November 18, 2009

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

Re: Notice of Filing of Proposed Rule Change to Define Asset-Backed Securities, Mortgage- Backed Securities, and Other Similar Securities as TRACE-Eligible Securities and Require the Reporting of Transactions in Such Securities to TRACE (Release No. 34–60860; File No. SR–FINRA–2009–065)

Dear Ms. Murphy,

The American Securitization Forum (ASF[1]) and the Securities Industry and Financial Markets Association (SIFMA[2]), are pleased to respond to this request for comments on the rule proposal to expand the scope of TRACE reporting requirements to asset-backed securities (ABS). ASF and SIFMA believe that the restoration of securitized products markets is an essential and necessary component of any broad-based economic recovery, and is key to the return of more normal levels of credit availability that are important contributors to economic growth. Improvements to the transparency of structured finance products and markets are a necessary component of such recovery.

ASF and SIFMA members believe that regulatory reporting of trades of securitized products to FINRA through TRACE will provide FINRA greater clarity as to the nature of securitization markets and trading practices therein, and could serve to enhance FINRA's market surveillance efforts. We note that FINRA's proposal recognizes important differences in the nature of trading and market conventions in the securitized product markets versus those of corporate or agency debt markets. Thus our response is generally supportive of the principles that underlie FINRA's proposal.

We note with encouragement that FINRA plans to work with the industry to promote an "effective and cost efficient" implementation of this proposal. ASF and SIFMA are well-positioned to assist FINRA with this implementation given the depth, breadth and collective expertise of our membership, and we stand ready to offer our support and resources. Given the short timeframe available for comments on this very complicated issue, ASF and SIFMA have undertaken a significant, ongoing dialog with our members to continue to surface issues that require clarification, and believe that optimal results will be achieved through coordination and continued dialog with FINRA. We believe that FINRA should take advantage of our resources and continue to engage the industry in a

[1] The American Securitization Forum is a broad-based professional forum through which participants in the US securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com. The ASF is an affiliate of the Securities Industry and Financial Markets Association.
[2] The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington, DC and London, and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

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productive, collective dialog well in advance of the implementation of any post-trade reporting regime for securitized products. The unique nature of securitization markets presents a number of significant challenges and uncertainties that must be addressed so that broker-dealers are able to comply with the new regulations in a timely and efficient manner. ASF and SIFMA believe that it is essential that the industry have a common understanding of the specific details of their obligations for post-trade reporting of securitized products. The primary desire of our broker-dealer members is that they are able to support FINRA's rules in the most efficient, cost-effective, and comprehensive manner possible.

In this letter, we will address both broad principles and issues raised by the proposal that apply to trade reporting generally, and discuss with specificity significant impediments to the implementation of TRACE reporting for securitized products as proposed. We will use the term "securitized products" or "SP", to refer to the broad universe of securitized products that fit the definition of "asset backed security" in the rule proposal, and employ specific terms when we are focused on a specific asset class (e.g. private label RMBS, Agency MBS, CDO). Therefore, the term "ABS" as used herein will refer to the asset classes commonly referred to as ABS in accordance with market convention (e.g., non-mortgage ABS such as credit card and auto loan securitizations).

1. The Design of Transaction Reporting Systems for Securitized Products Should Address the Unique Features of SPs as Well as The Differing Trading Practices, Underlying Collateral, and Liquidity Of Individual ABS Markets.

The term "asset-backed securities" as defined in the rule proposal encompasses a broad, heterogeneous universe of financial products, market conventions, trading practices, structures, and collateral. While the proposed regulations will apply broadly to nearly all securitized products, it is imperative in the implementation of trade reporting systems that regulators are mindful of the variety of unique features of SPs vis-à-vis other products such as corporate debt, as well as SPs vis-à-vis other SPs, as well as the sheer size of the markets. Outstanding SP CUSIPs number above one million, compared to the tens of thousands of corporate CUSIPs currently outstanding. Depending upon the granularity of how one views it, the term "asset backed security" as defined in the rule proposal captures anywhere from five to fifteen or more distinct markets for securitized products, comprising a large assortment of heterogeneous outstanding securities. For example, ABS may be collateralized by mortgages, credit card loans, auto loans and leases, equipment loans and leases, student loans, auto rental fleet leases, aircraft leases, manufactured housing, servicing advance receivables, other receivables, corporate loans, other corporate bonds, other asset backed securities, and a variety of other assets. Further gradations can be made within many of these categories at a more granular level for each type of asset, by credit quality, or other measures. Each of these products requires a distinct analysis, and each market has distinct liquidity, trading, and other characteristics.

Relative to SPs, the majority of corporate and federal agency debt has a simple structure featuring a bullet maturity whereby principal is repaid at maturity. These securities may contain certain features, such as call or put options, and may be convertible to other types of securities in specific instances, which can add to the complexity of their analysis. Corporate and agency debt investors generally rely on the ability of a single entity to repay the debt - the entity that issued the security. SPs, on the other hand, are most commonly collateralized by tens to hundreds to thousands of individual, amortizing assets, and generally amortize themselves through monthly or quarterly principal and interest repayments, based on the cash flows of the underlying assets. Amortization and inherent volatility of cash flows are key distinctions of ABS from most other fixed income securities. The issuance process for many SPs also differs significantly from other types of debt securities, and we will address the specific issues this creates with respect to FINRA's proposal later in the letter.

