

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83815; File No. SR-FINRA-2018-023)

August 9, 2018

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Relating to ATS Reporting to TRACE of Transactions in U.S. Treasury Securities

I. Introduction

On June 5, 2018, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend FINRA Rule 6730 to require certain alternative trading systems (“ATSs”) that report transactions in U.S. Treasury Securities to the Transaction Reporting and Compliance Engine (“TRACE”) to identify non-FINRA-member subscribers on those transaction reports. The proposed rule change was published for comment in the Federal Register on June 13, 2018.<sup>3</sup> The Commission received three comment letters regarding the proposed rule change.<sup>4</sup> On July 26, 2018, the Commission extended until September 11, 2018, the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 83393 (June 7, 2018), 83 FR 27643 (“Notice”).

<sup>4</sup> See letter to Secretary, Commission, from Stephen John Berger, Managing Director, Government and Regulatory Policy, Citadel, dated July 5, 2018 (“Citadel Letter”); letter to Robert W. Errett, Deputy Secretary, Commission, from Theodore Bragg, Chief Executive Officer, Execution Access, LLC, dated July 3, 2018 (“Execution Access Letter”); letter to Brent J. Fields, Secretary, Commission, from Tyler Gellasch, Executive Director, The Healthy Markets Association, dated July 5, 2018 (“Healthy Markets Letter”).

to determine whether to disapprove the proposed rule change.<sup>5</sup> FINRA submitted a response to the comments on August 6, 2018.<sup>6</sup> This order approves the proposed rule change.

## II. Description of Proposed Rule Change

As described in further detail below, FINRA has proposed to add Supplementary Material .07 to existing FINRA Rule 6730 to require an ATS, as defined in Rule 300(a) of Regulation ATS,<sup>7</sup> that effects transactions in U.S. Treasury Securities above a certain volume threshold to identify in its TRACE reports any counterparty to a Treasury transaction that is a non-FINRA member, using a market participant identifier (“MPID”) assigned by FINRA.<sup>8</sup>

### A. Background

On October 18, 2016, the Commission approved a proposed rule change that required FINRA members to report secondary market transactions in U.S. Treasury Securities to TRACE.<sup>9</sup> FINRA members began reporting such transactions to TRACE on July 10, 2017.<sup>10</sup>

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<sup>5</sup> See Securities Exchange Act Release No. 83722 (July 26, 2018), 83 FR 37544 (Aug. 1, 2018).

<sup>6</sup> See letter to Brent J. Fields, Secretary, Commission, from Racquel L. Russell, FINRA, dated August 6, 2018 (“FINRA Response”).

<sup>7</sup> 17 CFR 242.300(a).

<sup>8</sup> FINRA Rule 6710(p) defines “U.S. Treasury Security” to mean “a security, other than a savings bond, issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities. The term ‘U.S. Treasury Security’ also includes separate principal and interest components of a U.S. Treasury Security that has been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program operated by the U.S. Department of Treasury.”

<sup>9</sup> See Securities Exchange Act Release No. 79116 (October 18, 2016), 81 FR 73167 (October 24, 2016) (SR-FINRA-2016-027) (“2016 Order”).

<sup>10</sup> See Notice, 83 FR at 27644; FINRA Regulatory Notice 16-39 (October 2016).

Information in TRACE regarding transactions in U.S. Treasury Securities is for regulatory purposes only and is not disseminated publicly.<sup>11</sup>

Under FINRA’s rules, each FINRA member that is a Party to a Transaction in a TRACE-Eligible Security must report the transaction.<sup>12</sup> A TRACE transaction report must include, among other things, the contra-party’s identifier (i.e., MPID, customer, or a non-member affiliate, as applicable).<sup>13</sup> Transactions in U.S. Treasury Securities that occur on an ATS generally must be reported to TRACE by the counterparties, if they are FINRA members, and by the ATS itself.<sup>14</sup> On a TRACE report, an ATS must identify a FINRA member counterparty by that counterparty’s MPID.<sup>15</sup> However, for a transaction involving a non-FINRA-member customer, the ATS must report the trade utilizing a generic customer identifier (“C”).<sup>16</sup>

A significant amount of trading activity in U.S. Treasury Securities on ATSS involves market participants that are not registered as broker-dealers or are not FINRA members,

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<sup>11</sup> See FINRA Rule 6750(c)(5) (providing that FINRA will not disseminate information on a transaction in a U.S. Treasury Security). See also Notice, 83 FR at 27644.

