

November 14, 2016

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

Via Email to rule-comments@sec.gov

Re: File No. SR-FINRA-2016-032 – Partial Amendment No. 1

Dear Mr. Fields:

As a courtesy to commenters, attached is Partial Amendment No. 1 to the above-referenced proposed rule change that was filed with the Securities and Exchange Commission today. FINRA submitted by separate letter its response to comments on the proposed rule change.

If you have any questions, please contact me at [REDACTED] or [REDACTED].

Sincerely,



Alexander Ellenberg
Associate General Counsel

Attachment

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 19

SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549
 Form 19b-4

File No.* SR - 2016 - * 032

Amendment No. (req. for Amendments *) 1

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * Amendment * Withdrawal Section 19(b)(2) * Section 19(b)(3)(A) * Section 19(b)(3)(B) *

Rule

Pilot Extension of Time Period for Commission Action * Date Expires *
 19b-4(f)(1) 19b-4(f)(4)
 19b-4(f)(2) 19b-4(f)(5)
 19b-4(f)(3) 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 806(e)(1) * Section 806(e)(2) * Section 3C(b)(2) *

Exhibit 1 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Alexander Last Name * Ellenberg
 Title * Associate General Counsel
 E-mail *
 Telephone * Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

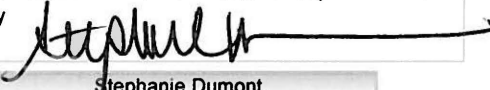
(Title *)

Date 11/14/2016

By Stephanie Dumont

(Name *)

Senior Vice President and Director of Capital Markets Policy



Stephanie Dumont,

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On August 15, 2016, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (the “Commission” or “SEC”) proposed rule change SR-FINRA-2016-032 (the “Proposal”), pursuant to which FINRA proposed to require members to disclose additional pricing information on confirmations of transactions in certain non-municipal fixed income transactions with retail customers.

The Commission published the proposed rule change for public comment in the Federal Register on August 19, 2016,¹ and received ten comments in response to the Proposal.² FINRA is submitting by separate letter its response to comments on the Proposal contemporaneously with this Partial Amendment No. 1. With this Partial Amendment No. 1, FINRA is including Exhibit 4, which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 1, and Exhibit 5, which reflects the changes to the current rule text that are proposed in the Proposal, as amended by this Partial Amendment No. 1.

As discussed in FINRA’s response to comments, this Partial Amendment No. 1 makes the following changes in response to concerns raised by commenters to the Proposal: (1) it clarifies the scope of the Proposal by adding the word “offsetting” to the Proposal’s “triggering” language in proposed Rule 2232(c)(2); (2) it further harmonizes the Proposal with a parallel proposal from the MSRB that is currently pending with the Commission;³ and (3) it extends the Proposal’s implementation timeline.

¹ Securities Exchange Act Release No. 78573 (August 15, 2016), 81 FR 55500 (August 19, 2016) (Notice of Filing of Proposed Rule Change; File No. SR-FINRA-2016-032).

² See Letters to the Commission from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, dated September 9, 2016 (“BDA Letter”); Norman L. Ashkenas, Chief Compliance Officer, Fidelity Brokerage Services, LLC, and Richard J. O’Brien, Chief Compliance Officer, National Financial Services, LLC, dated September 9, 2016 (“Fidelity Letter”); Mary Lou Von Kaenel, Managing Director, Financial Information Forum, dated September 9, 2016 (“FIF Letter”); Scott A. Eichhorn, Practitioner in Residence & Supervising Attorney, et al., Investor Rights Clinic, University of Miami School of Law, dated September 8, 2016 (“IRC Letter”); Hugh D. Berkson, President, Public Investors Arbitration Bar Association, dated September 7, 2016 (“PIABA Letter”); Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated September 8, 2016, and September 19, 2016 (“Reuters Letter I” and “Reuters Letter II”); Sean Davy, Managing Director, Capital Markets Division, and Leslie M. Norwood, Managing Director & Associate General Counsel, Municipal Securities Division, Securities Industry and Financial Markets Association, dated September 9, 2016 (“SIFMA Letter”); and Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, dated September 9, 2016 (“Wells Fargo Letter”); and Memorandum to the Commission from Rick A. Fleming, Investor Advocate, SEC, dated November 7, 2016 (“SEC Investor Advocate Memo”).