This amortization, and the nature of the underlying assets, complicates the analysis of the securities. Investors must consider the behavior of those granular underlying assets in their analysis. Some SPs feature credit enhancements in the form of third party guarantees (either by an insurance company, the issuer itself or the government). Borrowers of loans that underlie the majority of types of SPs are free to repay their obligation at any time they please; thus, prepayment risk analysis is a significant factor for investors in SPs. Additionally, investors in non-guaranteed SPs must look to the risk of default of the underlying borrowers, the correlations among those defaults, and the ultimate severity of any losses due to those defaults. While an analysis of any security requires the analysis of its underlying obligor and an analysis of the security's structural features, this analysis is much more complex for ABS as it requires an understanding of the default, prepayment, correlation and other risks presented by the potentially thousands of underlying obligors. An entire industry exists to serve the analytical needs of securitization investors. Just as this amortization impacts analysis of securities, it will also impact the most efficient means of trade reporting, as we will discuss later.

As mentioned above, investing in or making markets in SPs requires a thorough and complex analysis of the risks of the securities – this has led to an investor base that is primarily institutional. This analysis may take significant time, and generally leads to lower liquidity for SP compared to other products. Lower liquidity is also a result of other factors. First, many investors in SP are buy-and-hold investors, although there are pockets of opportunistic investors who will move more quickly in and out of positions (especially in Agency MBS passthroughs). Additionally, many SPs have been resecuritized into other vehicles, and will not likely see future trading. Importantly, the markets for many of these resecuritization vehicles have closed, and it is unlikely they will return in the near term. Thus, a component of recent illiquidity may have become a structural form of illiquidity. It is not an improper generalization to say that SP markets are characterized by illiquidity; and we note that this illiquidity is heightened in times of stress, such as those that have been experienced in the last two years. Furthermore, the withdrawal of important classes of investors (SIVs, ABS CDOs, securities arbitrage conduits, and the GSE's retained portfolios) means that liquidity is likely to be depressed for a significant period of time, especially in subordinate tranches of SPs.

An exception to this general illiquidity is the Agency MBS passthrough asset class, where the simple structure of the securities, standardized collateral and trading practices, and quasi-government guarantee serves to promote significant liquidity. Agency MBS passthroughs are the most liquid SP and among the most liquid of any fixed income security. While the liquidity of Agency passthroughs may meet or exceed the liquidity of other non-securitized products, other features of this market are unique and present special challenges for trade reporting. Foremost among them is the nature of the "To Be Announced" market, where trades are made based on a request for a specific Agency, coupon, amount, and settlement date, among other things. These trades may settle at any time, but most trades are done forward, to settle on the next class settlement date, or on a standardized settlement date 60, 90 or more days into the future. TBAs are used by investors to gain exposure to MBS, and importantly, by originators to hedge their mortgage pipelines. These unique features present specific implications for the TRACE proposal, as we discuss later.

The preceding paragraphs are a brief illustration of the unique nature of ABS markets, intended to indicate the degree of specialization that is required to operate in them as a successful market maker or investor. ASF and SIFMA believe that regulatory implementation should be tailored to the characteristics of the markets in which they operate, and that it is neither efficient nor appropriate to attempt to simply shift the post-trade reporting model for corporate bonds onto the securitization markets. Rather, certain provisions and requirements of TRACE will necessarily need to be adapted from TRACE for corporate bonds or Agency debentures in a fashion that allows for a flexible, yet specialized, approach to trade reporting for the many varied products of SPs as well as corporate debt and Agency debentures. It is illogical that longstanding market practices and conventions that have been proven to promote the liquidity and stability of a market would be changed to accommodate a trade reporting function. We believe that the opposite outcome is appropriate – the trade reporting function should be adapted to, and be sensitive to, the unique characteristics of the markets that it impacts. ASF and SIFMA echo IOSCO's statement that "*any post-trade transparency system should be tailored to take into account the unique characteristics of the SFP market in a particular jurisdiction*".[3] We are encouraged that the proposal generally reflects this approach, and hope this frame of reference is followed throughout the lifecycle of implementation of TRACE reporting for SPs.

2. FINRA Should Obtain Security Information, Including CUSIPs, Pool Numbers and Factors From Commercially Available Sources

FINRA should update the TRACE Issue Master file with information for all available outstanding ABS before reporting is implemented for SPs. Reference data feeds are available from a number of sources, and the GSEs

[3] IOSCO, Transparency of Structured Finance Products, Report of the Technical Committee of IOSCO <http://iosco.org/library/pubdocs/pdf/IOSCOPD306.pdf>. ASF's comment letter to IOSCO is available here:

provide pool-level reporting on their securities on a monthly basis. Furthermore, the GSEs make available on their websites each day a detail of new pools that have been issued, and a number of vendors provide complete coverage of the Agency MBS markets.[4] Similarly, vendors provide reference information for new-issue and outstanding private label securities. Where their coverage is not complete, dealers would be able to provide security information for their trades, but FINRA could significantly lessen this compliance burden by undertaking measures to have commercially available data feed into the TRACE system on an automated basis. Implementation and reporting of SP trades will be most efficient if information is collected and verified only once, by FINRA, as opposed to being collected and submitted by multiple dealers, prone to human error and hampered by a manual process, and only then processed by FINRA.

By collecting information in an automated fashion from commercially available sources, FINRA will greatly reduce the compliance burden on reporting broker-dealers. While the process of communicating new security information for new deals can be organized into the new issuance process for a transaction, no such efficiency is available for outstanding securities. Dealers would face a significant resource, compliance, and technology burden if they were required to provide the initial setup information to FINRA for existing CUSIPs. We note that there are over 1 million existing ABS CUSIPs and mortgage pool identifiers.