<sup>12</sup> See FINRA Rule 6730(a). See also FINRA Rules 6710(a) and (e) (defining “TRACE-Eligible Security” and “Party to a Transaction,” respectively).

<sup>13</sup> See FINRA Rule 6730(c)(6).

<sup>14</sup> See Notice, 83 FR at 27644. See also FINRA’s Regulatory Notice 14-53 (November 2014) (reminding ATSS and ATS subscribers of their reporting obligations in TRACE-Eligible Securities). While there are limited exceptions to the reporting requirement that are available when all the counterparties are FINRA members, these exceptions do not apply to transactions on an ATS involving a non-FINRA member. See Notice, 83 FR at 27644, n. 6. FINRA has stated that, because each current ATS is a FINRA member, each ATS must report to TRACE all trading activity in TRACE-Eligible Securities that occurs on the ATS. See Notice, 83 FR at 27644.

<sup>15</sup> See Notice, 83 FR at 27644.

<sup>16</sup> See id. In addition, if the non-FINRA member is an affiliate, the ATS must report the trade as a generic trade with a non-member affiliate by denoting the counterparty with an “A” identifier. See FINRA Rule 6730(c)(6).

including hedge funds, banks, and principal trading firms (“PTFs”).<sup>17</sup> The Department of the Treasury stated in its October 2017 Capital Markets Report that “[t]rading activity [in U.S. Treasury Securities] on the major electronic interdealer platforms is dominated by PTFs, . . . . and collectively they account for over half of all transaction volumes in the interdealer broker segment of the [cash Treasury] market.”<sup>18</sup> The Capital Markets Report stated that “a significant portion of PTF activity is anonymized in the TRACE data.”<sup>19</sup> The Treasury Department recommended requiring ATSs that facilitate transactions in U.S. Treasury Securities to identify customers in their trade reports.<sup>20</sup> FINRA believes that requiring additional counterparty information in ATS TRACE reports for transactions in U.S. Treasury Securities would improve the effectiveness of FINRA’s surveillance patterns and help FINRA to identify potentially manipulative activity, including wash sales and prearranged trading activity.<sup>21</sup> FINRA further believes that such information would facilitate a better understanding of Treasury market structure and liquidity.<sup>22</sup>

B. Proposed Changes to ATS Reporting Obligations

FINRA has proposed to add Supplementary Material .07 to existing FINRA Rule 6730 to require each “covered ATS,” as described below, to provide FINRA with a list of all of its non-

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<sup>17</sup> See Notice, 83 FR at 27644.

<sup>18</sup> Notice, 83 FR at 27644 (citing Treasury Department, A Financial System That Creates Economic Opportunities: Capital Markets, Report to President Donald J. Trump, Executive Order 13772 on Core Principles for Regulating the United States Financial System, at 79-80 (October 2017) (“Capital Markets Report”), <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>).

<sup>19</sup> See *id.* (citing Capital Markets Report at 80).

<sup>20</sup> See *id.* (citing Capital Markets Report at 80).

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*

FINRA-member subscribers and to obtain from FINRA an MPID for each such subscriber. Each covered ATS would then be required to identify a non-FINRA-member subscriber in the contra-party field of a TRACE report of a U.S. Treasury Security transaction using the MPID assigned by FINRA. A covered ATS would no longer be permitted to identify a contra-party to such a transaction using the “customer” or “non-member affiliate” identifier. Based on the list of non-FINRA-member subscribers that a covered ATS provides to FINRA, FINRA will assign each non-FINRA-member subscriber a unique MPID (to be used consistently across ATSs) and provide a list of those MPIDs to the ATS.<sup>23</sup> This approach is designed to preserve the confidentiality of an individual ATS’s subscriber list, because FINRA will provide a covered ATS with a list of MPIDs only for its own subscribers.<sup>24</sup>

Proposed Supplementary Material .07(b) of FINRA Rule 6730 defines a “covered ATS” as an ATS, as that term is defined in Rule 300 of Regulation ATS, that executed transactions in U.S. Treasury Securities against non-FINRA-member subscribers of \$10 billion or more in monthly par value, computed by aggregating buy and sell transactions, for any two months in the preceding calendar quarter.<sup>25</sup> FINRA has stated that, based on a review of U.S. Treasury Security transaction data reported to FINRA during a sample period, six ATSs would currently

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<sup>23</sup> See proposed FINRA Rule 6730, Supplementary Material .07(a). See also Notice, 83 FR at 27645.

<sup>24</sup> See Notice, 83 FR at 27645.