³ See Securities Exchange Act Release No. 78777 (September 7, 2016), 81 FR 62947 (September 13, 2016) (SR-MSRB-2016-12) (“MSRB Proposal”).

Clarify the Scope of the Proposal's Trigger Standard

One commenter on the Proposal, SIFMA, requested clarification on the scope of the same-day trigger standard. Specifically, SIFMA sought confirmation for its interpretation that the Proposal requires disclosure only in cases where a customer trade has an offsetting principal trade.⁴ SIFMA is correct that there must be offsetting customer and principal trades for the Proposal to be triggered, and FINRA submits this Partial Amendment No. 1 in part to ensure rule text clarity on this point, consistent with FINRA's original description of the Proposal.⁵ For example, if a member purchased 100 bonds at 9:30 AM, and then executed three customer buy orders for 50 bonds each in the same security on the same day without purchasing any more of the bonds, the Proposal would require mark-up disclosure on two of the three trades, since one of the trades would need to be satisfied out of the member's prior inventory rather than offset by the member's same-day principal transaction.

Harmonize the Proposal with the MSRB Proposal

Four commenters—BDA, Thomson Reuters, SIFMA, and FIF—addressed FINRA's statement in the Proposal that it intends to submit an additional filing to require members to add disclosures to non-institutional confirmations of the time of trade and a link to trade data reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). Three of these commenters asked that FINRA conform its forthcoming filing to parallel requirements included in the MSRB Proposal.⁶ The SEC Investor Advocate also stated generally that it is important for FINRA and the MSRB to adopt consistent rules related to confirmation disclosure.⁷

FINRA agrees that it is important to harmonize these additional disclosure requirements with the MSRB. Accordingly, FINRA submits this Partial Amendment No. 1 to propose requirements that it believes are identical to the MSRB's proposed requirements in all material respects. FINRA expects that as a result, FINRA's Proposal and the MSRB's Proposal will be fully aligned and adopt consistent and coordinated disclosure requirements, furthering a more harmonized implementation schedule.

⁴ See SIFMA Letter at 8.

⁵ See, e.g., Proposal, supra note 1, at 55500 (beginning the description of the Purpose of the Proposal by stating that it would require mark-up disclosure for customer trades "if the member also executes one or more offsetting principal transaction(s) on the same day as the customer trade, the aggregate size of which meets or exceeds the size of the customer trade"). FINRA notes, however, the Proposal is not meant to be drawn more narrowly to apply only to "matched trades," as the SIFMA Letter might suggest. To the extent SIFMA's use of the term "matched trades" is meant to imply that the principal and customer trade legs must both be known to the member when it arranges the trades, it would not accurately characterize the scope of the Proposal.

⁶ See BDA Letter at 2; SIFMA Letter at 12; Reuters II Letter at 3. The fourth commenter, FIF, raised operational concerns with the proposed additional requirements that are addressed in detail below.

⁷ See SEC Investor Advocate Memo at 6.

Specifically, with this Partial Amendment No. 1, FINRA proposes to amend Rule 2232 to require members to provide the following additional information on customer confirmations in connection with transactions in corporate and agency debt securities with non-institutional customers: (1) a reference, and a hyperlink if the confirmation is electronic, to a web page hosted by FINRA that contains Trade Reporting And Compliance Engine (TRACE) publicly available trading data for the specific security that was traded, in a format specified by FINRA, along with a brief description of the type of information available on that page;⁸ and (2) the execution time of the transaction, expressed to the second. FINRA notes that while these requirements are intended to complement mark-up disclosure, they would require confirmations to include a reference to TRACE and the time of execution for all trades with non-institutional customers in corporate and agency debt securities, regardless of whether the trades trigger the mark-up disclosure requirements of the Proposal.⁹

Description of the Purpose of the Proposed Additional Requirements

For all trades with non-institutional customers in corporate and agency debt securities, FINRA proposes to require members to provide a reference, and a hyperlink if the confirmation is electronic, to a web page hosted by FINRA that contains TRACE publicly available trading data for the specific security that was traded, in a format specified by FINRA, along with a brief description of the type of information available on that page. FINRA makes TRACE data for corporate and agency debt transactions publicly available on a trade-by-trade and aggregate basis, including, among other things, an end-of-day summary of corporate bond market activity