Factor information is similarly available – reference data feeds are available for both agency and private label ABS markets that provide comprehensive, and in the case of Agency MBS, complete coverage of factor information. ASF believes it would be most efficient, both for FINRA and for member broker-dealers, if FINRA were to obtain, and maintain, factor information in the TRACE system.

3. Issues Related to Security Identifiers: Confirmation of Application of TBA CUSIPs to TBA Trades; the Challenges Presented by Trades of Securities without Available CUSIPs, and the Need for an Efficient Process to Obtain FINRA symbols for Securities without CUSIPs or Mortgage Pool Numbers

FINRA correctly notes the need for SPs to use identifiers beyond CUSIPs in the proposal, including the use of mortgage pool numbers. This is important because the trading of securities that do not have CUSIPs is more common in SP markets than in other fixed income markets, among other reasons due to the nature of the new-issue process, and the TBA MBS market.

TBAs should be Reported with TBA CUSIPs

Certain Agency MBS that trade in TBA form are booked and identified by a generic CUSIP called a "TBA CUSIP".[5] From a TBA CUSIP, a reader is able to determine: (1) product type, (2) guarantor agency (i.e., Fannie Mae, Freddie Mac, and Ginnie Mae), (3) coupon, (4) maturity, and (5) settlement month. Most dealers book these trades internally with these CUSIPs, and these CUSIPs are also used by the Fixed Income Clearing Corporation in its Agency MBS matching and pool allocation systems. For Agency MBS that have available TBA CUSIPs, FINRA should confirm (1) that dealers are able to report trades to FINRA using these generic CUSIPs as identifiers, and (2) that dealers are not expected to amend TBA trades with mortgage pool numbers when allocations are made in the settlement process, as these allocations do not impact price and are solely a settlement function. The alternative, requiring dealers to obtain FINRA symbols, would seem to create an impossible situation due to the sheer volume of TBA trading.

Specific Issues Related to Reporting Trades of Securities without CUSIPs or Other "Streetwide" Identifiers

As discussed above, FINRA has an existing process for obtaining a FINRA symbol for securities that do not have CUSIPs. Many ABS will trade without CUSIPs. Outside of TBAs, Agency CMO products trades may be executed a significant period of time before they are settled, and thus before CUSIPs are available. Similarly, trades of

[4] Fannie Mae New Issue Pool Statitistics File: <http://www.fanniemae.com/mbs/data/mbs/newisspoolstats.jhtml?p=Mortgage-Backed+Securities&s=Monthly+Reporting+Data&t=MBS&q=New+Issues+Pool+Statistics>; Freddie Mac new issue files: http://www.freddiemac.com/mbs/. We note that the GSEs issue thousands of pools per month, and that some form of automated process between FINRA and the GSEs is needed in order to alleviate what would otherwise be a significant resource burden for FINRA-member firms.

[5] http://www.cusip.com/static/html/cusipaccess/pdf/TBA%20CUSIP%20Service06.25.07.pdf

private label products may be executed before CUSIP information is known. The issue that arises here is that, at least for a period of time, the dealer who obtained the FINRA symbol will know which specific security the ID relates to, but other firms will not. To provide a real world example: Dealer A, acting as underwriter, might sell a security to Investor A. Dealer A in this example obtained a FINRA symbol for the security, and reported this trade through TRACE. Dealer B then, on the same day, buys this bond from Investor A. Dealer B may suspect that this bond is reportable to TRACE, but Dealer B will not know an identifier under which to report the security, even though one exists. Conceivably, Dealer B might attempt to obtain a FINRA symbol for the security, requiring manual work on both the part of Dealer B and FINRA staff, and resulting in another FINRA symbol corresponding to this bond. Even after this security appears on the TRACE Issue Master file, dealers will face a difficult task when trying to match up the security shown on the TRACE Issue Master with the securities on their internal master files; dealers will likely resort to comparisons of multiple fields of information, and in some cases may not be able to uniquely identify a security with the level of certainty that is needed when dealing with TRACE reporting obligations. Nonetheless, such a process would likely require a manual processes at dealers and, as was noted by SIFMA in earlier comments to the SEC and FINRA on previous TRACE expansions, solutions for identifying dealers' trade reporting obligations need to enable dealers to internally automate system controls to determine which trades are subject to reporting requirements.

If FINRA believes that dealers should be required to report trades in securities without broadly known, uniquely identifying identifiers such as CUSIPs, a framework for the creation of a broadly known ("streetwide") unique identifier must be established in order to minimize the duplication of work, manual processing, uncertainty, and compliance risk that such a situation would otherwise entail. This is a critical concern given the potential volume of trades done in SPs without CUSIPs. ASF and SIFMA members believe that the best solution for these issues will be reached through a constructive dialog between FINRA and the industry.

FINRA should Ensure Process for Obtaining FINRA symbol*s is Efficient and Timely*

For Agency MBS passthroughs that trade in TBA markets that do not have TBA CUSIPs available, and all other private-label SPs that may trade without a CUSIP or mortgage pool number, dealers will need to utilize an alternate identifier, such as a FINRA symbol obtained from FINRA, to report trades. FINRA, therefore, should ensure that it has processes in place to allow for a significant increase in the need for these FINRA symbols. Dealers must also be allowed reasonable time after they receive a FINRA symbol to update their systems with this new code, and transmit the trade information to FINRA. If a dealer is unable to submit a trade in a timely manner because of a lack of time between the receipt of a FINRA symbol and the deadline for reporting, it should not be penalized.

