

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64364; File No. SR-FINRA-2011-012)

April 28, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to TRACE Reporting of Asset-Backed Securities

I. Introduction

On March 3, 2011, 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 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change related to Trade Reporting and Compliance Engine (“TRACE”) reporting of Asset-Backed Securities. The proposed rule change was published for comment in the Federal Register on March 21, 2011.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

In February 2010, the Commission approved FINRA’s proposal to amend the FINRA Rule 6700 Series to define “Asset-Backed Securities” as TRACE-Eligible Securities, thereby subjecting members to the requirement to report transactions in such securities to TRACE.⁴ The proposal is to become effective on May 16, 2011.⁵ In the current proposed rule change, FINRA

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 64084 (March 16, 2011), 76 FR 15352 (“Notice”).

⁴ See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010). This proposed rule change also amended FINRA Rule 7730 to establish fees for reporting transactions in Asset-Backed Securities.

⁵ See Securities Exchange Act Release No. 63223 (November 1, 2010), 75 FR 68654 (November 8, 2010) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2010-

proposes additional amendments to the FINRA Rule 6700 Series and FINRA Rule 7730 to prepare for the reporting of Asset-Backed Securities transactions to TRACE. The proposed rule change amends or supplements the TRACE reporting and other requirements that will apply to Asset-Backed Securities transactions. Specifically, the proposed rule change would:

(1) in FINRA Rule 6710, clarify, simplify, or conform the defined terms “TRACE-Eligible Security,” “Reportable TRACE Transaction,” “Agency Debt Security,” “Asset-Backed Security” and “TRACE System Hours”; add the defined term, “Securitizer”; and delete the defined terms “Sponsor” and “Issuing Entity”;

(2) in FINRA Rule 6730, (A) revise, renumber, and conform the text of parallel reporting provisions in FINRA Rule 6730(a); (B) incorporate minor amendments regarding the duration and expiration of the pilot program for reporting Asset-Backed Securities transactions (“Pilot Program”); (C) consolidate reporting requirements for Asset-Backed Securities transactions that are executed other than during TRACE System Hours; (D) simplify how settlement is reported for Asset-Backed Securities transactions; (E) add alternative reporting requirements for Asset-Backed Securities transactions that are collateralized mortgage obligation (“CMO”) or real estate mortgage investment conduit (“REMIC”) transactions that occur prior to the issuance of the CMO or REMIC (“pre-issuance CMOs/REMICs”); and (F) add new FINRA Rule 6730(a)(6) to clarify a member’s obligation to provide information to FINRA Operations regarding a TRACE-Eligible Security when such security is not in the TRACE system, and to incorporate other minor technical or clarifying amendments to the Rule;

(3) in FINRA Rule 6760, incorporate requirements that apply to Securitizers of Asset-Backed Securities, alternative notification requirements for pre-issuance CMOs/REMICs, and minor technical, conforming, or clarifying changes; and

(4) in FINRA Rule 7730, add the Financial Information eXchange (“FIX”) as a method to report transactions to TRACE, establish a system-related FIX fee, and incorporate a minor technical amendment.

III. Discussion and Commission’s Findings

After carefully considering the proposed rule change, the Commission finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁶ In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,⁷ 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. The Commission believes that the proposal clarifies the standards for reporting Asset-Backed Securities, will assist FINRA by supporting more timely and accurate reporting to TRACE of transactions in Asset-Backed Securities and enhance FINRA’s surveillance of the debt market in connection with Asset-Backed Securities transactions for the protection of investors and in furtherance of the public interest.

The Commission further finds that the proposal to add to Rule 7730 a fee for reporting transactions in Asset-Backed Securities via FIX is consistent with Section 15A(b)(5) of the Act, which requires, among other things, that FINRA rules provide for the equitable allocation of

⁶ 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).

⁷ 15 U.S.C. 78o-3(b)(6).

reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or system that FINRA operates or controls.⁸ The fee is similar to the Computer-to-Computer Interface (“CTCI”) fee that currently is assessed to members that elect to report transactions in TRACE-Eligible Securities to TRACE via a CTCI line.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-FINRA-2011-012), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Cathy H. Ahn
Deputy Secretary

⁸ 15 U.S.C. 78o-3(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).