⁸ TRACE is the automated system developed by FINRA that, among other things, accommodates reporting and dissemination of transaction reports where applicable in TRACE-Eligible Securities. See FINRA Rule 6710(b). A “TRACE-Eligible Security” is defined as “a debt security that is United States (“U.S.”) dollar-denominated and issued by a U.S. or foreign private issuer, and, if a “restricted security” as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; or is a debt security that is U.S. dollar-denominated and issued or guaranteed by an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n).” See Rule 6710(a). Transactions that are executed during TRACE system hours generally must be reported within 15 minutes of the time of execution and are made immediately public. See Rule 6730 (Transaction Reporting) and 6750 (Dissemination of Transaction Information).

⁹ The MSRB originally filed a slightly broader scope for one of these requirements. In the original MSRB Proposal, the MSRB stated that all confirmations—both for non-institutional and institutional customers—must include the time of trade. The MSRB amended its original proposal in part to change the scope of these requirements so that they are the same as what FINRA proposes in this Partial Amendment No. 1. As a result of this amendment and the MSRB’s, both proposals will require the time of on non-institutional customer confirmations only. See Letter to the Commission from Michael L. Post, General Counsel – Regulatory Affairs, MSRB, dated November 14, 2016 (“MSRB Comment Response”).

which has the number of securities and total par amount traded as well as advances, declines, and 52-week highs and lows. FINRA believes that the TRACE data contains useful market information that may provide investors with a more comprehensive picture of the market for a security on a given day. FINRA also notes that retail customers typically have less ready access to market and pricing information than institutional customers, and believes that requiring a link to TRACE data will increase retail investors' awareness of, and ability to access, this information.¹⁰

Given the potential usefulness of TRACE data to retail customers, FINRA believes that the link to TRACE data should be required for all transactions involving non-institutional customers. FINRA also believes that using the definition of an institutional account as set forth in Rule 4512(c) to define the scope of this requirement is appropriate because firms use this definition in other rule contexts, therefore reducing the implementation costs associated with the Proposal, including Partial Amendment No. 1.¹¹ FINRA believes the proposed link to TRACE data will support retail investors accessing important data related to fixed income securities, providing them with a more comprehensive picture of the market for a security on a given day, and ultimately assist them in understanding and comparing the transaction costs associated with their purchases and sales of fixed income securities.

FINRA also proposes to require members to disclose on the customer confirmation the execution time of the customer trade, expressed to the second, for all non-institutional customer trades in corporate and agency debt securities. FINRA believes that providing the execution time of the customer trade on the customer confirmation will enable customers to better identify their own trades using TRACE data. Under FINRA Rule 6730(c)(8), firms must include time of execution on each TRACE report, which is then disseminated by FINRA at the second level.¹² Disclosing to customers the time of their trades will enable the customers to identify which of the trades published in the TRACE data are their trades and compare the price of their trades as reported to TRACE to the prices at which other market participants traded that bond on the same trading day.¹³

¹⁰ FINRA and the MSRB conducted investor testing in connection with this proposed requirement, and the results showed that investors would find a link to security-specific trade information to be most useful.

¹¹ A more detailed discussion of anticipated costs associated with this proposed requirement, and FINRA's efforts to mitigate them—including efforts to develop a short, uniform template for a security-specific TRACE reference or link—is included below.

¹² See <http://www.finra.org/industry/trace/corporate-bond-data>.

¹³ A majority of investors that took part in FINRA and the MSRB's investor testing indicated that disclosing the time of their trade would be useful, especially if it would enable them to better identify their trade on TRACE. FINRA notes that the MSRB Proposal contains a similar requirement, except its proposal calls for confirmation disclosure of trade execution time at the minute level to be consistent with the way the MSRB's trade dissemination system (EMMA) displays trade information. See MSRB Proposal, *supra* note 3, at 62951 n.29. FINRA is proposing in this filing that time of