FINRA may wish to consider implementing logic in the process that generates a FINRA symbol that would allow the reader of the ID to discern information about the security from the format of the ID. The TBA CUSIP, discussed above, provides a rich set of information regarding the securities that it references. Devising a similar standard for FINRA symbols that would express information such as a referenced security's asset class (e.g., RMBS, credit card ABS) and issuance year would add value to the FINRA symbol. Again, industry members would be willing to provide further feedback should FINRA agree with this proposal.

4. Factor Reporting -- Dealers Should Indicate Usage of "Current Factor" at Time of Trade, not Specific Numeric Factor for Each Trade

Factor information for both Agency and private label SPs is commercially available. Given that FINRA is likely to employ reference data feeds that will include this information for other purposes, FINRA should utilize this data in ways that reduce the compliance burden placed upon dealers. If FINRA were to independently maintain factor information, it would allow for a greatly reduced compliance burden for dealers by requiring the reporting of factor information only in the unlikely event that the factors used at the time of a trade by a reporting dealer were different then those that were published at that time. FINRA could allow dealers to report either (a) an indication as to whether or not the trade was executed based on the currently available factor at the time of trade, or (b) the actual factor used at the time of trade, if it is not the currently published factor for that security. The vast majority of trades would likely be reported using option (a) above.

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FINRA's maintenance of factor information is critical to the development of an efficient system for post-trade reporting of SPs. Without it, dealers will face a significant compliance burden by having to report individual factors used for trades that FINRA will already possess through its reference data subscriptions. Furthermore, it would alleviate a concern that has been raised in the private label MBS asset classes, where because of timing differentials two counterparties may have different factor information based on the vendor they use to obtain this information. Some vendors publish updated factors hours or even a full day before others; therefore, a counterparty to a trade could have the older information, while the other counterparty has the new information. For example, if a security has a payment date of the 25th, one vendor might have factors available that day, while another may not have them available until the following morning. Currently, when this situation occurs it is resolved through adjustments to final monies before the settlement of the trade. However, with the introduction of post-trade reporting, such a situation would result in unmatched dealer-to-dealer trades, possibly require dealers to amend previously reported trade information, cause report card and other compliance issues, and make more complicated FINRA's regulatory surveillance. If FINRA interposes itself as the single repository of factor information for the purposes of TRACE reporting, these issues will be alleviated.

5. T+1 Reporting

Given the operational complexity of trade reporting for SPs, the unique features of SPs, the volume of trading in SPs, the fact that TRACE reporting will not include dissemination, and issues with trades done late in the day, ASF and SIFMA dealers believe that a T+1 reporting regime is appropriate.

While FINRA may be able to alleviate certain issues with the availability of the data that is required to be reported to TRACE through its usage of commercially available data, as discussed above in the sections regarding identifiers and factors, significant impediments and burdens remain for broker-dealers. As we have discussed, outstanding SP CUSIPs and mortgage pools number over one million, and thousands of new pools and CUSIPs are issued each month. Dealers do not maintain on their trading systems information for every outstanding CUSIP or pool. Therefore, many trades will require an initial setup of a security on a dealer's system before it can be reported to TRACE. This takes time, and depending on resource availability and trading volumes, the time required may be significant. Furthermore, agency MBS specified pool trades may involve hundreds of pools in a single trade. For trades done late in the day, if may be difficult for dealers to comply with a same-day reporting requirement. Importantly, FINRA indicates in the proposal that SP trade information will not be disseminated, rather it will become a part of FINRA's market surveillance process, making same-day reporting less important.

We also note that the volume of trades of SP may lead to a significant increase to TRACE reporting volumes for broker dealers, in addition to recently approved changes to TRACE reporting requirements that will also lead to significant increases in reporting volumes. Approximately 1.8 million sides of trades were reported to the RTTM comparison system maintained by the Mortgage Backed Securities Division of DTC by the Division's approximately 65 participants, with volumes concentrated in the top tier of trading firms (all of whom are broker dealers), between January and September of 2009. If annualized, this number exceeds 2.3 million – an average of over 9,000 trades per business day[6]. Importantly, these numbers only represent a subset of trades in Agency MBS passthroughs, and do not include (a) any Agency MBS passthrough trades executed by dealers that are not compared in the RTTM system, (b) agency CMO trades, or (c) private label SPs. Thus, it is clear that dealers will face significant increases in TRACE reporting volumes, and FINRA will need to be able to process all of this information.

Some of our dealer members have undertaken preliminary analyses of trading volumes and indicated that reporting volumes may double with the implementation of TRACE reporting for Agency debentures and primary market transactions in March 2010. As a point of comparison to other markets for which TRACE reporting is or will be required, according to data published by the Federal Reserve Bank of New York, primary dealers reported 2009 year-to-date average daily trading volumes for MBS that were approximately 2.2 times higher than those of

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[6] Source of this data is DTC. Average calculated with assumption of 249 business days in a year (5 days/week * 52 weeks – 11 SIFMA market close holidays).

corporate debt, and higher than those of corporate and Federal Agency debt combined[7]. Clearly the implementation of TRACE reporting for SPs will cause a further, major increase in reporting volumes and this should be reflected in the implementation of this process. Our members have expressed concerns regarding the ability of their systems and FINRA's TRACE infrastructure to handle this tremendous increase in reporting volumes in a reliable manner.

Taken together, these factors lead ASF and SIFMA member broker-dealers to request that FINRA change the proposed T+0 reporting requirement to a T+1 requirement. This will allow dealers to process their trades accurately and efficiently, and report the information to FINRA in a manner that does not impact FINRA's important role in market surveillance. Should FINRA not be amenable to this request, at a minimum ASF and SIFMA request that the "cutoff" time for when trades may be reported T+1 be moved back from 5:00 PM NY time to an earlier time. We would suggest a 12:00 PM NY time cutoff. We believe that a T+1 regime, or at a minimum an earlier cutoff time, will best allow dealers to provide accurate and timely reports through the TRACE system. ASF and SIFMA members stand ready to discuss these technical issues further with FINRA; we believe it is imperative that FINRA work in an open, constructive manner with the industry to ensure an efficient and cost-effective implementation for SP reporting in TRACE.

