

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84374; File No. SR-FINRA-2018-032)

October 5, 2018

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to FINRA Rule 6710 to Modify the Dissemination Protocols for Agency Debt Securities

I. Introduction

On August 16, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to modify the dissemination protocols for Agency Debt Securities. The proposed rule change was published for comment in the Federal Register on August 23, 2018.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

Under FINRA’s rules, each member firm is required to report to the Trade Reporting and Compliance Engine (“TRACE”) transactions in TRACE-Eligible Securities,⁴ including securities that meet the definition of “Agency Debt Security.”⁵ Currently, for disseminated reports of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 83882 (August 17, 2018), 83 FR 42732 (“Notice”).

⁴ See FINRA Rule 6710(a) (defining “TRACE-Eligible Security”).

⁵ FINRA Rule 6710(l) generally defines “Agency Debt Security” to mean a debt security (i) issued or guaranteed by an Agency as defined in paragraph (k); (ii) issued or guaranteed by a Government-Sponsored Enterprise as defined in paragraph (n); or (iii) issued by a trust or other entity that was established or sponsored by a Government-Sponsored Enterprise for the purpose of issuing debt securities, where such enterprise

transactions in Agency Debt Securities, FINRA displays either the entire notional size (volume) of the transaction or a capped amount, depending on whether the security is Investment Grade,⁶ Non-Investment Grade,⁷ or unrated.⁸ For Agency Debt Securities that are Investment Grade or unrated, FINRA disseminates the entire notional size for transactions of \$5 million or less in par value traded, but a capped size—“\$5MM+”—for transactions exceeding \$5 million in par value traded; for transactions in Agency Debt Securities that are Non-Investment Grade, FINRA disseminates the entire notional size for transactions of \$1 million or less in par value traded but a capped size—“1MM+”—for transactions exceeding \$1 million in par value traded.⁹

provides collateral to the trust or other entity or retains a material net economic interest in the reference tranches associated with the securities issued by the trust or other entity.

⁶ FINRA Rule 6710(h) defines “Investment Grade” to mean “a TRACE-Eligible Security that, if rated by only one nationally recognized statistical rating organization (“NRSRO”), is rated in one of the four highest generic rating categories; or if rated by more than one NRSRO, is rated in one of the four highest generic rating categories by all or a majority of such NRSROs; provided that if the NRSROs assign ratings that are evenly divided between (i) the four highest generic ratings and (ii) ratings lower than the four highest generic ratings, FINRA will classify the TRACE-Eligible Security as Non-Investment Grade for purposes of TRACE. If a TRACE-Eligible Security is unrated, for purposes of TRACE, FINRA may classify the TRACE-Eligible Security as an Investment Grade security. FINRA will classify an unrated Agency Debt Security as defined in [Rule 6710(l)] as an Investment Grade security for purposes of the dissemination of transaction volume.”

⁷ FINRA Rule 6710(i) defines “Non-Investment Grade” to mean “a TRACE-Eligible Security that, if rated by only one NRSRO, is rated lower than one of the four highest generic rating categories; or if rated by more than one NRSRO, is rated lower than one of the four highest generic rating categories by all or a majority of such NRSROs. Except as provided in [Rule 6710(h)], if a TRACE-Eligible Security is unrated, FINRA may classify the TRACE-Eligible Security as a Non-Investment Grade security.”

⁸ See Notice, 83 FR at 42732.

⁹ See Securities Exchange Act Release No. 59733 (April 8, 2009), 74 FR 17709, 17712 (April 16, 2009) (SR-FINRA-2009-010) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Expand TRACE To Include Agency Debt Securities and Primary Market Transactions).

FINRA has proposed to apply the \$5 million dissemination cap to transactions in all Agency Debt Securities, regardless of whether the security is Investment Grade, Non-Investment Grade, or unrated. FINRA has stated that, when adopting the original dissemination caps for Agency Debt Securities, it believed that unrated Agency Debt Securities should default to the \$5 million dissemination cap due to factors such as that they trade more consistently with Investment Grade securities that are subject to the \$5 million dissemination cap.¹⁰ FINRA has further stated that it is not aware of the existence of any Non-Investment Grade Agency Debt Securities other than credit risk transfer securities (“CRTs”), a type of Agency Debt Security issued by Fannie Mae (“Fannie”) and Freddie Mac (“Freddie”).¹¹ Based on FINRA’s experience with CRTs and in consultation with Fannie and Freddie, FINRA believes that it is appropriate to disseminate Non-Investment Grade CRTs with the \$5 million dissemination cap. Because CRTs are the only type of Agency Debt Security rated less than Investment Grade, FINRA is proposing to simplify the dissemination structure by applying the \$5 million cap to all Agency Debt Securities irrespective of rating.¹²

FINRA has stated that it will announce the effective date of the rule change in a Regulatory Notice to be published no later than 60 days following a Commission approval, and

¹⁰ See Notice, 83 FR at 42732.

¹¹ See id.

¹² See id. at 42733. In support of the proposal, FINRA provided statistics about the trade count and notional volume traded for Investment Grade, Non-Investment Grade, and unrated Agency Debt Securities indicating that, for both metrics, transactions in Non-Investment Grade Agency Debt Securities currently account for only a small percentage of transactions in Agency Debt Securities. See id.

the effective date will be no later than 120 days following publication of that Regulatory Notice.¹³

III. Discussion and Commission Findings

After careful consideration, 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 securities association.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁵ which requires, among other things, that FINRA 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 believes that the proposal is reasonably designed to simplify the dissemination protocols for transactions in Agency Debt Securities by instituting a uniform \$5 million dissemination cap, regardless of whether the security is Investment Grade, Non-Investment Grade, or unrated. The Commission received no comments that objected to the proposed rule change and notes that FINRA consulted with Fannie and Freddie before submitting the proposal.

Pursuant to Section 19(b)(5) of the Act,¹⁶ the Commission consulted with and considered the views of the Treasury Department in determining to approve the proposed rule change. The

¹³ See id.

¹⁴ 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).

¹⁵ 15 U.S.C. 78o-3(b)(6).

¹⁶ 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”).

Treasury Department indicated its support for the proposal.¹⁷ Pursuant to Section 19(b)(6) of the Act,¹⁸ 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 discussed above, by applying the \$5 million dissemination cap to all Agency Debt Securities regardless of rating, the rule change will simplify the dissemination protocols for transactions in Agency Debt Securities.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-FINRA-2018-032) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Eduardo A. Aleman
Assistant Secretary

¹⁷ Telephone conversation with Treasury Department staff and Brett Redfearn, Director, Division of Trading and Markets, et al., on October 2, 2018.

¹⁸ 15 U.S.C. 78s(b)(6).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).