While FINRA recognizes that there will be operational burdens associated with this proposed additional requirement, FINRA believes that the systems to capture this information for provision to customers should already be in place, given that current rules already require members to capture and maintain this information with respect to each customer transaction. Specifically, under SEC Rule 10b-10, a broker-dealer, in connection with any transaction in any security, except for U.S. Savings Bonds or municipal securities, is required to disclose the date and time of the transaction, or the fact that the time of the transaction will be furnished upon written request to such customer.¹⁴

Statutory Basis for the Proposed Additional Requirements

FINRA believes that the proposed additional requirements are consistent with the provisions of Section 15A(b)(6) of the Securities Exchange Act (“Act”),¹⁵ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of the Act,¹⁶ which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that the proposed additional requirements are consistent with the Act because they will provide retail customers with meaningful and useful additional information that is either not readily available through existing data sources, *i.e.*, the time of the customer trade, or is not always known or easily accessible to investors, *i.e.*, TRACE data. This belief is supported by investor testing, which indicates that investors find the proposed requirements useful. FINRA believes that the proposed additional requirements will better enable customers to evaluate the cost of the services that members provide, and will promote transparency into members’ pricing practices and encourage communications between members and their customers about the execution of their fixed income transactions. The proposed additional requirements also will provide customers with additional information that may assist them in detecting practices that are possibly improper, which would supplement FINRA’s own surveillance and enforcement program.

Statement on Burden on Competition and Economic Impact Assessment of Proposed Additional Requirements

FINRA does not believe that the proposed additional requirements will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will apply equally to all similarly situated members. FINRA has performed an economic impact assessment to inform this amendment.

execution be disclosed at the second level to align with TRACE dissemination, which displays trade execution times at the second level.

¹⁴ See 17 CFR 240.10b-10(a)(1). The Rule defines “time of the transaction” as “the time of execution, to the extent feasible, of the customer’s order.” See Rule 10b-10(d)(3).

¹⁵ 15 U.S.C. 78o-3(b)(6).

¹⁶ 15 U.S.C. 78o-3(b)(9).

(a) Need for the Rule

As noted above, the proposed additional requirements are intended to complement the mark-up disclosure that would be required by the Proposal, and to harmonize FINRA's Proposal with the MSRB Proposal. With the additional data points that would be included on a customer confirmation as a result of these proposed additional requirements, a retail customer should receive valuable information about market activity on the bond transacted at the time of the customer's transaction, which in turn should assist the customer in understanding, comparing, and evaluating the disclosed mark-up associated with the trade.

(b) Economic Baseline

These proposed additional requirements are expected to impact investors' awareness of, and ability to access, the comprehensive pricing information available through TRACE data. As noted above, FINRA performed investor testing, which demonstrated that approximately a quarter of the investors that participated in the test recall seeing screenshots for FINRA's web page where TRACE data is available. Even though awareness of FINRA's hosted web access to TRACE data may be limited, the investors who have familiarity with FINRA's market data web page refer to TRACE data frequently for researching fixed income securities. This is evidence that once introduced, TRACE data can be a valuable tool for investors. Indeed, over 90 percent of the overall participants of the investor testing indicated that a link to TRACE data would be useful.

In order to provide investors with easier access to relevant pricing information, these proposed additional requirements would impose costs on broker-dealers in the retail market of corporate and agency debt securities by requiring disclosure of additional information on customer confirmations. As further discussed below, these direct impacts include the costs to incorporate the required information onto customer confirmations, and indirect impacts may include competitive pricing pressure resulted from investors' better understanding of transaction costs.

To estimate the number of transactions and firms potentially impacted by the proposed rule, the staff reviewed information about activities in the third quarter of 2015. For this period, the average daily number of retail-size customer trades was 18,330 in corporate debt securities and 676 in agency debt securities. The transactions were mainly concentrated among large firms. For example, the top 20 broker-dealers with the highest volumes accounted for roughly 70 percent of the transactions for both corporate and agency debt securities.