6. Flexibility for Dealers to Modify Trade Information Should be Improved; Changes to Trade Terms Outside of Dealer Control Should not be "Late" Trades

Dealers should not be penalized for facilitating legitimate modifications to customer transactions that do not meaningfully impact price transparency which may occur in the normal course of business, or that are the result of factors beyond their control. For example, customers may provide account-level allocations outside of the proposed TRACE reporting window, or dealers may amend settlement terms pursuant to a client's request. Compliance costs and penalties for trade modifications, which are currently generally treated as late trade reports, will impose a burden on dealers who are simply working to service normal investor and client needs. We reiterate here points made by SIFMA in response to previous TRACE expansion to agency debentures and primary market transactions[8]. We believe the MSRB's approach to trade amendments, where certain fields may be amended and changes are tracked separately, is a more flexible model that preserves the integrity of a trade reporting regime.

FINRA should take into account when designing the rules around TRACE for SPs that certain market conventions will create a potentially significant volume of amendments to executed trades. These modifications to trade terms are not the result of errors or any neglect on the part of the transaction counterparties, and thus should not reflect negatively upon them. For example, trade assignments may happen at any time until just prior to notification date in the Agency MBS passthrough markets. If these are reportable events (we believe they generally should not be, as discussed later in this section), they are by their nature incompatible with a T+0 reporting regime, and should not result in penalties to reporting broker-dealers. It strikes us as illogical that long standing market practices that have proven useful and efficient to market participants over time would need to be revised or eliminated because of the implementation of a post-trade reporting requirement.

Additionally, there are a number of issues that are particular to the SP markets that could require the modification of previously submitted trades but are outside of the control of dealers. For example, security factors are sometimes reported incorrectly by the GSEs or trustees of securitization transactions (and not always immediately after the release – it may be months before errors are discovered). It is impossible for a dealer to know whether or not a given factor is correct, and must assume that they are. Therefore, if a factor is issued and subsequently amended by its issuer, dealers should be able to modify any affected trades in that security without penalty (if, as we discussed earlier, FINRA were to maintain factor information for outstanding issues and not require the reporting of factors with each trade, this problem would be largely resolved, to the benefit of both FINRA and dealers).

[7] "Year-to-date Market Share Data of Primary Dealer Transactions", Federal Reserve Bank of New York. Data covers 1/7/2009 through 9/30/2009. <http://www.newyorkfed.org/markets/statrel.html>

[8] May 7, 2009 comment letter from Sean C. Davy, Managing Director, and Robert Toomey, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, http://www.sec.gov/comments/sr-finra-2009-010/finra2009010-4.pdf , at 3.

Similar logic should be followed in other instances where issues outside of the control of the reporting broker dealer result in a need for trade modifications.

Changes that do not Impact Original Trade, or that Merely Facilitate Settlements, Should Not Be Reportable

We ask FINRA to clarify that common trading practices in SP markets that typically result in changes to some of the original terms of a trade but do not impact the integrity of the price transparency information provided by trade reports are not reportable transactions. This could include: trades done through inter-dealer brokers[9], trades done with correspondent brokers, and buy- or sell-side trade assignments. Many of these adjustments to trades involve the substitution of one counterparty for another, and do not necessarily result in the entry of a new trade on a dealer's system. These substitutions are a part of the normal course of trading and represent standard market practice for SPs; they tend to be most prevalent in Agency MBS passthrough markets. Amendments to trades for reasons such as the above should not require the amendment of previously submitted trades. If FINRA believes they should be reported, we again point to the MSRB's more flexible amendment regime as a model.

Trade assignments are prevalent in Agency MBS markets. A typical assignment may involve a customer assigning their "buy" of a trade to another dealer. In many cases, no terms of the trade change except for the counterparty. Thus, these changes do not impact the economics of the original trade, and in reality are post-trade adjustments that facilitate the orderly settlement of transactions (thus similar in spirit to a step-out). Operationally, most dealers will process this assignment with a pair-off of the original buy trade to the customer with an "as/of" original trade date buy transaction, and then execute a new sell trade to the dealer to whom the trade was assigned, for the same amount of securities, and at the same price. Given that the economics of the original trade have not changed, and that the new trades were booked in order to facilitate the settlement of the securities with the correct counterparty, ASF and SIFMA members do not believe that these transactions should be reportable as they do not provide any new or valuable information (beyond the new settlement counterparty). It is more likely that they would provide more noise than signal as to the dynamics of the market, because one transaction will become three. When this is combined with the normal volumes of assignments, it could become a significant issue. It is important to note that the dealer to whom the trade is assigned will report this "new" transaction to FINRA. In addition, if FINRA moves to require resubmission of these trades, or the submission of new trades, in these circumstances by the original dealer, they should not reflect negatively on the reporting dealers as "late" trades. As stated earlier, TRACE reporting should not negatively impact common, longstanding and beneficial market practices that serve to promote the efficiency of SP markets.

We agree that changes to material terms of a trade such as the price, size, or whether it was a buy or sell should require a change to the original TRACE submission. However, to echo SIFMA's earlier comments to FINRA on trade modifications, we suggest that FINRA should follow the MSRB's approach to trade modifications where changes to several fields in customer transactions are separately classified as "amendments" rather than "late trades" and are tracked separately for report card purposes and regulatory analysis.

