

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67798; File No. SR-FINRA-2012-042)

September 7, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Post-Trade Transparency for Agency Pass-Through Mortgage-Backed Securities Traded in Specified Pool Transactions and SBA-Backed Asset-Backed Securities Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on August 29, 2012, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the FINRA Rule 6700 Series and Trade Reporting and Compliance Engine (“TRACE”) dissemination protocols regarding the reporting and dissemination of transactions in TRACE-Eligible Securities that are: (1) Agency Pass-Through Mortgage-Backed Securities traded in Specified Pool Transactions (“MBS Specified Pool transactions”) and (2) Asset-Backed Securities backed by loans guaranteed as to principal and interest by the Small Business Administration (“SBA-Backed ABS”) and traded either in Specified Pool Transactions or to be announced (“TBA”) (collectively, “SBA-Backed ABS transactions”).³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The terms TRACE-Eligible Security, Agency Pass-Through Mortgage-Backed Security, Specified Pool Transaction, Asset-Backed Security and To Be Announced are defined in,

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

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

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

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

1. Purpose

On April 18, 2012, the SEC approved the TBA Amendments to provide for the dissemination of MBS TBA transactions, subject to dissemination caps, and concomitant reductions in the reporting periods for such transactions, which will become effective November 5, 2012.⁴ FINRA is proposing to expand transparency further in the market for Asset-Backed

respectively, Rule 6710(a), Rule 6710(v), Rule 6710(x), Rule 6710(m) and Rule 6710(u). The definition of SBA-Backed ABS is proposed in Rule 6710(bb).

⁴ The proposed rule text includes the amendments to the FINRA Rule 6700 Series to provide for reduced reporting times and dissemination of transactions in TRACE-Eligible Securities that are Agency Pass-Through Mortgage-Backed Securities that are traded To Be Announced ("TBA") ("MBS TBA transactions"), which were approved by the SEC and will become effective November 5, 2012. See Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (Order Approving File No. SR-FINRA-2012-020) and Regulatory Notice 12-26 (May 2012) ("TBA Amendments").

The TBA Amendments distinguished between MBS TBA transactions for good delivery

Securities in the proposed rule change, which provides for the dissemination of MBS Specified Pool and SBA-Backed ABS transactions, subject to dissemination caps, and concomitant reductions in the reporting periods for such transactions.

FINRA proposes to amend Rule 6730 to reduce, in two stages, the time frames to report MBS Specified Pool and SBA-Backed ABS transactions. FINRA also proposes minor clarifying amendments to Rule 6730(a)(3)(D) and (E) to specify that the reporting requirements set forth therein apply solely to MBS TBA transactions. In connection with such changes, FINRA proposes amendments in Rule 6710 to the definitions of “Agency Pass-Through Mortgage-Backed Security,” “To Be Announced (‘TBA’),” and “Specified Pool Transaction,” and a new defined term, “SBA-Backed ABS.” Finally FINRA proposes to amend Rule 6750 to provide for the dissemination of MBS Specified Pool and SBA-Backed ABS transactions, and proposes to establish, as part of TRACE dissemination protocols, the specific data elements of the transactions that will be disseminated as well as a \$10 million dissemination cap for such transactions.

MBS Specified Pool Transactions

Generally, Agency Pass-Through Mortgage-Backed Securities are traded either TBA or in Specified Pool Transactions as defined in Rule 6710(u) and (x), respectively. In MBS Specified Pool transactions, on the date of trade (trade date), the seller agrees to deliver to the buyer a specific Agency Pass-Through Mortgage-Backed Security identifiable by a unique identification number, representing a specific pool of mortgage loans. In an MBS TBA

(“MBS TBA transactions GD”) and not for good delivery (“MBS TBA transactions NGD”). In response to comments, FINRA proposed a longer period to timely report, and lower dissemination caps for, MBS TBA transactions NGD than the requirements proposed for MBS TBA transactions GD.

transaction, the mortgage pools to be delivered are described (e.g., by program, interest rate, type of residential mortgage, maturity) but are not specifically identified, and will not be identified until shortly before settlement. While the majority of Agency Pass-Through Mortgage-Backed Securities are traded TBA, the daily volume of MBS Specified Pool transactions represents significant economic activity in mortgage-related securities, and FINRA believes that additional transparency in such securities is appropriate. The reported transaction data shows that MBS Specified Pool transaction pricing is strongly correlated to (and in general is priced at a premium over) the pricing of similar mortgage pools traded in the substantially larger MBS TBA market. Moreover, the two market sectors exhibit similar trading characteristics, and the same programs dominate both markets. For example, approximately 98 percent of the total volume in MBS Specified Pool transactions, and approximately 95 percent of the total volume in MBS TBA transactions, occurs in securities backed by single-family mortgage loans.⁵ Accordingly, the TRACE data sets are complimentary and the dissemination of the additional pricing information for MBS Specified Pool transactions will further improve transparency in the Agency Pass-Through Mortgage-Backed Securities market.