(c) Economic Impacts

(i) Benefits

FINRA believes that the proposed additional requirements will provide retail customers with meaningful and useful additional information that is either not readily available through existing data sources (*i.e.*, the time of the customer trade), or is not always easily accessible or known to investors (*i.e.*, TRACE data). The execution time combined with a reference or link to security-specific TRACE data will enable a retail investor to easily identify all transactions in the same specific fixed income security around the time of the customer's execution, which should improve the investor's understanding of the market conditions. While the mark-up disclosure that would be required by the original Proposal will provide investors with trade and dealer-

specific information, these proposed additional requirements will provide security-level information concerning individual trades. According to investor testing, many investors would find a link to TRACE data “very useful.”¹⁷

As discussed above, even though TRACE data is used frequently among investors who are aware of it, there is evidence that it is still not widely known to retail customers. Including a reference or link to TRACE data on customer confirmations may effectively increase the usage of TRACE data and promote price transparency in the retail market of fixed income securities. It may also provide FINRA the opportunity to link investors to other educational material related to fixed income transactions that FINRA believes could improve investors’ ability to evaluate their investment experience.

(ii) Costs

FINRA recognizes that the proposed additional requirements may impose burdens and costs on members. FINRA expects the costs to be limited.¹⁸ As discussed above, members should already have the systems to capture the execution time in compliance with the disclosure requirements of SEC Rule 10b-10. FINRA understands that requiring disclosure for retail transactions would require firms to build into their systems a way to identify those transactions that would be subject to the proposed rule, and that those transactions are not identical to the transactions that would be necessarily subject to the mark-up disclosure requirements of the Proposal. Some firms may choose to provide these proposed disclosures to more transactions than required if it is less expensive than other methods of ensuring compliance with the proposals. For example, firms may find it more economical to provide execution time and reference or link to TRACE data to both retail and institutional transactions.

FINRA is developing technology that it believes may mitigate costs associated with modifying systems to include the required reference or link to a security-specific TRACE webpage. Specifically, FINRA is in the process of developing a webpage linkage system that will create a short, uniform link template that could be included on customer confirmations. FINRA anticipates that the link template would include a short domain name followed by a slash and the specific security CUSIP. FINRA believes that by developing this short, uniform link template, it can limit the space required on each confirmation for the required TRACE reference or link. FINRA also believes a short, uniform link template would make automation of the requirement more feasible, since the link would only include two pieces of information: (1) the short domain name, which would remain constant; and (2) the security-specific CUSIP, which members already include on customer confirmations. FINRA intends to work with firms to obtain input and expects to finalize and publish the short uniform link template well before the

¹⁷ FINRA notes that the proposed additional requirements may also provide regulatory benefits, as disclosing additional trade-related information to customers may assist them in detecting practices that are possibly improper, which would supplement FINRA’s own surveillance and enforcement program.

¹⁸ As further discussed in the next section below, this is consistent with feedback received from some member firms.

Proposal as modified by Partial Amendment No. 1 takes effect, with sufficient time for further feedback and implementation.

(iii) Effect on Competition

To the extent that the proposed additional requirements would expand the usage of TRACE and increase price transparency in the retail market of corporate and agency debt securities, they may assist in promoting price competition among dealers, which may lead to lower transaction costs.¹⁹

(d) *Alternatives Considered*

FINRA considered requiring a reference or link to a generic homepage where an investor could search for security-specific TRACE data, but decided to require a CUSIP-specific reference or link because investor testing shows that investors would find a link to security-specific trade information to be most useful. FINRA also considered requiring confirmation disclosure of trade execution time at the minute level, rather than the second level. However, time of execution is currently reported to and disseminated by TRACE at the second level. To align with these current TRACE reporting and dissemination protocols, FINRA is proposing confirmation disclosure of execution time at the second level.

Discussion of Comments On the Proposed Additional Requirements

While these proposed additional requirements were originally contemplated to be the subject of a separate filing that would follow the Proposal FINRA has had the opportunity to receive and evaluate feedback on them at several points. First, FINRA received comments on these proposed requirements when it began to solicit input on fixed income pricing disclosure concepts in Regulatory Notices 14-52 and 15-36. Notably, one commenter stated in response to Regulatory Notice 14-52 that providing CUSIP-specific links to TRACE on customer confirmations would be “fairly easy” if FINRA adopts a retail customer-friendly hyperlink protocol.²⁰

¹⁹ For example, an academic paper finds that transaction costs of corporate bonds decreased when TRACE began to publicly disseminate trade prices. The paper concludes that “public traders benefit significantly from price transparency.” Edwards, Amy K., Lawrence E. Harris, and Michael S. Piwowar. “Corporate Bond Market Transaction Costs and Transparency.” *The Journal of Finance* 62.3 (2007): 1421-1451.