<sup>25</sup> FINRA stated that any member that meets the definition of “alternative trading system” set forth in Rule 300(a) of Regulation ATS will be required to comply with the new counterparty reporting requirements, regardless of whether the member is excepted from the requirements applicable to ATSS provided in Rule 301(b) of Regulation ATS (e.g., the exception applicable if the ATS limits its securities activities to government securities). See Notice, 83 FR at 27644, n. 12 (citing 17 CFR 242.301(a)(4)(ii)(A)).

be considered covered ATSS.<sup>26</sup> According to FINRA, these ATSS currently account for over 99% of the trade reports submitted by ATSS to TRACE for transactions in U.S. Treasury Securities.<sup>27</sup> FINRA believes that limiting the proposed counterparty identification requirement in this manner balances the burdens associated with complying with the proposed rule (i.e., providing FINRA a list of all non-FINRA-member subscribers, obtaining MPIDs, and using the assigned MPIDs in TRACE reporting) with the benefits sought to be achieved (i.e., obtaining additional granularity that will enhance the quality of U.S. Treasury Security transaction data).<sup>28</sup> FINRA further believes that the proposal would improve the completeness of the information on U.S. Treasury Security transactions available to FINRA and the official sector, and that the absence of more detailed counterparty information from ATSS with activity levels below the proposed threshold would not materially affect the completeness of the audit trail.<sup>29</sup>

FINRA believes that the proposed rule change would result in an improvement to the effectiveness of FINRA's surveillance patterns from the standpoint of greater granularity and thus more accurate pattern detection, including the increased ability to identify potentially manipulative activity.<sup>30</sup> FINRA has stated that its ability to detect wash sales or prearranged trading activity would be improved if the audit trail included the identity of the non-FINRA-

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<sup>26</sup> See Notice, 83 FR at 27645, n. 13.

<sup>27</sup> See id.

<sup>28</sup> See Notice, 83 FR at 27645.

<sup>29</sup> See id. FINRA also noted that, if the proposal is approved, FINRA intends to monitor the continued appropriateness of the \$10 billion threshold, the impact of the exception on its audit trail, and potential negative impacts or changes in ATS or non-FINRA-member subscriber behavior. See id.

<sup>30</sup> See id., 83 FR at 27644.

member counterparty rather than the generic customer indicator received today.<sup>31</sup> The identity of the particular ATS subscriber allows the surveillance pattern to narrow down the potential universe of matching trades and thus more accurately detect instances of potential manipulation.<sup>32</sup> FINRA concluded that the more granular detail that would be added to transaction reports by identifying non-FINRA-member counterparties would enhance FINRA's surveillance program for U.S. Treasury Securities.<sup>33</sup>

FINRA has stated that it 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 of the proposal, and that the effective date will be no later than 180 days following publication of that Regulatory Notice.<sup>34</sup> Covered ATSS will be required to submit a list of their non-FINRA-member subscribers to FINRA at least 60 days in advance of the effective date.<sup>35</sup> An ATS that becomes a covered ATS in the future would be required to begin complying with the requirements of Supplementary Material .07 of FINRA Rule 6730 within 60 calendar days of the end of the calendar quarter in which it becomes a covered ATS.<sup>36</sup> This 60-day period is designed to provide sufficient time for a newly covered ATS to provide FINRA with a list of, and obtain MPIDs for, its non-FINRA-member subscribers, and perform any necessary programming changes.<sup>37</sup> Once an ATS is deemed a covered ATS, it must continue complying with the new

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<sup>31</sup> See id.

<sup>32</sup> See id.

<sup>33</sup> See id.

<sup>34</sup> See id., 83 FR at 27645.

<sup>35</sup> See id.

<sup>36</sup> See proposed FINRA Rule 6730, Supplementary Material .07(c).

<sup>37</sup> See Notice, 83 FR at 27645.

counterparty reporting requirements even if its volume of executed transactions in U.S. Treasury Securities against non-FINRA-member subscribers falls below the threshold.<sup>38</sup>

### III. Summary of Comments and FINRA’s Response

The Commission received three comment letters regarding the proposal.<sup>39</sup> Two commenters strongly supported the proposal.<sup>40</sup> One of these commenters noted that making more Treasury market data readily available to the official sector would improve general monitoring and surveillance capabilities, including those designed to detect prohibited trading practices and potential risks to market stability.<sup>41</sup> Similarly, the second commenter noted that the absence of information regarding the identity of non-FINRA-member counterparties is “a significant limitation for effective surveillance and oversight.”<sup>42</sup>

The third commenter generally supported the goal of increased transparency in the U.S. Treasury market but did not think that the proposal “is sufficient or even necessarily an appropriate means of facilitating transparency among non-FINRA member participants in the Treasury market.”<sup>43</sup> This commenter warned that the proposal “may actually result in reduced transparency” because it might cause non-FINRA members to shift their trading in U.S. Treasury Securities “from FINRA member firms to non-FINRA member and bank affiliates that have no reporting responsibilities.”<sup>44</sup> The commenter concluded that “Congress or the SEC should

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<sup>38</sup> See proposed FINRA Rule 6730, Supplementary Material .07(d).