SBA-Backed ABS Transactions

SBA-Backed ABSs are Asset-Backed Securities created from pooling loans made to small business by banks and other financial institutions in conformity with the program requirements of the Small Business Administration (“SBA”). Loans that meet the SBA’s

⁵ Over half of all transactions in MBS Specified Pool transactions, and approximately 77 percent of all transactions in MBS TBA transactions, occur in Federal National Mortgage Association (“Fannie Mae”) program securities. The information is based on FINRA staff’s review of all Asset-Backed Securities transactions reported to TRACE from May 16, 2011 through October 31, 2011.

requirements are guaranteed by SBA as to the timely payment of principal and interest, and pools are then created to issue SBA-Backed Asset-Backed Securities.

SBA-Backed ABS also are traded TBA and in Specified Pool Transactions.⁶ Like Agency Pass-Through Mortgage-Backed Securities discussed above, such TBA trading may occur because market participants may anticipate with some certainty the creation of loan pools and are aware of the pool characteristics, and the extent to which such loan pools are fungible with previously-settled SBA-Backed ABS. FINRA proposes that both types of SBA-Backed ABS transactions be subject to dissemination.

Amendments to Defined Terms

FINRA proposes to define “SBA-Backed ABS” in proposed Rule 6710(bb) as an Asset-Backed Security issued in conformity with a program of the Small Business Administration (“SBA”), for which the timely payment of principal and interest is guaranteed by the SBA, representing ownership interest in a pool (or pools) of loans and structured to “pass through” the principal and interest payments made by the borrowers in such loans to the holders of the security on a pro rata basis.

In connection with the proposed addition of the definition of SBA-Backed ABS, FINRA also proposes amendments to the definitions of “To Be Announced (‘TBA’)” and “Specified Pool Transaction” in Rule 6710(u) and Rule 6710(x), respectively. Both definitions currently

⁶ SBA-Backed ABS transactions constitute a very minor portion of all Specified Pool Transactions. SBA-Backed ABS Specified Pool Transactions account for only 0.41 percent of the combined total volume of all Specified Pool Transactions (*i.e.*, the total volume of Agency Pass-Through Mortgage Backed-Securities and SBA-Backed ABS traded in Specified Pool Transactions).

apply only to Agency Pass-Through Mortgage-Backed Securities. As amended, both terms would include transactions in SBA-Backed ABS.⁷ In addition, FINRA proposes amendments to the definition of “Agency Pass-Through Mortgage-Backed Security” in Rule 6710(v) to incorporate minor, technical changes to the defined term.⁸

Reduction of Reporting Period

Currently, Asset-Backed Securities transactions (except certain pre-issuance transactions in collateralized mortgage obligations (“CMOs”) and real estate mortgage investment conduits (“REMICs”)) that are executed on a business day through 5:00:00 p.m. Eastern Time must be reported to TRACE on the Trade Date during TRACE System Hours, as provided in Rule 6730(a)(3)(A)(i), subject to the exceptions for transactions executed after 5:00:00 p.m. and

⁷ As revised, Rule 6710(u) would provide:

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

As revised, Rule 6710(x) would provide:

“Specified Pool Transaction” means a transaction in an Agency Pass-Through Mortgage-Backed Security as defined in paragraph (v) or an SBA-Backed ABS as defined in paragraph (bb) requiring the delivery at settlement of a pool or pool(s) that is identified by a unique pool identification number at the Time of Execution.

⁸ As revised, Rule 6710(v) would provide:

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

during times when the TRACE System is not open in Rule 6730(a)(3)(A)(ii) and (iii). In contrast, secondary market transactions in all other TRACE-Eligible Securities must be reported within 15 minutes of the Time of Execution.⁹ With certain exceptions, transaction information on such TRACE-Eligible Securities is disseminated as soon as the transaction is reported, and the 15-minute reporting requirement results in meaningful price transparency for market participants trading such securities.¹⁰ In addition, effective November 5, 2012, MBS TBA transactions will be disseminated, and, in connection with their dissemination, the time frames for timely reporting such transactions will be reduced to provide market participants meaningful and timely price information about MBS TBA transactions.¹¹

In connection with proposing that MBS Specified Pool and SBA-Backed ABS transactions be disseminated, FINRA proposes to reduce the reporting time frames for such transactions for the same reasons. The proposed reduction of the reporting time frames would occur in two stages to permit industry participants time to adjust policies and procedures and to make required technological changes, as also done in connection with the TBA Amendments.