7. Special Considerations for New Issues

Aside from amortization and structure, the new issue process for many private label MBS and CDOs differs significantly from that of many other fixed-income markets. Asset-backed securities are complex instruments that are often tailored to the needs of their investors, and this is especially true in the case of MBS and CDOs. At one extreme, significant amounts of CDOs have been issued that have but a single investor – the securities are truly bespoke. More generally in the MBS and CDO markets, securities tend to be customized to the needs of particular investors, which may stem from those investor's desire to gain exposure to (conversely, to hedge) a specific level of risk, a certain set of companies, markets, or other factors, or the customization may stem from those particular investor's view on the future direction of a market, a rate, an index, or other factor. In this way, structures are often arranged in an iterative manner, with classes of securities tailored to the needs of their investors.

[9] We note that post-trade processing of give-up trades may involve an adjustment of price to reflect broker commissions, but do not believe this to be a material piece of information that should require a cancellation and resubmission of a new trade.

MBS and CDO offerings may not be done in a traditional corporate-style syndicate process with a defined single pricing date and time. As mentioned above, underwriters embark on an iterative process, soliciting interest from investors as to their desired exposure to a type and amount of risk, and book trades with investors as the investor's needs are met. This may be considered more akin to a reverse inquiry method for building a book. The structure of the transaction develops as investors agree to purchases of securities. It is possible that a single class of an issuance might be sold to more than one investor on different days. Therefore, in contrast to many traditional corporate syndicate transactions, there may be multiple executions of so-called 'primary market' trades for an RMBS class that do not occur on a single day. FINRA should consider how this multiplicity of primary market trades will be reflected in TRACE reporting requirements. A traditional corporate syndicate process with a predetermined date and time when all bonds are priced is more common in ABS markets than RMBS or CDO.

Another complication arises with FINRA's definition of "list or fixed offering price" transactions (as defined in Rule 6710 effective March 1, 2010). Many new issue SP transactions are not executed at a "list or fixed offering price". This type of offering is more common for publicly registered issuances of ABS, and less common in private (i.e. 144a) markets. The possibility exists that, if a transaction is sold at a fixed offering price, primary trades will be executed on one day, and other primary market trades would occur in the same CUSIP on a subsequent day. FINRA's definition in Rule 6710 appears to indicate that trades executed on any day other than the first day, regardless of whether or not they were essentially identical fixed-price offering trades, would not qualify for T+1 reporting. Given the nature of SP offerings, FINRA should reconsider whether or not the limitation of T+1 reporting to trades that occur on the first day of trading for fixed-price offerings is appropriate

As discussed in section 2, many new-issue SPs will trade without CUSIPs, and this presents a number of implications for post-trade reporting that have been previously discussed.

8. TRACE Issue Master File Process Improvements Are Needed; Initial Rollout for SPs Should Include Outstanding Securities

ASF echoes comments previously made to FINRA by SIFMA[10] regarding the need for enhancement of the update process for the TRACE Issue Master File. Firms rely on this list to automate system controls to determine which trades are subject to reporting requirements, but the file is only posted in a downloadable format once per day (although FINRA updates the list intraday on the TRACE website, this is not amenable to automation by users). If FINRA plans to continue to require securities to appear on its master file before they are admitted for reporting, FINRA should work to improve and make more real-time the ability of dealers to know what securities are, and are not, on the master. FINRA should implement improvements that result in a more real-time reporting of eligible securities, such as a dedicated computer-to-computer interface or file-feed based arrangement, and/or provide real-time email updates to participants in a format the processing of which may be automated (e.g., with a CSV file attached detailing new additions).

9. Timing of Implementation Should Be Sensitive to Other Demands of FINRA Member Broker-Dealers and Ample Time Should Be Provided for Testing and Calibration of TRACE to SP Trading; Phased-in Approach Should Be Implemented

Given the scope and size of the securities markets that will become TRACE-eligible as a result of this rule change, and the significant operational complexities that implementation will present for dealers, FINRA must provide for a sufficient implementation timeline, as well as a robust period for testing and development. FINRA indicates that implementation will be no more than 270 days from the final approval of these rules by the SEC. We believe that the release of technical specifications provides a more appropriate marker upon which FINRA should base its implementation target date. Dealers are not able to fully understand the specific technical requirements and complexities until this date; therefore, it is a more reasonable starting point for the 270 day development window. Furthermore, ASF and SIFMA members believe that the development of the technical specifications should be

[10] Id at 5.

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previewed, and reviewed, in a constructive fashion with the industry to head off any unforeseen complications or issues on the both of either FINRA or the broker-dealers.

The release of technical specifications will likely come after SEC approval, but ASF and SIFMA members believe this approach is needed for a variety of reasons. First, separate and apart from any other impediments, given the complexities of the implementation of TRACE reporting for broker-dealer participants in the SP markets, dealers will face significant challenges in terms of resource availability as well as IT complexity. Notably, there are a number of other significant IT resource consuming industry-wide projects under way. Depending on timing, broker-dealers may still be in the process of implementing TRACE reporting systems for Agency debt products and primary market transactions at the time they must begin development for SPs. Even if the final approval of these rules for ABS falls after the technical implementation of the rules for Agency debt and primary market transactions, we note that significant technology and other resources will likely continue to be involved in those processes; TRACE related development does not end upon implementation of new rules. ASF and SIFMA believe strongly that all efforts should be made to avoid creating any parallel implementation requirements for SPs and other TRACE-eligible products.