²⁰ See Letter to FINRA and the MSRB from Norman L. Ashkenas, Chief Compliance Officer, Fidelity Brokerage Services, LLC, and Richard J. O’Brien, Chief Compliance Officer, National Financial Services, LLC, dated January 20, 2015 (“Fidelity Letter on 14-52”) at 7. FINRA acknowledges that this comment was intended to illustrate the general feasibility of providing links to TRACE data on customer confirmations as a potential alternative to the proposed mark-up disclosure requirement that FINRA described in Regulatory Notice 14-52. All comments that FINRA received on Regulatory Notice 14-52 are attached to the Proposal in Exhibit 2.

In response to Regulatory Notice 15-36, three commenters opposed a proposed requirement to disclose the time of the execution of the customer transaction.²¹ FIF stated that this proposal would create additional expense for firms, and that it could not be adjusted in connection with any trade modifications, cancellations or corrections.²² FIF also indicated that the execution time was not necessary for securities that trade infrequently, as investors should not have difficulty ascertaining the prevailing market price at the time of their trade.²³ Schwab indicated that this would not be a necessary data point for investors.²⁴

Other commenters, however, supported including the time of execution of the customer trade. Thomson Reuters stated that including the time of execution would allow retail investors to more easily identify relevant trade data on TRACE²⁵ and FSI stated that this would allow investors to understand the market for their security at the time of their trade.²⁶

Commenters on Regulatory Notice 15-36 also supported adding a link to TRACE data in some form.²⁷ Schwab supported adding a link to security-specific TRACE information, provided FINRA worked to develop a short URL that could fit on a customer confirmation.²⁸ FSI and SIFMA supported the proposal to add a link to the TRACE website on customer confirmations instead of a CUSIP-specific link, as a CUSIP-specific link could be inaccurate or misleading, and

²¹ See Letters to FINRA from Darren Wasney, Program Manager, Financial Information Forum, dated December 11, 2015 (“FIF Letter on 15-36”) at 5; Jason Clague, Senior Vice President, Trading & Middle Office Services, Charles Schwab & Co., Inc., dated December 11, 2015 (“Schwab Letter on 15-36”) at 6; Sean Davy, Managing Director, Capital Markets Division, and Leslie M. Norwood, Managing Director & Associate General Counsel, Municipal Securities Division, Securities Industry and Financial Markets Association, dated December 11, 2015 (“SIFMA Letter on 15-36”) at 16. All comments that FINRA received on Regulatory Notice 15-36 are attached to the Proposal in Exhibit 2.

²² See FIF Letter on 15-36 at 5.

²³ See FIF Letter on 15-36 at 6.

²⁴ See Schwab Letter on 15-36 at 6.

²⁵ See Letter to FINRA from Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated December 11, 2015 (“Reuters Letter on 15-36”) at 2.

²⁶ See Letter to FINRA and MSRB from David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, dated December 11, 2015 (“FSI Letter on 15-36”) at 7.

²⁷ See Letter to FINRA and MSRB from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, dated December 11, 2015 (“BDA Letter on 15-36”) at 3; letter to FINRA from Chris Melton, Executive Vice President, Coastal Securities (“Coastal Securities Letter on 15-36”); FSI Institute Letter on 15-36 at 6.

²⁸ See Schwab Letter on 15-36 at 6.

could be difficult for firms to implement.²⁹ BDA stated that a general link to the main TRACE page would be operationally easier to achieve than a security-specific link.³⁰

In addition to the comments that FINRA received on Regulatory Notices 14-52 and 15-36, FINRA has evaluated the comments submitted on the MSRB Proposal, which includes the proposed additional requirements that FINRA now seeks to add through Partial Amendment No. 1. To the extent commenters opposed these elements of the MSRB's Proposal, they did so primarily on the basis of harmonization, because FINRA had not yet proposed the same requirements, and on the basis of operational cost or burden.³¹

FINRA has thoroughly and carefully evaluated all of the comments that relate to the additional requirements it proposes in Partial Amendment No. 1. FINRA believes it is appropriate to pursue these requirements as an amendment to the Proposal in response to the strong call from commenters to harmonize the proposed disclosure requirements put forth by FINRA and the MSRB. In addition, for the reasons explained above, which are similarly discussed in the MSRB's response to comments on the MSRB Proposal,³² FINRA believes it has modified the requirements in a way that significantly mitigates the operational concerns that commenters have identified, particularly with respect to the format for the required reference or link to TRACE data. Finally, FINRA notes that it is extending the implementation timeline for the Proposal from one year to eighteen months, which it believes should mitigate the commenters' potential concerns with these requirements even further.