The requirements to report MBS Specified Pool and SBA-Backed ABS transactions are set forth in, respectively, proposed Rule 6730(a)(3)(F) and proposed Rule 6730(a)(3)(G). First,

⁹ The term Time of Execution is defined in Rule 6710(d).

¹⁰ See Rule 6750(b) for exceptions to dissemination. See also supra note 4 regarding the TBA Amendments and dissemination of MBS TBA transactions.

¹¹ See supra note 4. Under the TBA Amendments, which become effective November 5, 2012, MBS TBA transactions GD must be reported generally within 45 minutes of the Time of Execution until May 10, 2013 (reduced to 15 minutes after May 10, 2013), and MBS TBA transactions NGD be reported within 120 minutes until May 10, 2013 (reduced to 60 minutes after May 10, 2013). Both reporting requirements are subject to exceptions for transactions executed close to the end of the business day or when the TRACE system is not open.

FINRA proposes to reduce the reporting period for MBS Specified Pool and SBA-Backed ABS transactions from no later than the close of the TRACE system on Trade Date to no later than two hours (i.e., 120 minutes) from the Time of Execution for the duration of the proposed MBS Specified Pool Pilot Program and the proposed SBA-Backed ABS Pilot Program in, respectively, proposed Rule 6730(a)(3)(F)(i) and proposed Rule 6730(a)(3)(G)(i).¹² Like the reporting requirements currently in effect for other TRACE-Eligible Securities, FINRA also proposes exceptions to the 120-minute time frame for transactions executed near the end of the business day or when the TRACE system is not open.¹³ Second, after the pilot programs expire, the reporting periods for MBS Specified Pool and SBA-Backed ABS transactions would be reduced

¹² Proposed Rule 6730(a)(3)(F)(i) and proposed Rule 6730(a)(3)(G)(i) each incorporate by reference Rule 6730(a)(3)(E)(i)a. through d., which provides for a 120-minute reporting time frame in Rule 6730(a)(3)(E)(i)b.

Each of the pilot programs would expire after approximately 180 days. To accommodate member requests that, if possible, rule changes requiring technology changes occur on a Friday, proposed Rule 6730(a)(3)(F)(i) and proposed Rule 6730(a)(3)(G)(i) provide that the MBS Specified Pool Pilot Program and the SBA-Backed ABS Pilot Program each would expire on a Friday (i.e., on the 180th day, if a Friday, or, if the 180th day is not a Friday, on the Friday next occurring that the TRACE system is open).

¹³ See proposed Rule 6730(a)(3)(F)(i) and proposed Rule 6730(a)(3)(G)(i), which incorporate by reference Rule 6730(a)(3)(E)(i)a., c. and d., which apply to transactions executed near the end of the business day or when the TRACE system is not open. Under Rule 6730(a)(3)(E)(i)a., transactions executed on a business day at or after 12:00:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 120 minutes after the TRACE system opens. Under Rule 6730(a)(3)(E)(i)c., transactions executed on a business day less than 120 minutes before 6:30:00 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 120 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated “as/of” and include the date of execution. Under Rule 6730(a)(3)(E)(i)d., transactions executed on a business day at or after 6:30:00 p.m. Eastern Time through 11:59:59 p.m. Eastern Time or on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T + 1), no later than 120 minutes after the TRACE system opens, designated “as/of” and include the date of execution.

from no later than two hours (120 minutes) from the Time of Execution to no later than one hour (60 minutes) from the Time of Execution, as set forth in, respectively, proposed Rule 6730(a)(3)(F)(ii) and proposed Rule 6730(a)(3)(G)(ii).¹⁴ Currently, approximately 84 percent of MBS Specified Pool and SBA-Backed ABS transactions are reported within two hours of execution, and approximately 75 percent are reported within one hour of execution.

After the 60-minute reporting requirement is implemented, FINRA will continue to review the reporting of MBS Specified Pool and SBA-Backed ABS transactions and may recommend further reductions in the reporting period.

FINRA also proposes minor clarifying amendments to Rule 6730(a)(3)(D) and (E) to specify that the reporting requirements set forth therein apply solely to MBS TBA transactions.