<sup>39</sup> See supra note 4.

<sup>40</sup> See Citadel Letter; Healthy Markets Letter.

<sup>41</sup> See Citadel Letter at 1.

<sup>42</sup> Healthy Markets Letter at 3.

<sup>43</sup> Execution Access Letter at 2.

<sup>44</sup> Id. Another commenter agreed that banks should be subject to reporting requirements, but expressed the view that the “important effort” represented by the proposal should not



consider requiring PTFs to register as broker-dealers such that FINRA, in turn, may require them to centrally clear their transactions and report their transactions to TRACE. Until such a requirement exists, the problem of market opacity will persist.”<sup>45</sup>

In its response letter, FINRA acknowledged that reporting by non-FINRA members would provide a more complete picture of Treasury market activity, but believes that the proposal represents an appropriate next step to improve the usefulness of the Treasury transaction data currently reported through TRACE, given the limits of its jurisdictional authority.<sup>46</sup> FINRA further noted that the Department of the Treasury, the Commission, the Federal Reserve Bank of New York, and the CFTC have stated that they are assessing effective means to ensure the collection of data regarding Treasury cash securities market transactions is comprehensive and includes information from institutions that are not FINRA members.<sup>47</sup> FINRA also noted that the Federal Reserve Board has announced that it plans to collect data from banks for secondary market transactions in U.S. Treasury Securities and is discussing with FINRA whether TRACE could be leveraged to potentially serve as the Board’s collection agent for the data.<sup>48</sup>

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be delayed or limited pending action with respect to the establishment of reporting obligations for banks. See Heathy Markets at 3.

<sup>45</sup> Execution Access Letter at 3.

<sup>46</sup> See FINRA Response at 1-2.

<sup>47</sup> See id. at 2 (citing Joint Press Release, Department of the Treasury, et al., Statement Regarding Progress on the Review of the U.S. Treasury Market Structure since the July 2015 Joint Staff Report (August 2, 2016), <https://www.sec.gov/news/pressrelease/2016-155.html>]; Joint Press Release, U.S. Department of the Treasury, et al., Statement on Trade Reporting in the U.S. Treasury Market (May 16, 2016), <https://www.sec.gov/news/pressrelease/2016-90.html>).

<sup>48</sup> See id. at 2 (citing Press Release, Board of Governors of the Federal Reserve System (October 21, 2016), <https://www.federalreserve.gov/newsevents/pressreleases/other20161021a.htm>).

Similarly, this commenter believed that “ATS participants whose trades are presently reported to TRACE only as ‘customer’ trades—including banks, hedge funds, and PTFs—may choose to not become an ATS subscriber or refrain from trading on ATS’s to maintain anonymity and avoid regulatory oversight.”<sup>49</sup> FINRA acknowledged that the proposal could result in a change in behavior by non-FINRA members, but reiterated its understanding, expressed in the Notice, that most trading in the Treasury cash market is electronic and that member firms and non-FINRA venues do not currently have the capability to facilitate the volume of orders and trades that FINRA-member ATSS can facilitate through electronic systems.<sup>50</sup> Accordingly, FINRA believes that the proposal is designed to apply to the trading venues most likely not to see a shift in volume away to other venues.<sup>51</sup> FINRA also reiterated that it would monitor activity in U.S. Treasury Securities with respect to the operation of the proposal.<sup>52</sup>

The commenter also argued that the proposal “unfairly allocates to ATSS the significant operational costs and regulatory burdens of trade reporting”<sup>53</sup> and that “ATS’s will likely need to recoup these costs by passing them through to their customers.”<sup>54</sup> FINRA responded that it is sensitive to the need to balance the regulatory objectives of a proposal with the burdens and costs imposed on member firms, and sought to narrowly tailor the proposal by establishing a minimum

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<sup>49</sup> Execution Access Letter at 2.