Extended Implementation Timeline

FINRA stated in the Proposal that if it is approved by the Commission, it will become effective no later than 365 days from approval.³³ As FINRA explains more fully in its separate response to comments, it has determined, based on concerns raised by commenters, to amend the Proposal to extend the [implementation period before rule effectiveness from one year to eighteen months. One of the primary purposes of this extended implementation is to provide firms more time and added flexibility in committing the necessary resources to implement the Proposal, which should help to mitigate the costs of implementation. FINRA believes this change is an appropriate balance of the commenters' cost concerns and the strong desire to begin delivering additional pricing information to customers under the Proposal as soon as practicable.

²⁹ See FSI Institute Letter on 15-36 at 6; SIFMA Letter on 15-36 at 19. SIFMA also noted that should FINRA proceed with a requirement to disclose a security-specific link to TRACE data, it must develop a short URL convention to ease implementation.

³⁰ See BDA Letter on 15-36 at 3.

³¹ See MSRB Comment Response, supra note 9, at 4-6.

³² See id. at 6.

³³ See Proposal, supra note 1, at 55503.

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed new language in this Partial Amendment No. 1 is underlined; proposed deletions in this Partial Amendment No. 1 are in brackets.

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0100. GENERAL STANDARDS

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0150. Application of Rules to Exempted Securities Except Municipal Securities

(a) through (d) No Change.

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2000. DUTIES AND CONFLICTS

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2200. COMMUNICATIONS AND DISCLOSURES

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2230. Customer Account Statements and Confirmations

2232. Customer Confirmations

(a) through (b) No Change.

(c) A confirmation shall include the member's mark-up or mark-down for the transaction, to be calculated in compliance with Rule 2121, expressed as a total dollar amount and as a percentage of the prevailing market price if:

(1) the member is effecting a transaction in a principal capacity in a corporate or agency debt security with a non-institutional customer, and

(2) the member purchased (sold) the security in one or more offsetting transactions in an aggregate trading size meeting or exceeding the size of such sale to

(purchase from) the non-institutional customer on the same trading day as the non-institutional customer transaction. If any such transaction occurs with an affiliate of the member and is not an arms-length transaction, the member is required to “look through” to the time and terms of the affiliate’s transaction with a third party in the security in determining whether the conditions of this paragraph have been met.

(d) A member shall not be required to include the disclosure specified in paragraph (c) above if:

(1) the non-institutional customer transaction was executed by a principal trading desk that is functionally separate from the principal trading desk within the same member that executed the member purchase (in the case of a sale to a customer) or member sale (in the case of a purchase from a customer) of the security, and the member had in place policies and procedures reasonably designed to ensure that the functionally separate principal trading desk through which the member purchase or member sale was executed had no knowledge of the customer transaction; or

(2) the member acquired the security in a fixed-price offering and sold the security to non-institutional customers at the fixed price offering price on the day the securities were acquired.

(e) For all transactions in corporate or agency debt securities with non-institutional customers, the member shall also provide on the confirmation: (1) a reference, and hyperlink if the confirmation is electronic, to a web page hosted by FINRA that contains Trade Reporting And Compliance Engine (TRACE) publicly available trading data for the specific security that was traded, in a format specified by FINRA, along with a brief description of the type of

information available on that page; and (2) the execution time of the customer transaction, expressed to the second.

([e]f) Definitions

For purposes of this Rule, the term:

- (1) “agency debt security” shall have the same meaning as in Rule 6710(l);
- (2) “corporate debt security” shall mean a debt security that is United States (“U.S.”) dollar-denominated and issued by a U.S. or foreign private issuer and, if a “restricted security” as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A, but does not include a Money Market Instrument as defined in Rule 6710(o) or an Asset-Backed Security as defined in Rule 6710(cc);
- (3) “arms-length transaction” shall mean a transaction that was conducted through a competitive process in which non-affiliate firms could also participate, and where the affiliate relationship did not influence the price paid or proceeds received by the member; and
- (4) “non-institutional customer” shall mean a customer with an account that is not an institutional account, as defined in Rule 4512(c).