Dissemination

Amendment to Rule 6750

Although members began reporting transactions in Asset-Backed Securities to TRACE on May 16, 2011, FINRA currently does not disseminate publicly Asset-Backed Securities transaction data reported to TRACE as provided in Rule 6750(b)(4). However, on November 5, 2012, transparency in Asset-Backed Securities transactions will increase significantly with the dissemination of MBS TBA transactions, which represent approximately 87 percent of the average daily volume traded in all Asset-Backed Securities.¹⁵ After obtaining the SEC's approval to disseminate such transaction information, FINRA continued to examine transactions

¹⁴ Proposed Rule 6730(a)(3)(F)(ii) and proposed Rule 6730(a)(3)(G)(ii) – the “post-pilot program” reporting provisions – incorporate by reference the reporting requirements set forth in Rule 6730(a)(3)(E)(ii)a. through d., including the exceptions to the requirement to report within 60 minutes that apply to transactions executed near the end of the business day or when the TRACE system is not open in Rule 6730(a)(3)(E)(ii)a., c. and d.

in Asset-Backed Securities to determine if FINRA should propose to disseminate additional Asset-Backed Securities. The SEC has been supportive of such efforts.¹⁶

FINRA has reviewed the data reported for Asset-Backed Securities other than MBS TBA transactions, including MBS Specified Pool and SBA-Backed ABS transactions, and studied the total volume of MBS Specified Pool and SBA-Backed ABS transactions, the concentration of trading in such securities, and the pricing disparity among various types of MBS Specified Pool and SBA-Backed ABS transactions to understand their liquidity and fungibility. The market activity reported and reviewed reveals that for MBS Specified Pool transactions, the market is generally active and liquid, and with liquidity comparable to that of corporate bonds.¹⁷ Based on the review, FINRA believes that it is appropriate to amend Rule 6750 to provide for the immediate dissemination of MBS Specified Pool and SBA-Backed ABS transaction information, and that such dissemination will benefit market participants by improving transparency in both market segments. Specifically, Rule 6750(b)(4) would be amended to provide that FINRA will not disseminate information on a transaction in a TRACE-Eligible Security that is an Asset-Backed Security, except: (A) an Agency Pass-Through Mortgage-Backed Security; and (B) an

¹⁵ See supra note 4.

¹⁶ See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262, 9265 (March 1, 2010) (Order Approving File No. SR-FINRA-2009-065).

¹⁷ Liquidity as measured by par value traded is comparable to corporate bonds. Although MBS TBA transactions account for approximately 93 percent of all trading in Agency Pass-Through Mortgage-Backed Securities, the average daily volume of MBS Specified Pool transactions is significant – approximately \$17.5 billion is traded daily on average, in approximately 3,000 trades per day. The information is based on FINRA staff’s review of all Asset-Backed Securities transactions reported to TRACE from May 16, 2011 through October 31, 2011.

SBA-Backed ABS.¹⁸ Thus, information would be disseminated on MBS Specified Pool and SBA-Backed ABS transactions immediately upon receipt of the transaction report and no later than 120 minutes, or, after the expiration of the applicable pilot program, no later than 60 minutes, from the Time of Execution.¹⁹

Dissemination Protocols

SBA-Backed ABS Transactions Traded TBA. The dissemination protocols applicable to SBA-Backed ABS transactions traded TBA would be the same as the dissemination protocols for MBS TBA transactions NGD and subject to the dissemination cap discussed below. Generally, such securities will be disseminated immediately upon receipt of transaction information, and the standard data elements will be displayed.²⁰

MBS and SBA-Backed ABS Specified Pool Transactions. FINRA proposes to modify the dissemination protocols for MBS Specified Pool transactions and SBA-Backed ABS traded in Specified Pool Transactions (collectively “MBS and SBA-Backed ABS Specified Pool transactions”) from those initially proposed by FINRA, to strike a balance between certain

¹⁸ See supra, note 4.

¹⁹ FINRA continues to review Asset-Backed Security transaction information in other sectors of the Asset-Backed Securities market and, at a later date, may propose that transactions in other Asset-Backed Securities be disseminated.

²⁰ Standard data elements include, among other things, CUSIP, time of transaction, size (subject to dissemination caps), price, counterparty type (customer or dealer), and buy/sell indicator. FINRA has represented that the CUSIP for a TBA transaction identifies the issuer and the characteristics of the pools of mortgages that can be delivered to satisfy a TBA transaction but differs from a standard CUSIP in that it is not unique to a security and will be re-assigned to future TBA transactions requiring delivery of the same type of pools on the same month of delivery. See e-mail dated September 4, 2012 from Sharon Zackula of FINRA to Geoffrey Pemble, Special Counsel, Commission and Michael Bradley, Attorney-Advisor, Commission.

anonymity concerns and providing meaningful transparency.²¹ Unlike the dissemination protocols for other disseminated TRACE-Eligible Securities, including MBS TBA transactions, FINRA proposes not to disseminate the CUSIP of the MBS or the SBA-Backed ABS Specified Pool transaction.²² Instead, certain specified data elements that are integral to describing and valuing the security traded, with numeric values expressed within specific ranges (i.e., the information will be truncated and, depending on the data element, rounded up or down) would be disseminated. Although FINRA has determined not to disseminate the specific CUSIP of the security, FINRA believes that investor [sic] must be provided sufficient information such that the investor can appropriately interpret the price transparency provided by the TRACE data. Part of the valuation analysis of any Asset-Backed Security includes a projection of its cash flow which in turn relies on assumptions about prepayment rates. FINRA believes that the data elements outlined below provide information that will allow market participants to perform such analysis.

