”<sup>22</sup> While Rule 15b9-1 may have been within the public interest and the protection of investors when originally adopted and subsequently amended in 1976, it is difficult to imagine a scenario where exempting brokers and dealers that engage in algorithmic, electronic trading strategies from membership in a national securities association such as FINRA is in the public interest or advances investor protection today. In fact, exempting brokers and dealers that trade a substantial volume of U.S. equities and Treasury securities cross- and off-exchange from membership in a national securities association is contrary to the public interest and the protection of investors. This exemption enables these firms to escape supervision and regulation by FINRA in its role as an SRO and largely shields their trading activity from public view. This is particularly harmful in the U.S. Treasury securities markets, where the Federal Reserve has had to intervene in the past to ensure the adequate functioning of these markets.

Accordingly, the Proposal is an appropriate and necessary step to modernize Rule 15b9-1 to account for the evolutions in our financial markets in a manner that is consistent with the original intent of the statute.

## **II. The Proposal will ensure market participants performing similar functions are treated similarly.**

The Proposal will help achieve a separate but related goal that promotes fair competition: ensuring that market participants performing similar functions are treated similarly. One of the

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<sup>21</sup> 15 U.S.C. 78o(b)(9).

<sup>22</sup> 15 U.S.C. 78o(b)(9).

core statutory requirements applicable to broker-dealers is membership in a national securities association unless, essentially, that broker or dealer “effects transactions in securities solely on a national securities exchange of which it is a member.”<sup>23</sup> Many high-frequency trading firms that trade large volumes of equities and U.S. Treasury securities both cross- and off-exchange avail themselves of the exclusion in Rule 15b9-1 to evade membership in a national securities association, such as FINRA. By narrowing the exclusion in Rule 15b9-1, the Proposal will ensure that market participants performing similar broker and dealer functions are treated similarly.

Ensuring regulations apply equally to market participants performing similar market functions is a necessary component of maintaining fair, orderly, and efficient markets. Specifically, the Proposal will safeguard against certain market participants, in this case high-frequency trading firms, from retaining a competitive advantage in the market due to outdated regulations. These firms have been able to keep their market activity relatively hidden from view for decades due to an outdated proprietary trading exclusion in Rule 15b9-1 that could not have contemplated these algorithmic, electronic trading strategies when the rule was last amended in 1976. As mentioned previously, the original intent of the Rule 15b9-1 exclusion was “to accommodate limited broker-dealer trading activities that were ancillary to a floor-based business on a single exchange.”<sup>24</sup> The Proposal appropriately narrows these outdated exemptions to ensure market participants performing similar functions are treated similarly.

### **III. The Proposal is another step in enhancing market transparency of the U.S. Treasury securities and repo markets.**

The Proposal marks another important step the Commission is taking to enhance transparency in the U.S. Treasury markets, which is desperately needed. The troubling disruptions in the U.S. Treasury securities markets in 2014, 2019, and 2020 have highlighted significant weaknesses in the current structure of the U.S. Treasury securities and repo markets. In a recent research report, Bank of America cautioned that “the Treasury market arguable poses one of the greatest threats to global financial stability today, potentially worse than the housing bubble of 2004-2007.”<sup>25</sup> These disruptions have also demonstrated the lack of transparency regulators have into these markets, both in real-time and the ability to look back at historical data. This lack of transparency and limited oversight over market participants in the U.S. Treasury securities and repo markets is particularly troubling from a financial stability standpoint because these markets help underpin the entire global financial system. The Proposal, coupled with other rulemaking efforts across the federal government and at FINRA, will enhance transparency into these markets by requiring all dealers to become members of FINRA and report their Treasury securities and repo markets trading data.

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<sup>23</sup> 15 U.S.C. 78o(b)(8).

<sup>24</sup> Release at 49,935.

<sup>25</sup> WALL ST. J., Alarm Bell Sounds on Treasury market Trading Conditions (Sep. 7, 2022), <https://www.wsj.com/articles/alarm-bell-sounds-on-treasury-market-trading-conditions-11662578202>.



Despite the importance of the U.S. Treasury securities markets to the global financial system, regulators still do not have all the tools necessary to adequately oversee this market. Many blind spots remain, particularly in the cash and repo markets, because a significant proportion of Treasury securities transaction activity is performed on a bilateral basis without data reporting requirements. This lack of transparency into the Treasury securities markets has hamstrung the ability of regulators to maintain fair, orderly, and efficient markets and to ensure adequate liquidity in periods of exceptional market stress. The lack of transparency in one of the most important markets in the world has contributed to several liquidity crises over the past decade, including the March 2020 turmoil.<sup>26</sup>

The lack of visibility in the Treasury markets undermines regulators' ability to monitor risks in those markets, understand how those risks evolve into potentially systemic risks, and react to them in real-time. For example, during the volatile round trip in prices that took place on October 15, 2014, the 10-year Treasury bond experienced unusual volatility as it dropped and recovered an extraordinary 1.6 percent in a matter of 12 minutes.<sup>27</sup> While other electronically traded markets have experienced similar moments of volatility throughout their own histories, this move in the Treasury markets was swift and unprecedented.<sup>28</sup> A joint staff report highlighted the lack of transparency and regulatory access to data:

Following the October 2014 disruption, analysis found that diversity in trading venues and participants and fragmented and ***incomplete data reporting had left market participants and individual regulatory agencies with only a very limited view of Treasury risk transfer and price discovery***. These gaps posed challenges to understanding the causes of the flash rally.<sup>29</sup>

As pointed out in the report, an absence of data not only leads to an inability to identify, monitor, and assess risks but also affects robust price discovery. As a consequence, regulatory agencies are unable to fulfil their obligations to monitor and mitigate risks to financial stability. In addition, market participants are unable to gain a full understanding of the market, thus inhibiting the provision of liquidity across the isolated pockets of visibility.