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EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change, as amended by this Partial Amendment No. 1. Proposed new language is underlined; proposed deletions are in brackets.³⁴

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0100. GENERAL STANDARDS

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0150. Application of Rules to Exempted Securities Except Municipal Securities

(a) through (b) No Change.

(c) Unless otherwise indicated within a particular Rule, the following FINRA and NASD rules are applicable to transactions in, and business activities relating to, exempted securities, except municipal securities, conducted by members and associated persons: FINRA Rules 2010, 2020, 2060, 2111, 2122, 2150, 2210, 2211, 2212, 2232, 2261, 2268, 2269, 2320(g), 3110, 3220, 3270, 3280, 4120, 4130, 4210, 4311, 4330, 4360, 4510 Series, 4530, 5160, 5210, 5220, 5230, 5310, 5340, 6700 Series, 8110, 8120, 8210, 8310, 8311, 8312, 8320, 8330 and 9552; NASD Rules 2340, 2510, 3050 and 3140.

(d) No Change.

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2000. DUTIES AND CONFLICTS

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2200. COMMUNICATIONS AND DISCLOSURES

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2230. Customer Account Statements and Confirmations

³⁴ The text of Rule 0150 reflects rule text approved by the SEC but not effective until July 10, 2017. See Securities Exchange Act Release No. 79116 (October 18, 2016), 81 FR 73167 (October 24, 2016) (Order Approving File No. SR-FINRA-2016-027).

2232. Customer Confirmations

(a) through (b) No Change.

(c) A confirmation shall include the member's mark-up or mark-down for the transaction, to be calculated in compliance with Rule 2121, expressed as a total dollar amount and as a percentage of the prevailing market price if:

(1) the member is effecting a transaction in a principal capacity in a corporate or agency debt security with a non-institutional customer, and

(2) the member purchased (sold) the security in one or more offsetting transactions in an aggregate trading size meeting or exceeding the size of such sale to (purchase from) the non-institutional customer on the same trading day as the non-institutional customer transaction. If any such transaction occurs with an affiliate of the member and is not an arms-length transaction, the member is required to "look through" to the time and terms of the affiliate's transaction with a third party in the security in determining whether the conditions of this paragraph have been met.

(d) A member shall not be required to include the disclosure specified in paragraph (c) above if:

(1) the non-institutional customer transaction was executed by a principal trading desk that is functionally separate from the principal trading desk within the same member that executed the member purchase (in the case of a sale to a customer) or member sale (in the case of a purchase from a customer) of the security, and the member had in place policies and procedures reasonably designed to ensure that the functionally separate principal trading desk through which the member purchase or member sale was executed had no knowledge of the customer transaction; or

(2) the member acquired the security in a fixed-price offering and sold the security to non-institutional customers at the fixed price offering price on the day the securities were acquired.

(e) For all transactions in corporate or agency debt securities with non-institutional customers, the member shall also provide on the confirmation: (1) a reference, and hyperlink if the confirmation is electronic, to a web page hosted by FINRA that contains Trade Reporting And Compliance Engine (TRACE) publicly available trading data for the specific security that was traded, in a format specified by FINRA, along with a brief description of the type of information available on that page; and (2) the execution time of the customer transaction, expressed to the second.

(f) Definitions

For purposes of this Rule, the term:

(1) “agency debt security” shall have the same meaning as in Rule 6710(l);

(2) “corporate debt security” shall mean a debt security that is United States (“U.S.”) dollar-denominated and issued by a U.S. or foreign private issuer and, if a “restricted security” as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A, but does not include a Money Market Instrument as defined in Rule 6710(o) or an Asset-Backed Security as defined in Rule 6710(cc);

(3) “arms-length transaction” shall mean a transaction that was conducted through a competitive process in which non-affiliate firms could also participate, and where the affiliate relationship did not influence the price paid or proceeds received by the member; and

(4) “non-institutional customer” shall mean a customer with an account that is not an institutional account, as defined in Rule 4512(c).

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