MBS Specified Pool Transactions

In lieu of a CUSIP, the following information would be disseminated for each MBS Specified Pool transaction reported to TRACE: product type; amortization type; issuing agency; coupon; original maturity; weighted average coupon (“WAC”); weighted average maturity (“WAM”); weighted average loan age (“WALA”); average loan size (“ALS”); and original loan-to-value (“original LTV”) information. Each data element (except issuing agency, product type and amortization type) would be provided in ranges (truncated and disseminated after rounding) to further reduce the potential for “reverse engineering” transaction data to determine the

²¹ See Item C of this filing for a discussion of SR-FINRA-2012-021.

²² FINRA notes that notwithstanding the proposed changes to dissemination protocols, FINRA is not proposing to change any of the reporting requirements applicable to such securities, including the requirement to report the CUSIP number.

identification of a market participant and/or the participant's trading strategies. FINRA believes that these data elements will permit investors to meaningfully assess the value and price of the security. If in the future, FINRA identifies additional data elements that would significantly improve transparency using this approach, FINRA may add such data elements to the dissemination protocol for MBS Specified Pool transactions discussed herein.

Product type, amortization type, issuing agency, coupon and original maturity would be disseminated to permit identification of the security type traded. Product type refers to the type of properties (or real-estate related projects) subject to the mortgages underlying the Agency-Pass Through Mortgage-Backed Security (e.g., single family residential dwelling mortgage loans, multi-family residential dwelling mortgage loans, or project loans). Amortization type identifies the underlying mortgage types (e.g., level payment, adjustable rate mortgages ("ARMs") or balloons). Issuing agency refers to the Agency or Government-Sponsored Enterprise (GSE) that issues the certificate and guarantees the payment of principal and interest of the Agency Pass-Through Mortgage-Backed Security (e.g., Fannie Mae, the Federal Home Loan Mortgage Corporation ("Freddie Mac") and the Government National Mortgage Association ("Ginnie Mae")). Coupon refers to the stated annual percentage rate of interest paid on the Agency-Pass Through Mortgage-Backed Security, and would be disseminated after rounding down to the nearest quarter percentage point (e.g., an interest rate of 5.12 percent would be disseminated at 5.00 percent). Original maturity refers to the original stated term after which the principal amount of the security is due to be repaid in full, or the end of the life of the Agency-Pass Through Mortgage-Backed Security (e.g., 30 years (expressed as 360 months)).

Original maturity would be disseminated after rounding up to the nearest 10 (e.g., an original maturity of 358 months would be disseminated at 360).

In addition, FINRA will disseminate WAC, WAM, WALA, ALS, and original LTV to provide information on recent and historic cash flows and prepayments, and permit investors to develop projections or assumptions regarding future payments, prepayments, and cash flows. WAC is the weighted average interest rate of the underlying mortgage loans or pools that serve as collateral for a mortgage security, weighted by the size of the principal loan balances.²³ WAC would be disseminated after truncating to a single decimal (e.g., WAC of 7.13% would be disseminated as 7.1). WAM is the weighted average number of months to the final payment of each loan backing an Agency Pass-Through Mortgage-Backed Security (or other mortgage-backed security), weighted by the size of the principal loan balances.²⁴ WAM would be disseminated rounded down to the nearest 10 (e.g., WAM of 87 months would be disseminated as 80). WALA is the weighted average number of months since the date of the loan origination of the mortgages (i.e., the age of the loans) backing an Agency Pass-Through Mortgage Security (or other mortgage-backed security), weighted by the size of the principal loan balances. WALA would be disseminated rounded up to the nearest 10 (e.g., WALA of 163 months would be disseminated as 170). Current ALS is obtained by dividing the current mortgage loan outstanding principal balance by the number of loans that remain outstanding. ALS would be rounded down to the nearest 25 (e.g., an ALS of 113 (i.e., \$113,000 average loan size) would be disseminated as 100). Original LTV ratio expresses the amount of a first mortgage lien as a

²³ WAC is calculated by weighting the interest rate of each mortgage loan in the pool by the amount of the mortgage outstanding.

²⁴ WAM is calculated by weighting the remaining number of months to maturity for each mortgage loan in the pool by the amount of the mortgage outstanding.

percentage of the total appraised value of real property, and also would be disseminated rounded down to the nearest 25 (e.g., an original LTV of 92 (i.e., 92 percent) would be disseminated as 75).