<sup>50</sup> See FINRA Response at 2.

<sup>51</sup> See id.

<sup>52</sup> See id. A second commenter who broadly supported the proposal also noted that the new counterparty reporting requirements “may lead to trading shifting to non-ATS or other venues” and observed that “it might be valuable to further expand the reporting obligations in the future.” Healthy Markets Letter at 3.

<sup>53</sup> Execution Access Letter at 2-3.

<sup>54</sup> Id. at 3.

volume threshold below which the identification requirements would not apply.<sup>55</sup> FINRA also noted that, because firms currently must populate the counterparty field in their TRACE reports, the proposal will not require ATs to undertake programming related to populating a new field, but rather will require them to use a FINRA-assigned MPID in place of the current generic contra-party identifiers for “customer” or “non-member affiliate.”<sup>56</sup> FINRA further noted that it intends to set an effective date for the proposal of approximately 180 days from the date of the Regulatory Notice announcing a Commission approval of the proposal, which is designed to provide ATs with enough time to determine whether they are covered and, if so, to obtain MPIDs for non-FINRA-member subscribers and make any necessary programming changes.<sup>57</sup>

Finally, one of the commenters who broadly supported the proposal suggested that FINRA ultimately should require identification using the legal entity identifiers (“LEIs”) rather than MPIDs.<sup>58</sup> FINRA responded that, at this time, MPIDs are the most appropriate identifier for TRACE reports because MPIDs are established and widely used by its members for purposes of reporting trade and counterparty information to FINRA.<sup>59</sup>

#### IV. Discussion and Commission Findings

After carefully considering the proposal, the comments submitted, and FINRA’s response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

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<sup>55</sup> See FINRA Response at 3.

<sup>56</sup> See id.

<sup>57</sup> See id. In addition, an ATS that becomes a covered ATS in the future will have 60 calendar days from the end of the calendar quarter in which it becomes covered to begin complying with the requirements. See id.

<sup>58</sup> See Healthy Markets Letter at 3-4.

<sup>59</sup> See FINRA Response at 4.

securities association.<sup>60</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>61</sup> which requires, among other things, that FINRA's rules 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.

The Commission called FINRA's 2016 proposal to expand TRACE reporting to include member transactions in U.S. Treasury Securities "an important first step in providing the official sector with more comprehensive data about the Treasury cash market."<sup>62</sup> Currently, TRACE reports require specific identification only of FINRA member counterparties; non-FINRA-member counterparties are reported only as "C" for customer or "A" if the counterparty is a non-member affiliate. FINRA has now proposed to require covered ATSs to specifically identify all non-FINRA-member counterparties in their TRACE reports of U.S. Treasury Security transactions. The Commission concurs with FINRA's assessment that "the additional detail that would be added to transaction reports by identifying non-FINRA member counterparties would enhance FINRA's surveillance program for U.S. Treasury Securities."<sup>63</sup> The Commission concludes, therefore, that expanding TRACE reporting of Treasury transactions in the manner described in the proposal is reasonably designed to help FINRA fulfill its mandate in Section 15A(b)(6) of the Act 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.

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<sup>60</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>61</sup> 15 U.S.C. 78o-3(b)(6).

<sup>62</sup> 2016 Order, 81 FR at 73174.

<sup>63</sup> Notice, 83 FR at 27644.

The Commission further believes that expanded reporting of counterparty identities in the manner described in the proposal will help to establish a more complete audit trail for transactions in U.S. Treasury Securities, thereby assisting regulators in detecting and deterring improper trading activity. More complete information regarding counterparty identity also will provide the official sector with a better understanding of the structure and characteristics of the U.S. Treasury cash market. The Commission notes that the proposal is consistent with the Treasury Department’s recommendation in the Capital Markets Report that FINRA members that facilitate transactions in U.S. Treasury Securities be required to identify customers in their reports of transactions in U.S. Treasury Securities.<sup>64</sup>

The Commission acknowledges the concerns of one commenter who argued that the proposal “does not do enough to achieve full transparency in the Treasury Market and may actually result in reduced transparency” and that some non-FINRA-member market participants might elect not to trade on covered ATs “to maintain anonymity and avoid regulatory oversight.”<sup>65</sup> The Commission believes, nevertheless, that this comment does not preclude approval of the proposal at this time. Although some Treasury transactions will continue to be outside the scope of the new requirements, the new counterparty information reported by covered ATs should greatly enhance surveillance capabilities and provide additional insights into the Treasury cash market. The Commission notes that other public sector authorities have expressed their intention to continue to assess effective means to ensure that reported data regarding the Treasury cash market is comprehensive and includes information from institutions that are not

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<sup>64</sup> See supra note 18 and accompanying text.