Dependent on timing, broker-dealers who are also active in the Agency MBS markets are likely to be "participants" of the Fixed Income Clearing Corporation (FICC), and involved in the process of implementing a central counterparty (CCP) for agency MBS trades.[11] It is likely that many members who will be impacted by the TRACE proposal for SPs will be in the midst of CCP implementation (e.g., larger broker-dealers). The CCP implementation is a multi-stage, multi-year process that demands extensive IT and development resources of FICC members. CCP will result in materially reduced settlement risk in the Agency MBS markets, and therefore is a significant and justified industry priority. ASF and SIFMA ask FINRA to be sensitive to this project when refining implementation timelines for TRACE reporting.

Phase-In of Primary Market Transactions

The implementation of TRACE reporting for SPs will be a significant undertaking for both broker-dealers and FINRA. Our members believe that, similar to the approach to corporate bonds, a phased-in approach to onboarding all relevant SP transactions will provide for an efficient, cost effective implementation. We reiterate our previously mentioned points about the unique nature of the offering process for many SPs, and the challenges this creates for trade reporting. Under our proposal, upon implementation dealers would be required to report only secondary market trades. After a period of time, we would suggest 6 months, primary market trades would become reportable. This would: (1) allow dealers to work out issues that are uncovered post-implementation, (2) lessen the compliance and IT burden on broker-dealers by spreading out work over a longer period of time, and (3) still provide FINRA with surveillance information for the vast majority of trades in SPs, and not undermine this important surveillance function. We note that corporate bond market participants had a number of years to prepare for the reporting of primary market transactions. Furthermore, ASF and SIFMA dealer members believe that FINRA should consider a reporting phase-in by product type, and request that FINRA solicit and include industry feedback in this consideration.

Need for a Reasonable "Test" period with Live Trades to Achieve Proper Calibration of TRACE Parameters, Including Price Rejects

Regardless of the actual implementation date, FINRA should allocate sufficient time for dealers to submit live trades in a "test" environment, in order that participants can ensure their systems are able to properly report all required trades, without facing compliance costs for errors or modifications. Given that ABS have never been reportable TRACE securities, and in some cases, trade on entirely different platforms than other fixed income securities, dealers are faced with adapting numerous systems to produce the required output.

FINRA should utilize this test period to calibrate internal checks and validation routines in the TRACE system to the nature of trading in SP markets. For example, TRACE will reject trades in securities where the price is outside of

[11] More information is available on CCP for Agency MBS here: http://www.dtcc.com/leadership/issues/mbsccp/index.php

some defined parameter related to previous trades in that security. Given the relative illiquidity of SP markets in addition to the current distressed conditions in many markets, SPs tend to have greater price volatility. This may be due to many factors, such as the forced unwinds of securitization vehicles that create supply the markets cannot handle without significant movements, changing economic conditions that impact underlying collateral, downgrades to the credit ratings of securities that impact market prices, or more generally, changes to investor sentiment regarding a particular asset class. FINRA should turn off TRACE's price reject functionality, at least initially, for SPs in order that the parameters of the tool may be calibrated with actual trading patterns of SPs to avoid creating "false positive" results that result in manual work and process disruptions for both dealers and FINRA. Alternatively, FINRA could employ a methodology where the price reject thresholds are initially set very wide, and discrepancies would not result in the rejection of a trade, but instead flag it for further review by FINRA. This would avoid creating the burden of a cancel and correct process which has already been noted to be operationally burdensome, yet still provide FINRA with information it desires. Given the nature of the price reject function as primarily an investor protection tool, and the fact that FINRA is not disseminating ABS trade prices, there should be less impetus for maintaining strict reject thresholds.

10. Actual Settlement Date Reporting Would Provide More Granular Information Than "Regular Way" Indicators or Special Settlement Modifiers

FINRA proposes that dealers report trades with settlement modifiers of the form ".sNN", except for regular-way trades in Agency MBS passthroughs, where "NN" represents the number of days until settlement. ASF and SIFMA members believe that trades should be reported with the actual settlement date, instead of a "regular way" or ".sNN" modifier. This would provide for a more flexible system, be easier for dealers to implement, and result in fewer compliance issues (as opposed to requiring the derivation of number of days until settlement and resulting disputes over treatment of holidays, etc). Furthermore, this would provide FINRA with maximally granular information regarding transactions in the most direct manner.

11. TRACE Fee Structure Should Be Reviewed In Light Of Expansion To SPs

If TRACE is expanded to cover SPs, TRACE fees should be reviewed to take into account the additional cost that will be borne by broker-dealer firms, and should be reduced to the extent the additional TRACE fees are not reflective of the economies of scale this expansion will present to FINRA (especially give the recent expansion to Agency debt securities and primary market transactions). Given the high volume of SP transactions noted previously, and the large size of such transactions, costs borne by dealers are likely to be significant. Furthermore, the relative costs of implementation of the reporting infrastructure will significantly higher for dealers than FINRA, as most (if not all) will not simply be able to adapt an existing system for a new product. SPs trade on multiple platforms at many dealer firms, and those systems will need to be adapted to the requirements for TRACE reporting, links built between the various trading platforms and reporting systems, and compliance protocols developed around the entire process. Given the prevalence of modifications and adjustments to trades in SP markets, FINRA should consider eliminating the fees charged for modifications of transaction reports submitted in good faith.