The data elements are publicly available as they are published on a monthly basis by the issuing agency. Upon receipt of a transaction report, the TRACE system will automatically disseminate the above data elements corresponding to the CUSIP reported in lieu of disseminating the CUSIP number.

Dissemination of SBA-Backed ABS traded in Specified Pool Transactions

For Specified Pool transactions in SBA-Backed ABS, FINRA generally proposes that dissemination protocols be established that are substantially similar to those discussed above for MBS Specified Pool transactions. The dissemination protocols would result in the dissemination of substantially the same data elements for SBA-Backed ABS Specified Pool transactions as those disseminated for MBS Specified Pool transactions, in lieu of the dissemination of the specific CUSIP. Specifically, upon receipt of a transaction report, FINRA would disseminate amortization type; coupon; original maturity; WAC; WAM; and WALA, except that such values would be based on SBA-backed pooled loans. The values, like those for MBS Specified Pool transactions, would be rounded and truncated prior to dissemination to reduce the possibility of potential identification of a market participant by “reverse engineering” of a transaction. In addition, if in the future, FINRA identifies additional data elements that would significantly improve transparency using this approach, FINRA may add such data elements to the dissemination protocol for SBA-Backed ABS Specified Pool transactions.

FINRA believes that, in the absence of disseminating CUSIP data, disseminating the information set forth above will help ensure meaningful price transparency, by providing relevant information commonly used to identify, value and price MBS and SBA-Backed ABS Specified Pool transactions. FINRA believes that its proposal strikes the appropriate balance in achieving meaningful transparency while significantly reducing the potential to “reverse engineer” transaction data to identify a market participant and/or determine its trading strategies.²⁵

Dissemination Caps

FINRA has established TRACE dissemination caps for disseminated TRACE data generally, such that the actual size of a transaction over a certain par value is not displayed in disseminated TRACE transaction data. For TRACE-Eligible Securities that are rated Investment Grade, the dissemination cap is \$5 million (“\$5MM”), and the size of transactions in excess of \$5MM is displayed as “\$5MM+.” For TRACE-Eligible Securities that are rated Non-Investment Grade, the dissemination cap is \$1 million (“\$1MM”), and the size of a transaction in excess of \$1MM is displayed as “\$1MM+.”²⁶ As of November 5, 2012, a \$25 million (“\$25MM”)

²⁵ As noted above, with respect to both MBS and SBA-Backed ABS Specified Pool transactions, if FINRA identifies additional data elements that would significantly improve transparency, FINRA may add such data elements to the dissemination protocols for such securities.(e.g., FICO).

²⁶ The dissemination caps for Investment Grade corporate bonds limit the display of actual size for approximately 1.6 percent of trades representing approximately 48 percent of total par value traded, and, for Agency Debt Securities, approximately 6 percent of trades representing approximately 74 percent of total par value traded. The dissemination cap for Non-Investment Grade corporate bonds limits the display of actual size for approximately 15 percent of trades representing approximately 84 percent of total par value traded. The information is based on a review of all transactions in Investment Grade corporate bonds, Agency Debt Securities and Non-Investment Grade corporate bonds reported to TRACE from May 16, 2011 through January 4, 2012.

dissemination cap will apply to MBS TBA transactions GD (with the size of a transaction in excess of \$25MM displayed as “\$25MM+”) and a \$10 million (“\$10MM”) dissemination cap will apply to MBS TBA transactions NGD (with the size of a transaction in excess of \$10MM displayed as “\$10MM+”).²⁷

FINRA has analyzed the distribution of MBS Specified Pool and SBA-Backed ABS transactions to determine an appropriate dissemination cap, and proposes a \$10 million (“\$10MM”) dissemination cap for MBS Specified Pool and SBA-Backed ABS transactions initially. Accordingly, the size of MBS Specified Pool and SBA-Backed ABS transactions greater than \$10 million would be displayed in disseminated data as “\$10MM+.” In setting the dissemination caps, FINRA took into account the liquidity and trading activity in these segments, and at \$10 million, approximately nine percent of transactions and approximately 80 percent of par value traded would be disseminated subject to the \$10MM cap.²⁸ FINRA believes that the proposed dissemination caps will allow the marketplace time to adjust to the new levels of transparency.

As dissemination of MBS Specified Pool and SBA-Backed ABS transactions is implemented, FINRA will continue to review the volume of and liquidity in these securities, and

The terms Investment Grade, Non-Investment Grade and Agency Debt Security are defined in, respectively, Rule 6710(h), Rule 6710(i) and Rule 6710(l).

²⁷ See supra note 4.