<sup>65</sup> Execution Access Letter at 2.

FINRA members.<sup>66</sup> Furthermore, although theoretically possible, it might not be practical for non-FINRA members to shift their trading activity away from covered ATSS if covered ATSS continue to serve as significant pools of liquidity for U.S. Treasury Securities. The Commission notes that FINRA “intends to monitor . . . for any potential negative impacts or changes in ATSS or non-member subscriber behavior.”<sup>67</sup>

The Commission believes that the proposal is reasonably designed to minimize burdens on ATSS while still fulfilling the important policy objectives discussed above. The new non-FINRA-member identification requirements will apply only to ATSS that exceed the \$10 billion threshold. These ATSS currently account for the vast majority of ATSS transaction reports for transactions in U.S. Treasury Securities against non-FINRA members.<sup>68</sup> Furthermore, the proposal does not appear likely to require covered ATSS to undertake significant programming work because new reporting fields will not be necessary. All ATSS that report to TRACE already utilize fields for counterparty identifiers and are familiar with the use of MPIDs for FINRA member counterparties. For Treasury transactions on covered ATSS, the proposal eliminates use of the generic “C” and “A” identifiers and instead requires the ATSS to populate the counterparty identifier field with an MPID in all cases, regardless of whether a particular counterparty is a FINRA member. Under the new rule, FINRA will assign MPIDs to all non-FINRA-member subscribers of covered ATSS who engage in Treasury transactions without employing a de minimis cut-off. The Commission believes that this is a reasonable means of

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<sup>66</sup> See supra notes 47-48 and accompanying text.

<sup>67</sup> Notice, 83 FR at 27645.

<sup>68</sup> FINRA stated that, based on a review of TRACE data over a sample period, only six ATSS that accounted for 99% of trade reports exceeded the proposed threshold. See Notice, 83 FR at 27645, at n. 13.

simplifying compliance with the rule because covered ATSs will not have to analyze the transaction volume of non-FINRA-member subscribers to ascertain whether any of them become subject to or subsequently fall outside the scope of the rule. In addition, an ATS that reaches the \$10 billion threshold will remain a covered ATS even if its volume of executed transactions in U.S. Treasury Securities subsequently falls below the \$10 billion threshold.<sup>69</sup> The Commission believes that this will simplify compliance with the new rule because an ATS will not be required to continue monitoring its volume of executions in U.S. Treasury Securities against non-FINRA-member subscribers once it has reached the \$10 billion threshold. Finally, the Commission notes that the new rule will impose duties only on covered ATSs and not on any of their subscribers.

Pursuant to Section 19(b)(5) of the Act,<sup>70</sup> the Commission consulted with and considered the views of the Treasury Department in determining to approve the proposed rule change. The Treasury Department supports FINRA’s proposal to require covered ATSs to identify non-FINRA-member counterparties in their TRACE reports of Treasury transactions.<sup>71</sup> Pursuant to Section 19(b)(6) of the Act,<sup>72</sup> the Commission has considered the sufficiency and appropriateness of existing laws and rules applicable to government securities brokers, government securities dealers, and their associated persons in approving the proposal. As

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<sup>69</sup> See FINRA Rule 6730, Supplementary Material .07(d).

<sup>70</sup> 15 U.S.C. 78s(b)(5) (providing that the Commission “shall consult with and consider the views of the Secretary of the Treasury prior to approving a proposed rule filed by a registered securities association that primarily concerns conduct related to transactions in government securities, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor”).

<sup>71</sup> Telephone conversation with Treasury Department staff and Brett Redfearn, Director, Division of Trading and Markets, *et al.*, on August 3, 2018.

<sup>72</sup> 15 U.S.C. 78s(b)(6).

discussed above, ATSS currently report Treasury transactions using generic identifiers that do not specifically identify non-FINRA-member counterparties. By requiring covered ATSS to identify non-FINRA-member counterparties in their TRACE reports of Treasury transactions, the new rule will enhance FINRA's surveillance program for U.S. Treasury Securities and provide the official sector with important additional information concerning activity in the U.S. Treasury cash market.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>73</sup> that the proposed rule change (SR-FINRA-2018-023) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>74</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>73</sup> 15 U.S.C. 78s(b)(2).

<sup>74</sup> 17 CFR 200.30-3(a)(12).