12. Considerations for Dissemination

FINRA notes in the proposal that:

> *"…[R]eporting of Asset-Backed Securities transactions will permit FINRA to obtain additional information, observe patterns of trading and otherwise engage in more in-depth surveillance of the Asset-Backed Securities market. FINRA will study the collected data to determine the volume and trading in various types of Asset-Backed Securities. FINRA may determine that dissemination of transaction information is warranted with respect to Asset-Backed Securities after it has had an opportunity to review data over a period of time."*

This approach reflects a careful consideration of the impacts post-trade reporting systems can have on market practices and liquidity. We strongly support using the results and insights obtained from regulatory reporting to decide whether and how dissemination should be rolled out, based on observed patterns of trading activity.

We have experienced, at times, a divergence of opinions within our membership on certain issues related to the dissemination of trade prices, similar to the distinctions noted by IOSCO in its consultation report. While there are areas of disagreement between various market participants as to the merits of and implementation of public post-trade price dissemination, market participants generally agree that unless carefully approached and designed, the impact of such requirements on liquidity could instead act to hamper a return to normal market conditions, thus acting counter to governments' efforts to safeguard financial stability and restore the provision of credit and lending to the economy.

IOSCO recently noted[12] that "*any post-trade transparency system should be tailored to take into account the unique characteristics of the SFP market in a particular jurisdiction*", and we agree broadly with this statement. ASF and SIFMA believe these unique features of securitization markets are important components of a cost-benefit analysis of post-trade reporting requirements. In the construction of this reporting rule proposal, we believe FINRA is appropriately following an approach that reflects the unique characteristics of ABS markets.

The factors mentioned above could lead to the conclusion that if dissemination of trade prices is indeed appropriate for a given market, different dissemination schemes may be appropriate for different asset classes, calibrated to the general levels of activity and liquidity in those markets. In liquid markets, presumably, more transparency already exists, and thus the implementation of trade price reporting may have a minimal impact on the willingness of market makers to supply liquidity to these markets. Indeed, in liquid markets such as Agency MBS passthroughs bid-ask spreads are generally very tight.

We note that liquidity has a number of components beyond measures of frequency of trading. Important to considerations of liquidity, especially in the context of price transparency, are the ease of execution and the ability to trade significant amounts of securities in large blocks. Central to the debate over previous price transparency efforts has been whether market liquidity and efficiency should be measured by trading costs (i.e., bid-ask spreads) or ability to execute/trade in significant size, or some combination of both measures.

In less liquid markets where securities are more credit or prepayment/structure sensitive (e.g., subordinated MBS/ABS, portions of the Agency CMO markets), and require a more robust pre-trade due diligence effort, bid/ask spreads tend to be wider. This reflects, to some degree, the illiquidity of these markets as well as the increased level of risk that a market-maker must take on in order to position securities in these markets. The experience in the corporate debt markets indicates that it may be appropriate to expect bid-ask spreads to tighten if and when dissemination of trade prices is implemented. The key, in these types of markets, would be to provide an appropriate level of transparency to investors without creating disincentives to market-makers to commit risk capital and provide liquidity to an extent that damages the liquidity for these more credit sensitive securities.

In attempting to assess the liquidity of markets, and thus the appropriate framework for trade price transparency, a number of factors should be considered. We note that these factors should be viewed as interdependent and connected. For example, liquidity is directly tied to the size and nature of the investor base for a product, which is connected to the homogeneity of the products and the complexity of the structures, and causation flows in multiple directions from factor to factor. Factors that are related to liquidity, and thus should be considered in any plans for dissemination, include:

- *The degree of secondary market trading in that asset class*
- *Nature of trading – flows, size, concentrations of volume around certain dates*
- *The initial and outstanding amount of the issue*
- *Complexity of the structure*
- *Credit ratings*
- *Size and composition of investor base*
- *The degree of standardization of structures and underlying collateral*

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[12] *Transparency of Structured Finance Products, Report of the Technical Committee of IOSCO*, available: <http://iosco.org/library/pubdocs/pdf/IOSCOPD306.pdf>

- *Assuring anonymity of market participants, such as only disclosing trade amounts up to a certain size (e.g., $5 million)*
- *Timing of Dissemination*
- *Cost-Benefit Analysis*

The "cost" of implementation should not only be considered the cost of implementation by dealers in monetary terms. The calculation of the ultimate "cost" of trade price reporting should also include any impact trade price reporting schemes have on financial markets. This impact could be positive, in terms of increased investor willingness to participate in markets, and increased trading volumes. Furthermore, experience in corporate debt markets has shown a correlation between trade reporting and compression of bid-ask spreads (i.e. a reduction in transaction costs).

On the other hand, trade reporting requirements carry with them risks of impacting the willingness of market markers to place capital at risk in certain sectors of securitization markets. Market makers, especially in the current environment of limited risk capital, must consider risk-adjusted returns on various business propositions. A market maker will demand an appropriate level of return for positioning any product, and if this return hurdle cannot be met, that market maker may decide not to participate in those markets. For less liquid products, which are likely to be more credit sensitive and risky, this hurdle will be higher, and less likely to be met. This would create disincentives to market makers from providing liquidity and maintaining inventories of bonds, negatively impacting the liquidity of those markets. Experience in corporate markets has provided examples of reductions in the commitment of capital to corporate trading desks at broker dealer firms, which impacts the depth of these markets, the ability for both dealer and investor participants to trade in significant sized blocks of securities, and the ability to execute trades in a timely fashion. Furthermore, many participants have noted that in the corporate context, much trading and risk capital was moved into synthetic markets, which seems to be contrary to the intentions of regulators.

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Please do not hesitate to contact George Miller of ASF at 212-313-1116 or Randy Snook of SIFMA at 212-313-1118 with any questions or for more information on any issue related to this proposal and comment letter.

Sincerely,

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