²⁸ See supra note 4. The proposed dissemination caps for MBS TBA transactions GD would limit display of actual size for approximately 20 percent of trades representing approximately 84 percent of par value traded and for MBS TBA transactions NGD would limit the display of actual size for approximately 42 percent of trades representing approximately 85 percent of par value traded. The information is based on a review of all MBS TBA, MBS Specified Pool and SBA-Backed ABS transactions reported to TRACE from May 16, 2011 through January 4, 2012.

may recommend that such dissemination caps be set at higher levels to provide additional transparency to market participants.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 270 days following publication of the Regulatory Notice announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁹ 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. FINRA believes that the proposed rule change to increase fixed income market transparency is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, generally to protect investors and the public because transparency in MBS Specified Pool and SBA-Backed ABS transactions will enhance the ability of investors and other market participants to identify and negotiate fair and competitive prices for these securities, and because the dissemination of price and other information publicly will promote just and equitable principles of trade among participants in the more transparent market, and will aid in the prevention of fraudulent and manipulative acts and practices in the Asset-Backed Securities market.

²⁹ 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

On April 2, 2012, FINRA filed with the Commission SR-FINRA-2012-021 ("April 2012 Filing"), a proposed rule change to amend the Rule 6700 Series and TRACE dissemination protocols regarding the reporting and dissemination of (1) MBS Specified Pool transactions and (2) SBA-Backed ABS traded either in Specified Pool Transactions or to be announced ("TBA") (collectively, "SBA-Backed ABS transactions"). Specifically, FINRA proposed to amend Rule 6730 to reduce, in two stages, the time frames to report MBS Specified Pool and SBA-Backed ABS transactions. FINRA also proposed minor clarifying amendments to Rule 6730(a)(3)(D) and (E) to specify that the reporting requirements set forth therein apply solely to MBS TBA transactions. In connection with such changes, FINRA proposed amendments to the definitions of "To Be Announced ('TBA')," "Specified Pool Transaction," and "Agency Pass-Through Mortgage-Backed Security" and a new defined term, "SBA-Backed ABS." Finally, FINRA proposed to amend Rule 6750 to provide for the dissemination of MBS Specified Pool and SBA-Backed ABS transactions, and proposed to establish, as part of TRACE dissemination protocols, a \$10 million dissemination cap for such transactions. A copy of the Form 19b-4 and original Exhibit 5 of the April 2012 Filing is attached as Exhibit 2a.

On April 19, 2012, the April 2012 Filing was published for comment in the Federal Register.³⁰ A copy of the Federal Register release is attached as Exhibit 2b. SEC received two comment letters in response.³¹ A list of the comment letters received in response to the April 2012 Filing is attached as Exhibit 2c. Copies of the comment letters received in response to the April 2012 Filing are attached as Exhibit 2d.

One commenter focuses its comments solely on the aspects of the proposal relating to MBS Specified Pool transactions. The commenter states that a pool traded on a specified basis (i.e., by CUSIP) may not trade frequently, that most trades in pools – or at least those for smaller pools – are trades of the whole pool, which means that most pools are owned by a single investor, or two or three investors, instead of being widely held, and that most market participants track which pools they trade to and from their various counterparties. As a result, the commenter is concerned that FINRA’s proposal to disseminate such a security’s CUSIP as part of disseminated transaction information will compromise sensitive information regarding investors’ trading strategies, volumes, identities and positions, and, over time, market participants will be able to “reverse engineer” and develop quite detailed and precise estimates of other participants strategies and positions. The commenter expresses concern that the impact of “such diminution of confidentiality,” especially regarding positions and strategy, may be quite

³⁰ See Securities Exchange Act Release No. 66804 (April 13, 2012), 77 FR 23524 (April 19, 2012) (Notice of Filing of File No. SR-FINRA-2012-021).

³¹ See Letter from Chris Killian, Managing Director, Securities Industry and Financial Markets Association (“SIFMA”), to Elizabeth M. Murphy, Secretary, SEC, dated May 10, 2012 (“SIFMA Letter”) and Letter from Michael Nicholas, Chief Executive Officer, Bond Dealers of America (“BDA”), to Elizabeth M. Murphy, Secretary, SEC, dated May 10, 2012 (“BDA Letter”).

negative and impair participation and liquidity in the market for such instruments.³² The second commenter discusses the same issues raised by the first, –though the second commenter raises such issues in connection with SBA-Backed TBA transactions as well as MBS and SBA-Backed Specified Pool transactions.³³ Both commenters recommend that certain information be withheld from dissemination. One commenter recommended that pool number and CUSIP information, regardless of size, should be omitted.³⁴ The other commenter recommended that for pools with an original face amount below \$1 billion, the CUSIP information not be shown on disseminated trade reports for a three to six month period.³⁵ This commenter also recommended that FINRA reduce the dissemination cap to \$1 million.³⁶ In addition, one commenter was concerned that broker-dealers affiliated with banks can effect MBS Specified Pool and SBA-Backed ABS transactions through the bank and avoid reporting such transactions to TRACE, giving such broker-dealers an unfair advantage.³⁷

³² See SIFMA Letter, p. 3.