In response to the unprecedented gyrations in the market for U.S. Treasuries that occurred in October 2014 and public comments submitted to the U.S. Treasury Department in response to

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<sup>26</sup> See, e.g., U.S. Department of Treasury, *Recent Disruptions and Potential Reforms in the U.S. Treasury Market: A Staff Progress Report* (Nov. 8, 2021); Annette Vissing-Jørgensen, Bank for International Settlements, *The Treasury market in spring 2020 and the response of the Federal Reserve* (Oct. 2021); Alex Aronovich, Dobrislav Dobrev, and Andre Meldrum, *The Treasury Market Flash Event of February 25, 2021*, FEDS Notes, Washington: Board of Governors of the Federal Reserve (May 14, 2021).

<sup>27</sup> Zachary S. Levine, Scott A. Hale, and Luciano Floridi, *The October 2014 United States Treasury bond flash crash and the contributory effect of mini flash crashes*, PLOS One (Nov. 1, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5665520/>.

<sup>28</sup> U.S. Department of Treasury, *Recent Disruptions and Potential Reforms in the U.S. Treasury Market: A Staff Progress Report* 18 (Nov. 8, 2021).

<sup>29</sup> *Id.*

a Request for Information on structural changes to the U.S. Treasury markets, FINRA finalized a rule requiring its *members* to report U.S. Treasury transactions to the Trade Reporting and Compliance Engine (TRACE) reporting system.<sup>30</sup> Requiring reporting to the TRACE reporting system was one way for regulators to have more insight into the U.S. Treasury market that they did not have during or after the events of October 2014. Regulators across the federal government continue to make important improvements to increase the number of U.S. Treasury transactions that are reported to the TRACE reporting system and the frequency with which those transactions are reported.

Building on actions to require Treasuries transaction reporting to the TRACE reporting system by FINRA members, the Federal Reserve adopted a rule in October 2021 to require certain other financial institutions to report Treasuries transactions to the TRACE reporting system.<sup>31</sup> Specifically, the rule requires “[e]very national bank, state member bank, state non-member bank, savings association, or U.S. branch and agency of a foreign bank filing a Notice of Government Securities Broker or Government Dealer Activities Form...with average daily transaction volumes of over \$100 million for U.S. Treasury securities” to report transactions to the TRACE reporting system. While this action would not result in all Treasuries transaction data being captured by TRACE, it is a significant step.<sup>32</sup> This rule will help to enhance transparency in the Treasury markets by increasing the percentage of transactions being reported to the TRACE reporting system.

Similarly, FINRA has recently proposed further changes to the TRACE reporting system in an effort to “enhance the regulatory audit trail” and to ensure that data is reported “in a more timely manner.”<sup>33</sup> Specifically, FINRA’s proposed rule would require *members* to report U.S. Treasury transaction data in the smallest increment available to the member and as soon as practicable, but no later than 60 minutes following a transaction.<sup>34</sup> These changes would provide more granular and rapid transaction data that benefits regulators and market participants alike. This is another example of an important step regulators are taking to enhance transparency in our U.S. Treasury markets.

The Proposal is yet another important step in enhancing market transparency of the U.S. Treasury securities and repo markets. By modernizing Rule 15b9-1 – in conjunction with other proposed rules to subject Government securities ATSS to Reg ATS and further define the definition

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<sup>30</sup> Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Reporting of Transactions in U.S. Treasury Securities to TRACE, 81 Fed. Reg. 73,167 (October 24, 2016).

<sup>31</sup> Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB, 86 Fed. Reg. 59,716 (October 28, 2021).  
<sup>32</sup> 86 Fed. Reg. 59,717.

<sup>33</sup> Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 6730 To Enhance TRACE Reporting Obligations for U.S. Treasury Securities, 87 Fed. Reg. 33,844, 33,845 (June 3, 2022).

<sup>34</sup> 87 Fed. Reg. 33,844.

of a dealer and government securities dealer – regulators across the federal government will have more real-time and historical data to adequately assess gyrations in the U.S. Treasury securities and repo markets that they did not have in 2014 or 2020. By in effect requiring more HFT firms to become members of FINRA, the Proposal will help mitigate the lack of transparency of the U.S. Treasury securities and repo markets. It will ensure greater reporting of dealer trading activities by high-frequency trading firms that dominate those markets.

## **CONCLUSION**

We hope these comments are helpful as the Commission finalizes the Proposal.

Sincerely,



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