³³ See BDA Letter, pp. 1 and 2. (See, for example, the second commenter’s statements: “Much of the market in the Agency Specified Pool Securities is driven by institutional investors who take the time to research the performance of pools, to develop a strategy to generate a profit and ultimately to execute on that strategy.”; “. . . the pools can be smaller in size and a single investor frequently owns the entire pool . . .”; regarding smaller pools, “. . . the market easily knows who these investors are and what pools they own.”; “When a single investor owns a large percentage of a specified pool, if the FINRA proposal were finalized in its current form, the market would be able to know that this investor is buying or selling and the market would then be able to track this investor’s activity, and reverse engineer and capitalize on its strategy.”; and, “. . . a more fair approach to investors is if broker-dealers are allowed to omit the pool number and CUSIP information from TRACE dissemination regardless of the size of the transaction.”)

³⁴ See BDA letter, p. 1.

³⁵ See SIFMA Letter, p. 3.

³⁶ See SIFMA Letter, p. 3.

³⁷ See BDA Letter, p. 2.

FINRA withdrew the April 2012 Filing on July 12, 2012, prior to filing a response to comments. Accordingly, the comments to the April 2012 Filing and FINRA's responses are discussed below.

After careful consideration of the commenters' concerns, in this proposed rule change, FINRA proposes to modify the transaction dissemination protocols such that the disseminated information regarding MBS and SBA-Backed ABS Specified Pool transactions would not include the CUSIP of such securities. Instead, as detailed above, FINRA proposes to disseminate specific reference data elements, including information widely used to project cash flows and pre-payments, in specific ranges. FINRA believes that this approach would significantly limit the ability to "reverse engineer" transaction data to determine trading strategies and identities while providing valuable information about the mortgages/loans that are in MBS and SBA-Backed ABS Specified Pool transactions.

The information set forth above will help provide meaningful price transparency, by providing relevant information commonly used to identify, value and price MBS and SBA-Backed ABS Specified Pool transactions. FINRA believes that the proposed rule change strikes the appropriate balance in achieving meaningful transparency while significantly reducing the potential for "reverse engineering" transaction data to determine trading strategies and/or participant identification. If in the future, FINRA identifies additional data elements that would significantly improve transparency, FINRA may add such data elements to the dissemination protocols for such securities (e.g., FICO).

In addition, FINRA believes that the \$10 million dissemination cap is appropriate and does not propose to reduce it. As noted in the proposed rule change and the April 2012 Filing,

the size of MBS Specified Pool and SBA-Backed ABS transactions greater than \$10 million would be displayed in disseminated data as “\$10MM+.” At this level, approximately nine percent of transactions and approximately 80% of par value traded would be subject to the \$10MM cap. FINRA believes this data is consistent with respect to dissemination caps for other securities.³⁸

Finally, with respect to the commenter’s concern that a broker-dealer affiliated with a bank may run MBS Specified Pool and SBA-Backed ABS transactions through the bank’s balance sheet and avoid reporting such transactions to TRACE, FINRA notes that the statutory standard requires that FINRA’s proposed rules not impose any burden on competition not necessary or appropriate in furtherance of the Act. FINRA believes that increased transparency in the securities trading market appropriately furthers the purposes the Act. As FINRA has previously noted, it defeats the purposes of the Act by referring to market participants that may not be subject to the Act (in whole or in part), as a basis for not approving the proposed rule change.³⁹ Such a standard would undo much, if not all, regulation of broker-dealers and markets necessary for the protection of investors and the efficiency, competitiveness and integrity of securities markets. FINRA believes that the fact that there may be market participants that are not subject to the Act should not delay the reporting and dissemination of MBS Specified Pool and SBA-Backed ABS transactions and related changes regarding the reporting of such transactions.

³⁸ See note 21 and note 23 of the Form 19b-4 and Exhibit 1, respectively, in SR-FINRA-2012-021.

³⁹ See Response to Comments on SR-FINRA-2009-010 (Proposed Rule Change Relating to Expansion of TRACE to Include Agency Debt Securities and Primary Market Transactions).

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2012-042 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2012-042. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-FINRA-2012-042 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Kevin M. O'Neill
Deputy Secretary

⁴⁰ 17 CFR 200.30-3(a)(12).